



Executive Summary

Country Report Ireland 2011 on measures to combat discrimination

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1. Introduction

The make up of Irish society is quite homogeneous. According to the 2011 census¹, of a population of 4,588,252, 84% are Roman Catholic, 2.8% Church of Ireland (Protestant), 1% Muslim, 1.8% no religion, remainder unstated or various religions. 85% describe themselves as white Irish, 0.6% as Irish Travellers. 58 697 people describe themselves as Black or Black Iri. Between 2006 and 2011 'Other White' (non-Irish) rose by almost 43 %, largely due to immigration from Eastern European countries. 'Other Asian' ethnic group includes people of Indian and Filipino origin (87 % rise), while there is 8 % more people of Chinese ethnicity. The average age of the population is 36.1. The figures for those describing themselves as disabled are not available. No census questions were asked as to sexual orientation (there were 4,042 cohabiting same-sex couples). Non-Irish nationals consisted of 544,357 (12% of the population). The percentage of non-nationals from another EU Member State is not yet available, but is likely to be the majority.

The major impetus for the development of the equality regime in Ireland was its accession to the European Union in 1972. The 1990s witnessed all-party agreement on the necessity for a significant expansion of Ireland's equality laws, governing more than gender discrimination. This resulted in the Employment Equality Act 1998-2008 and the Equal Status Act 2000-2008. These Acts also established the Equality Authority and the Equality Tribunal.

At the outset of this equality regime there was significant support for the bodies and their actions, but in recent years there has been something of a backlash. This is evidenced most keenly by the introduction of the Intoxicating Liquor Act 2003. This Act governs the enforcement of non-discrimination in licensed premises, requiring complainants to use the ordinary court system rather than the specialised Equality Tribunal. The introduction of this Act was the direct result of political pressure by the vintners of Ireland. The reason for such pressure would appear to be a direct result of the significant body of case law which established wide spread discrimination by licensed premises against members of the Traveller Community. Recent budgets have severely curtailed funding for the Equality Authority and Tribunal, whose workloads meanwhile continue to increase.

¹ <http://www.cso.ie/en/census/census2011reports/>.



2. Main legislation

The Irish Constitution enshrines a guarantee of equality before the law. There was a broad welcome for the range of equality laws which have been introduced over the last few decades.

Irish anti-discrimination legislation consists of the Employment Equality Act 1998-2008, and the Equal Status Act 2000-2008. Four other acts also contain provisions prohibiting discrimination, namely the Pensions Act 1990 – 2008, Unfair Dismissals Act 1977 – 2007, the Prohibition on the Incitement to Hatred Act 1989, which criminalizes hate speech, and the Intoxicating Liquor Act 2003, which provides for enforcement of discrimination law in the context of premises licensed for the sale of alcohol. The transposition of both directives and the necessary changes were provided for in the Equality Act 2004. The directives were transposed in good time, but the European Commission started infringement actions against Ireland (amongst other Member States) for failure to correctly implement some requirements of both directives. These actions have been closed by the Commission, on the basis that the explanations provided by the Government were satisfactory, although the legislation has not changed in the meantime. The Employment Equality Act 1998-2008 established two permanent national institutions with enforcement functions under the equality legislation, namely the Equality Authority and the Equality Tribunal, and these are the specialised bodies required by the Racial Equality directive. Both are involved in the promotion of equal treatment with regard to gender, disability, age, sexual orientation, religion, marital status and family status, and racial or ethnic origin (including membership of the Traveller Community). The Equality Authority is an independent statutory body charged with working towards the elimination of discrimination, the promotion of equality, the provision of information to the public, and assisting litigants. The Equality Tribunal is a quasi-judicial body established for the purpose of investigating complaints under the Employment Equality Act 1998-2008 and the Equal Status Act 2000-2008, on all nine grounds. The Tribunal Director is charged with the enforcement of the Employment Equality Acts and the Equal Status Acts, and may delegate his/her quasi-judicial functions to Equality Officers and Equality Mediation Officers. The Tribunal has had its legal mandate extended and it now has jurisdiction to deal with discriminatory dismissals and the Pensions Acts as they deal with equality issues. These bodies fulfil the roles envisaged by the EU directives.

There are two other relevant bodies in the context of equality, namely the Irish Human Rights Commission and the National Disability Authority. The Irish Human Rights Commission is charged with the protection and promotion of human rights. The Commission works to ensure the protection of civil, political, economic, social and cultural rights in recognition of the universal, indivisible, interdependent and inter-relation of all human rights. The National Disability Authority, on behalf of the State, promotes and helps secure the rights of people with disabilities. Its responsibilities include policy development, research and advice on standards.



Irish anti-discrimination legislation goes beyond EU equality directives, in that the scope of the Equal Status Acts 2000 -2008 prohibit discrimination in access to goods and services not just on grounds of race and gender but also disability, age, religion, sexual orientation, Traveller community, family and marital status grounds. Nationality is also a named ground under Irish employment equality and equal status legislation. The definition of disability is broader than in EU law.

Ireland has ratified almost all of the major international instruments combating discrimination: Charter of the United Nations; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Nationality of Married Women; International Convention on the Elimination of All Forms of Racial Discrimination; Convention relating to the Status of Refugees; European Convention for the Protection of Human Rights and Fundamental Freedoms; European Social Charter; European Social Charter (revised); Framework Convention for the Protection of National Minorities and European Convention on the Exercise of Children's Rights. It has not ratified Protocol 12 of the European Convention on Human Rights. Ireland is a dualist state, meaning that for international law to have an impact in the Irish legal system, it must be transposed by means of legislation into the national legal order. The only international convention that has been transposed into Irish law is the European Convention on Human Rights, which was incorporated by means of the European Convention on Human Rights Act 2003. Ireland has not yet ratified the UN Convention on the Rights of Persons with Disabilities.

The International Convention against All Forms of Racial Discrimination (CERD) monitoring committee observed² that the economic recession that has confronted the State party threatens to reverse the achievements that have been made in the State party's efforts to combat racial discrimination. It expressed grave concern over the disproportionate budgets cuts to various human rights institutions mandated to promote and monitor human rights such as the Irish Human Rights Commission, Equality Authority and National Consultative Committee on Racism and Interculturalism. It recommended that the government should recognise Travellers as an ethnic group, and produce a positive action programme for Travellers at all levels.

The committee monitoring compliance with the Convention on the Elimination of Discrimination Against Women (CEDAW) (2005) expressed concern about the lack of legislative protection of migrant domestic workers from discrimination. NGOs such as the National Women's Council of Ireland (NWCi) also focus on the position of marginalised women (travellers, disabled, migrant, carers, trafficked women).

² Concluding Observations of the Committee on the Elimination of Racial Discrimination, March 2011 http://www2.ohchr.org/english/bodies/cerd/docs/co/Ireland_AUV.pdf.



The Equality Coalition, an alliance of 170 groups and organisations concerned with equality issues, considers that EU directives should be developed to cover third country nationals, former prisoners, and trade union membership; there should be a separate directive to address disability discrimination; and debate should be stimulated at EU level as regards discrimination in social origin and language including Sign Language.

3. Main principles and definitions

The Equality Acts prohibit discrimination across nine grounds, but govern different aspects of discrimination. The Employment Equality Act 1998-2008 prohibits discrimination in the sphere of employment; the Equal Status Act 1998-2008 prohibits discrimination in the provision of goods and services; the Social Welfare (Miscellaneous Provisions) Act 2004 prohibits discrimination in the provision of occupational pensions. These acts prohibit direct discrimination, indirect discrimination, victimisation, harassment, instructions to discriminate and procuring another person to discriminate on the grounds of race, religion, gender, age, disability, sexual orientation, marital status, family status and membership of the Traveller community. The Equality Acts also require reasonable accommodation. Figures from the Tribunal suggest that more than one in four cases claim more than one discriminatory ground. Direct discrimination is defined in the Equality Acts as treating one person less favourably than another person is, treated, has been treated or would be treated on any of the nine discriminatory grounds. This prohibition includes discrimination by association, and discrimination on a discriminatory ground that exists, existed but no longer exists, may exist in the future, or is imputed to the person concerned. Indirect discrimination is defined within the Equality Acts as occurring where an apparently neutral provision puts a person within one of the protected classes at a particular disadvantage when compared with others not within that protected class. This difference of treatment may be permitted where it can be objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. There is some concern that this definition is not fully in compliance with the Directives as no provision is made for the use of hypothetical comparators. There is no necessity for a complainant to show that there was an intention to discriminate, either directly or indirectly; it is sufficient if the actions do in fact discriminate. The Equality Acts define harassment as any unwanted conduct relating to a discriminatory ground, being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. This conduct can include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. Victimisation covers any person who claims discrimination, instigates proceedings, supports a complainant, acts as a comparator or a witness to a complaint, opposes discrimination by lawful means, or gives notice of an intention to do any of the above, and as a result they suffer dismissal or adverse treatment.



The Employment Equality Act 1998-2008 provides that where a person who has a disability can perform the duties of the post with or without the assistance of 'appropriate measures' they will be deemed competent under the Act. The employer has an obligation to take appropriate measures to enable a person with a disability to have access to employment, to participate or advance in employment, to undergo training unless such measures would impose a disproportionate burden on the employer. To determine what amounts to a disproportionate burden account must be taken of the costs of the measure in question, the scale and financial resources of the employer in question, the possibility of obtaining public funding or other assistance. The Equal Status Act 2000-2008 provides that there is a breach when a provider of goods or services fails to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, without which it would be impossible or unduly difficult for the person to avail of the good or service in question. A failure to provide the requisite special treatment or facility in question will not amount to a failure to provide reasonable accommodation where the provision of the treatment or facility would give rise to more than a nominal cost to the provider of the goods or services in question.

The Equality Acts contain a number of exceptions to the principle of non-discrimination, which does not apply to persons employed in another person's home for the provision of personal services. There are exceptions where the characteristic in question is a genuine and determining occupational requirement for the post and the objective is legitimate and the requirement proportionate. There are exceptions relating to the grounds of age, disability, and religion in occupational pensions, remuneration in respect of someone with a restricted capacity and employees working in bodies with a religious ethos, respectively. Equally there are exceptions in respect of certain forms of employment such as the Defence Forces, the Garda Síochána and the emergency services. With regard to the Equal Status Act there are a number of exceptions and exemptions to the non-discrimination rule. Differences of treatment are permissible in respect of annuities, pensions and insurance policies where there is actuarial evidence to show that the difference is reasonable. There are exceptions to the non-discrimination norm for the purposes of organizing sporting events, for authenticity purposes for a dramatic performance, or other entertainment, or for the provision of services for religious purposes. The exception that has proved most problematic relates to the provision of goods or services that would lead a reasonable person to believe there is a substantial risk of criminal or disorderly conduct, then, discrimination is not actionable. The Equal Status Act also contains a number of exceptions in respect of education on the grounds of age, gender, religion and disability.

4. Material scope

The Employment Equality Act 1998 – 2008 applies to the field of employment and vocational training; this does not distinguish between public and private sector employees. This relates to access to employment, conditions of employment, training or experience for or in relation to employment, promotion or re-grading or



classification of posts. This Act also covers vocational training, employment advertisements and agencies and agency workers.

The Equal Status Act 2000-2008 prohibits discrimination in relation to goods and services, including education and accommodation. State services are not explicitly mentioned. Section 14 of the Equal Status Act provides a statutory exemption where an act or action is required by virtue of another piece of legislation: then the Equal Status Act 2000-2008 does not apply.

5. Enforcing the law

The Employment Equality Act 1998-2008 introduced the enforcement mechanisms for the Equality Acts. The enforcement mechanisms apply equally to public and private employees with the exception of certain public sector employees. Complaints under either the Employment Equality Act 1998-2008 or the Equal Status Act 2000-2008 may be brought before the Equality Tribunal. The Equality Tribunal assumes an investigative role in the hearing of complaints; complainants may represent themselves, costs may not be awarded against either party, and the procedure is informal. The option of mediation is provided for in section 78 of the Employment Equality Act 1998-2008. A mediated settlement agreed by the parties becomes legally binding and its terms can be enforced at the Circuit Court. The decisions of the Tribunal may be appealed; the Labour Court hears the employment appeals, whereas the Circuit Court hears the equal status appeals. Labour court determinations can be appealed on a point of law to the High Court. Complaints of unfair dismissal may also be brought under the Unfair Dismissals Acts 1977 and 1993. The Employment Appeals Tribunal makes legally binding determinations, with the possibility of appeal to the Circuit Court, and subsequently the High Court. Claims are brought before the relevant body by way of application using standard forms. Once litigation has been instigated the alleged discriminator will be notified. Hearings are in private before the Equality Tribunal and Labour Court; before the Employment Appeals Tribunal the hearings are normally in public. The decisions of each of the bodies are available for public inspection, with both the Equality Tribunal and the Labour Court publishing their decisions on their respective websites. Complaints under the Equal Status Act 2000-2008 involving licensed premises (i.e. pubs etc) must now be brought to the District Court rather than as previously to the Equality Tribunal. The major impact of this amendment is increased costs for complainants. Organisations may represent an individual complainant, at the Equality Tribunal or the Labour Court where they are authorised to do so by the complainant, but not before the Circuit Court or the High Court. Organisations are not permitted to take a complaint, with the exception of the Equality Authority. The Equality Authority enjoys legal standing to bring complaints to the Equality Tribunal relating to patterns of discrimination, discriminatory advertising or the contents of a collective agreement. The Authority can also provide legal assistance and representation to an individual complainant. The Equality legislation provides for a shift in the burden of proof in non-discrimination cases, where the facts established suggest that there is a prima facie case of discrimination. The use of statistics is permitted, but is not necessary to



raise a prima facie case of discrimination. Situation testing has not been used to any great extent. There are no procedural or other rules prohibiting the use of 'situational testing.' Anecdotal evidence suggests that Judges from the Irish superior courts would be hostile to this form of evidence, seeing it as a form of entrapment. The Employment Equality Act 1998-2008 provides for a broad range of remedies: compensation, orders for employers to take specific courses of action, re-instatement and re-engagement. All employment contracts are deemed to have an equality clause that transforms any provisions of the contract that would otherwise give rise to unlawful discrimination. All discriminatory provisions in collective agreements are deemed null and void it is not possible to contract out of the terms of the equality legislation. There are maximum limits on financial awards, those limits in the context of employment are a maximum of two years pay, and where the complainant was not in employment then the maximum award is €12,697.

The Employment Equality Act 1998-2008 also provides for non-financial remedies, such as an order that a person should take a course of action including orders for re-instatement or re-engagement. The Equal Status Act 2000-2008 also provides for a variety of remedies including compensation, or orders for service providers to take specific course of action. This Act also imposes maximum award limits; the current maximum is €6,348.69. The majority of awards granted do not come anywhere near the maximum. This coupled with an extraordinary delay in cases coming before the Tribunal suggests that the sanctions under this Act are not effective, proportionate or dissuasive.

6. Equality bodies

The Equality Authority is an independent body mandated to work towards the elimination of discrimination, promote equality of opportunity, provide information to the public on a number of matters and review various legislative enactments. It fulfils these functions by means of research and awareness raising, review of the legislation and the drafting of statutory Codes of Practice. The Equality Authority also has the power to instigate litigation on its own behalf or to assist a litigant. It is authorized to conduct inquiries, and carry out equality reviews. The Department of Justice, Equality and Law Reform, under the direction of the Minister, funds the Equality Authority. The budget of the Equality Authority was reduced by 43% for 2009, causing the then Chief Executive Officer and half of the Board members to resign. The Department of Justice then appointed a new CEO from the ranks of officials within the Department.

Current concern centres on the plan of the present Government to merge the existing Equality Authority and Irish Human Rights Commission into a new single body, whether this new body will retain the full range of functions provided for under the EU Equality directives, and whether its structure, independence and financial resources will comply with the Paris Principles. The same considerations will apply to the proposed subsuming of the Equality Tribunal into a single employment rights service. Legislation on both matters is expected in the coming months.