

Assisting the Effective Implementation of the Public Sector Equality and Human Rights Duty

Tool for a consultative approach



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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INTRODUCTION

This **Tool for a Consultative Approach** has been developed as a companion document to the Commission's guidance: 'Implementing the Public Sector Equality and Human Rights Duty'.¹ This guidance emphasises the importance of an evidence-based approach to implementing the Public Sector Equality and Human Rights Duty (the Duty) with stakeholder participation as one of the key sources of the evidence required. This tool sets out steps that could be taken to implement a consultative approach to the Duty.

1. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Available at <https://www.ihrec.ie/our-work/public-sector-duty/>

Section 42 of the Irish Human Rights and Equality

Commission Act 2014 requires:

- (1) A public body shall, in the performance of its functions, have regard to the need to—
 - Eliminate discrimination;
 - Promote equality of opportunity and treatment of its staff and the persons to whom it provides services; and
 - Protect the human rights of its members, staff and the persons to whom it provides services.
- (2) (a) set out in a manner that is accessible to the public in its strategic plan (howsoever described) an **assessment** of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to **address** those issues, and

(b) **report** in a manner that is accessible to the public on developments and achievements in that regard in its annual report (howsoever described).

A consultative approach to implementing the Duty is **beneficial** in:

- deepening the evidence base available to the public body, for an effective implementation of the Duty;
- providing access to the knowledge, experience and perspectives of those affected by discrimination, inequality, human rights abuses, and social exclusion;
- ensuring that the policies plans and services of public bodies are responsive to the needs of both service users and staff.

The Public Sector Duty and Our Public Service 2020

A consultative approach to the Duty is rooted in the 'Our Public Service 2020' public sector reform plan, specifically:

- **Action 4:** Significantly improve communications and engagement with the public;
- **Action 9:** Strengthen whole-of-government collaboration; and
- **Action 16:** Promote equality, diversity, and inclusion.²

The reform plan gives effect to the public sector reform commitments on participation and consultation with civil society in the Open Government Partnership National Action Plan and the Civil Service Renewal Plan.³

The consultative approach outlined in this tool is specific to the technical task of implementing the Duty. It is separate to the normal channels of participation and consultation of the public body with staff, civil society organisations, and the wider communities it serves.

The consultative approach to the Duty engages representatives of **service users and policy beneficiaries**, and **staff members** from the groups identified for the Duty, in each of the three cyclical stages of implementing the Duty:⁴ undertaking an assessment of equality and human rights issues; prioritising actions to address the equality and human rights issues identified in the assessment; and reporting on progress made.

2. See: <https://www.ops2020.gov.ie/what-is-ops2020/overview/>

3. Consultation Principles and Guidance, Department of Public Expenditure and Reform, November 2016.

4. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Page 14.

The Commission's guidance names the following identified groups as a focus for the Duty⁵:

- people covered by the nine grounds under equality legislation: gender (including a transgender person or a person who is transitioning to another gender), civil status, family status (including lone parents, carers), age, sexual orientation, disability, race, religion, and membership of the Traveller community; and
- people at risk of poverty and social exclusion.

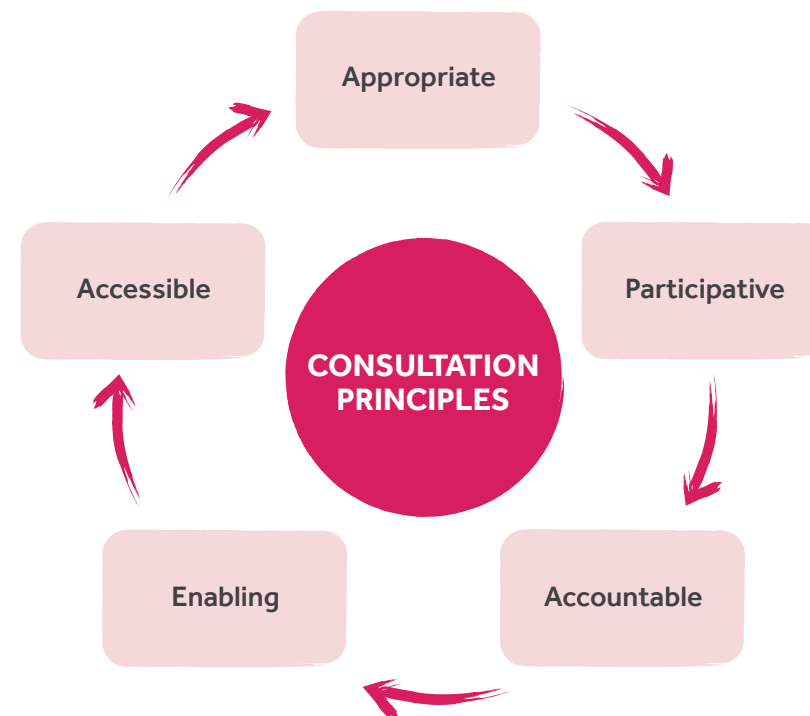
Taking an Evidence Based Approach: Importance of Consultation

The Commission's guidance states: 'Consultation and engagement are important throughout the process of assessing, addressing and reporting on the Public Sector Duty. Consultation with staff and service users assists in developing an evidence-based human rights and equality assessment; it can also inform how an organisation could most effectively address its priority actions; and it can form part of the ongoing monitoring of progress against those priority actions'.⁶

5. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Page 17.

6. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Page 25.

CONSULTATION PRINCIPLES



Five principles could underpin the approach to consultation for the Duty: appropriate; participative; accountable; enabling; and accessible.

1. Appropriate: the approach pursued is suited to the particular task involved.

- The consultation is specific to the technical task of implementing the Duty, therefore, separate to the usual channels of consultation between the public body and its staff, service users and policy beneficiaries, and civil society.

- The processes and structures for consultation need to be manageable within the resources available to the public body, while avoiding any risk of tokenism.
- The consultation process is evaluated on a regular basis, with the stakeholders involved, and adapted as appropriate.

2. Participative: the approach pursued is inclusive in engaging the voice of those experiencing discrimination, inequality and human rights abuses, and is empowering in addressing power imbalances between groups and between groups and the public body.

- Stakeholders identified from among civil society organisations, and staff networks, organisational committees, and trade unions, are representative of each of the identified groups.
- The absence of representatives of specific identified groups is addressed in the approach taken to the consultation.
- Stakeholders are afforded parity, in being heard and having influence in the consultation process and its outcomes.

3. Accountable: the approach pursued is open and transparent.

- The approach to the consultation is discussed and agreed with civil society and staff stakeholders.
- Feedback is provided to stakeholders on the conclusions of and outcomes from their participation in the consultation.

4. Enabling: the approach pursued supports effective participation by stakeholders.

- Adequate and timely information is provided to stakeholders on the purpose of the consultation and the proposed process.
- Documents to be considered are provided in advance of the consultation in a timely manner to allow preparation by stakeholders.

- Resource or capacity barriers faced by civil society organisations are a focus for discussion and resolution.

5. Accessible: the approach pursued involves identifying and addressing barriers to participation that arise for stakeholders from the diversity of identified groups.

- Stakeholders are invited to notify the public body about any supports they might need to ensure their effective participation.
- Stakeholders are invited to notify the public body about any reasonable accommodation required by people with disabilities⁷.
- The public body takes action to respond to stakeholder requests and to communicate the availability of these supports and accommodations.

Public Sector Duty: Values In Action

Organisational culture and the values that drive this culture are central to effectively implementing the Duty. The Commission's guidance states: 'Implementation of the Duty can assist an organisation to define and give expression to equality and human rights values related to its purpose and key public sector values'.⁸ Many public bodies are guided by core values, including those with an equality and human rights focus, such as: respect, participation, partnership, empowerment, inclusion, and diversity. These values could motivate and underpin the approach public bodies take to their consultation processes in the implementation of the Duty.

7. For more information see National Disability Authority: Ask Me: Guidelines for Effective Consultation with People with Disabilities. Available at www.nda.ie

8. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Page 18.

FIVE STEPS IN THE CONSULTATIVE APPROACH

Assessment of equality and human rights issues:

5 Steps

1. Identify the Purpose for the Consultation



2. Identify key Areas for Consultation



3. Identify the Stakeholders



4. Establish the Approach and Methodology



5. Provide Feedback

Step One:

Identify the purpose for the consultation

The **purpose** of engagement with service users, through relevant civil society organisations, and with staff, in a consultative approach to implementing the Duty, is to secure:

- access to knowledge, analysis, and understanding of the lived experience of discrimination, inequality, human rights abuses, and social exclusion;
- an evidence base, drawn from the diversity of people in the wider community served, and from the diversity of people in the workplace, to check each of the three steps for implementing the Duty;
- a source of creative and diverse ideas and thinking to more effectively progress action to address equality and human rights issues; and
- a review and validation among the identified groups for the process of, and outcomes from implementation of the Duty.

The consultation involved in implementing the Duty has a specific purpose aligned with the three-stage approach to implementing the Duty: Assess, Address and Report.⁹ The purpose of the consultation process, under each of these three stages is as follows:

Stage 1. Assess: undertake an evidence-based assessment of equality and human rights issues to identify a basis from which to consider how to eliminate discrimination, promote equality, and protect human rights.

Consultation purpose: to inform, assess, and validate a draft assessment of the equality and human rights issues relevant to the purposes and functions of the public body.

9. Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission, 2019. Page 14.

Stage 2. Address: prioritise actions to address the equality and human rights issues identified in the assessment and put in place organisational processes to strengthen implementation of equality and human rights actions.

Consultation purpose: to check strategic plans, annual plans, policies, programmes, or procedures, at final draft stage, to ensure the adequate and appropriate inclusion of actions to address the equality and human rights issues prioritised by the public body.

Stage 3. Report: communicate progress in relation to addressing equality and human rights issues relevant to the purpose and function of the public body.

Consultation purpose: to consider the draft report on progress made by the public body and to establish learning from the actions taken and the future implications of this learning.



Step Two: Identify key areas for consultation

It is important to establish the areas that will be a focus for the consultative exercise with service users and policy beneficiaries, and with staff so that these can be made available to stakeholders in advance.

Areas for consideration in the **consultation on the draft assessment of equality and human rights issues:**

- Are there gaps in the data and information gathered for the assessment, regarding one or more of the identified groups?¹⁰
- Do the equality and human rights issues identified adequately reflect the key concerns of all the identified groups?
- Do the equality and human rights issues identified cover all the functions of the organisation?
- Does the data and information gathered suggest a particular priority focus: for specific groups; and for key function areas of the organisation?

10. While identifying an appropriate legal basis under Article 6 and a permissible condition under Article 9 of the General Data Protection Regulation (GDPR) for processing equality data is a matter for each public body as a data controller, the legal basis and condition does now exist to allow public bodies to process equality data. While there is a responsibility to protect personal data and comply with regulations, it is important to ensure that data is collected on all populations including minority cohorts to ensure that statistical analysis can be used to inform future legislation, policies and services. For more information and guidance see Guidelines on Improving the Collection and Use of Equality Data, Equality Sub-Group, High Level Group on Non-Discrimination, Equality and Diversity, European Commission, DG Justice and Consumers, Brussels, 2018.

Areas for consideration in the **consultation on prioritising actions to address these equality and human rights issues in draft strategic plans and annual work plans:**

- Have the appropriate equality and human rights issues been identified for action, from the assessment?
- Does the strategic plan and annual work plan identify adequate and appropriate actions to address each of the equality and human rights issues identified as relevant?

Areas for consideration in the **consultation on reporting on progress:**

- Does the draft report accurately capture progress made on each of the equality and human rights issues prioritised by the organisation?
- Does the draft report accurately capture progress made on implementing the Duty by the organisation during the year?
- What is the learning from the progress made and what action should be taken by the organisation to respond to this learning?

Step Three: Identify the Stakeholders

The stakeholders for the consultations include service users, policy beneficiaries and staff from across the identified groups.

Engagement with **service users and policy beneficiaries** can be organised through relevant civil society organisations that advocate on behalf of and represent each of the identified groups. This underpins a consultative approach that is both manageable, in accessing the breadth of perspectives required, and effective, in mobilising the necessary expertise.

It is important that the perspective of each of the identified groups is adequately represented through the range of organisations involved. The approach to be taken in the consultation and the choices made as to which organisations to involve would be discussed and agreed with civil society organisations. This should be done in advance of the consultation exercise.

Engagement with **staff** from the identified groups can be organised through equality and diversity-related staff networks, staff equality and human rights committees, and/or trade unions that are representative of staff from the identified groups.

It is important that the perspective of each of the identified groups is adequately represented. Where this diversity is not available from among staff members, the trade unions could make this perspective available from within their wider membership.

Step Four: Establish the approach and methodology

To assist in identifying the best approach and methods for the consultation processes, public bodies could consider:

- Is the organisation currently engaging with relevant civil society organisations that could be invited to inform the approach and to participate in the consultation?
- What action is required to ensure that consultation processes are accessible and accommodate diversity?
- Does the organisation need to undertake any targeted consultation(s) to address information and/or feedback gaps from specific identified groups that may be harder to reach?
- What safeguards are required to address confidentiality and/or privacy issues that may arise in consulting with staff from the identified groups?

In preparing for consultation it is important for public bodies to:

- ensure invitations to participate in the consultation provide: information on the context for and purpose of the consultation; the areas to be focused on in the consultation; and a contact person to whom any questions can be addressed
- provide draft documentation relevant to the consultation purpose to participants in advance of any consultation so that they have time to prepare their contribution, and
- Provide clear information on confidentiality, how the information gathered will be stored and who will have access to it.

Possible consultation methods with civil society organisations:

Consultation Method	Potential
Convening an open meeting for representatives of relevant civil society organisations.	Provides opportunity to reach a broad spectrum of representative organisations, some of which may not have the capacity to engage on an ongoing basis.
Organising a roundtable discussion with civil society organisations representing specific identified groups.	Useful for gathering more in-depth data and information and/or feedback from specific identified groups where data and information is limited.
Establishing a standing civil society panel drawn from organisations representing and advocating for the range of identified groups ¹¹	Enables the development of civil society capacity to provide on-going support to the public body in implementing the Duty.

11. For an example of this approach see: Realising Potential: Public Sector Equality and Human Rights Duty Implementation Manual, Galway City LCDC, Galway 2020, pp 17-19.

Possible consultation methods with staff:

Consultation Method	Potential
Establishing a standing staff panel, from across all function areas of the public body.	Enables the development of staff capacity to effectively engage on an ongoing basis with the implementation of the Duty.
Convening focus groups with staff members from the identified groups	Useful for gathering more in-depth information from staff and/or feedback.
Anonymous staff surveys	Useful for gathering potentially sensitive equality data and information that staff members may not otherwise feel comfortable sharing.

Once the most appropriate consultation method is selected and conducted with the identified groups, a public body should allocate time to reflect on and analyse the information and evidence gathered in the consultation and incorporate it into the relevant stage of implementation of the Public Sector Duty: Assess, Address, Report. This will ensure that a public body reviews and strengthens its plans, actions and reports with the views of the identified groups. It is also important to evaluate the consultation process and take lessons learned into account in future consultations.

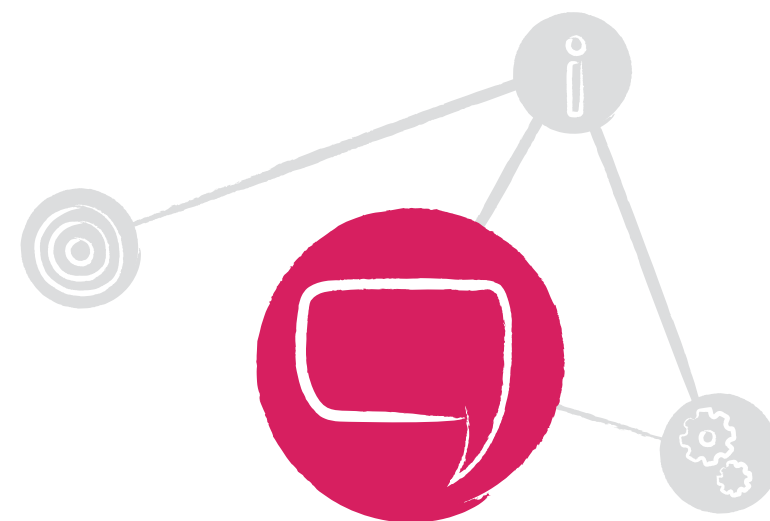
Step Five: Provide feedback

Feedback from the consultation process is an important element for accountability and ensuring the process is transparent and open.

The **feedback from each consultation** could cover:

- a minute of purpose of the exercise, identified groups represented, and the agreed conclusions, and
- a statement setting out how the public body has responded to the agreed conclusions and the rationale for any gaps.

The feedback should be circulated directly to the stakeholders that participated in the consultation exercise. It should be further disseminated as part of the transparency that underpins implementation of the Duty. This might involve making the outcomes available on the organisation's website.



Checklist



- ✓ **Have we clarified the purpose and objectives for the consultation?**
- ✓ **Have we defined the questions for the consultation and provided them in a timely way in advance to persons to be consulted?**
- ✓ **Have we identified civil society representative organisations and staff to consult, for each of the identified groups? How do we propose to address any gaps in this regard?**
- ✓ **Have we put in place the processes and structures to ensure our consultation is accessible to a diversity of people within the identified groups? Have we allowed enough time for people to engage in a meaningful way in the process?**
- ✓ **Have we used these processes and structures to convene participative exercises to check, review and validate:**
 - our draft assessment of equality and human rights issues?
 - that our strategic plans, annual plans, policies, procedures and programmes include the actions to address these issues?
 - our annual reports on the progress made through implementing the Duty?
- ✓ **Have we reflected on the information and evidence provided by the consultation and incorporated it accordingly?**
- ✓ **Have we provided feedback to people consulted on the outcome of the process and how their input has informed the outcome?**

Case Study

A Local Community Development Committee (LCDC) established by a local authority engaged with the Public Sector Duty in the development of an implementation plan for its Local Economic and Community Plan.

The LCDC had previously established a Social Inclusion Subgroup with implementation of the Public Sector Duty in its mandate. This included public bodies on the LCDC alongside civil society organisations representative of the identified grounds. Training was provided for Subgroup members on the Public Sector Duty and the values-led approach being taken by the LCDC in its implementation.

The Subgroup was tasked with conducting a check on the draft implementation plan to establish it contained a sufficient range of actions to address issues in the equality and human rights assessment previously undertaken by the LCDC. This was done through a consultation in a half-day meeting of the Subgroup.

The draft implementation plan was circulated in advance of the meeting. A briefing document was circulated that set out the key questions to be addressed in the consultation, with an agenda. This enabled participants to come to the meeting fully prepared and to maximise the benefit from the consultation.

The meeting was externally facilitated and it began with an agreement on the approach to be taken in the consultation. Each section of the implementation plan was discussed on the basis of questions circulated in advance. Agreement was reached on actions to be included and how to deliver them. A report was prepared and circulated to all participants for agreement.

The report was considered by the steering group overseeing the implementation plan for the Local Economic and Community Plan and its proposals agreed in full.



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