



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Ireland
Title:	Positive Discrimination
Date:	4 December 2018
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<u>Context</u>	
Issue at stake:	Positive Discrimination
Ground of discrimination:	Sex
Source:	Policy development
Field:	Employment
Applicable law:	Commission Recommendation 2006/54/EC

Content

Policy development: On 12 November 2018, the Prime Minister (An Taoiseach Leo Varadkar, T.D), and Mary Mitchell O'Connor T.D., Minister of State with special responsibility for Higher Education launched the *Gender Action Plan 2018 – 2020: Accelerating Gender Equality in Irish Higher Education Institutions*. The Action Plan is designed to transform the higher education sector's gender equality performance. The government initiative is that there will be 45 senior academic posts put in place to which *only women may apply*. Such appointments are to take place over three years and there is to be additional state funding for such posts. The minister also wants to have 40 % of professors in institutes of higher education to be female by 2024. The Gender Equality Taskforce was established in November 2017 to build on the work of the HEA National Review of Gender Equality in Irish Higher Education Institutions (2016). The Taskforce identified significant measures that will further accelerate progress in achieving gender equality in Irish higher education institutions following the recommendations of the HEA Expert Group (2016).

Key points of analysis: To date there are no precise details published as to the nature of these appointments save that they will be new permanent pensionable posts. It is not known as to whether these posts will be in Irish universities or in the institutes of technology; or in what fields, e.g. science or engineering. The Employment Equality Acts 1998 to 2015 make limited provision for positive discrimination and does not provide for quotas. Section 24 of the 1998 Act (as amended) provides that the Act is without prejudice to ensuring full equality in practice between men and women in their employments by providing specific advantages so as to make it easier for an under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. This section of the Act has not been litigated in Ireland and it is possible that there could be litigation depending on the nature of the proposed posts. The Electoral (Amendment) (Political Funding) Act 2012 provided that political parties had to have a certain quota of female candidates in general elections in

order to obtain political funding. Such approach was criticised at the time and has resulted in only a marginal increase in the number of women elected to parliament.

The controversy in respect of appointments to professorial posts in Irish institutes of higher education stems in the main from the case of *Sheehy Skeffington v National University of Ireland Galway*¹ where the complainant a lecturer failed to be appointed to a senior lecturer post. The statistics for that particular constituent college of the National University of Ireland showed that few women were appointed to senior posts in that college, i.e. one in two men and one in three women would get promotion. The complainant had applied for promotion on numerous occasions. If you look deeper into that case, it was badly handled by the respondent employer and there was a breach of fair procedures in the appeal process. The complainant made out a prima facie case of discrimination. In respect of indirect discrimination, the equality officer considered that there was one neutral criterion that put women at a disadvantage namely that the application form to senior lecturer asks people to state when they were on maternity leave or other unpaid leave. Male applicants left this part of the form 'blank'. The complainant had taken leave to look after her elderly mother and other female applicants had taken maternity, adoptive and parental leave. The only successful woman candidate had taken no leave. Such caring responsibilities were seen as a disadvantage to women. The equality officer ordered promotion of the complainant from 1 July 2009 (not clear but the date of refusal) with all necessary adjustments to salary and benefits and EUR 70 000 (being approximately one year's salary). In addition, the respondent must conduct a review of its policies with respect to the gender ground with a report on progress to be made to the Irish Human Rights and Equality Commission.

Internet link source:

<https://www.workplacerelations.ie/en/Cases/2014/November/DEC-E2014-078.html>. Accessed 25 November 2018.

<https://www.education.ie/en/Press-Events/Press-Releases/2018-press-releases/PR18-11-12.html>. Accessed 25 November 2018. There is a link to the Gender Action Plan 2018-2020 at the end of the press release.

<https://www.education.ie/en/Press-Events/Press-Releases/2018-press-releases/PR181112.html>. Accessed 25 November 2018.

<https://www.education.ie/en/Publications/Latest-Publications/>. Accessed 25 November 2018 – Go to Gender Action Plan 2018-2020.

¹ DEC-2014-078 (Equality Officer).