

The Equal Status Acts 2000 to 2004

Introduction

The Equal Status Acts 2000 to 2004

- Promote Equality
- Prohibit certain kinds of discrimination (with some exemptions) across nine grounds
- Prohibit sexual harassment and harassment
- Prohibit victimisation
- Require reasonable accommodation of people with disabilities
- Allow a broad range of positive action measures

Scope

The Acts apply to people who:

- Buy and sell a wide variety of **goods**
- Use or provide a wide range of **services**
- Obtain or dispose of **accommodation**
- Attend at or are in charge of **educational establishments**.

There are separate provisions on **discriminatory clubs**.

Licensed premises

Claims of discrimination in relation to licensed premises are now dealt with in the District Court. The main relevant provisions are contained in the Intoxicating Liquor Act 2003.

Grounds

The Equal Status Acts 2000 to 2004 prohibit discrimination on the following nine grounds:

The gender ground: A man, a woman or a transsexual person;

The marital status ground: Single, married, separated, divorced or widowed;

The family status ground: Pregnant, a parent of a person with a disability;

The sexual orientation ground: Gay, lesbian, bisexual or heterosexual;

The religion ground: Different religious belief, background, outlook or none;

The age ground: This only applies to people over 18 except for the provision of car insurance to licensed drivers under that age;

The disability ground: This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions.

The race ground: A particular race, skin colour, nationality or ethnic origin;

The traveller community ground: People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history,

culture and traditions, identified historically as a nomadic way of life on the island of Ireland.

Exceptions

There are several significant exceptions in the Act. The broadest general exception is that anything mandated by an Act of the Oireachtas or EU law is allowed. There are also exceptions on the ground of Nationality for public authorities in relation to certain non-nationals. These exceptions should be read restrictively and should not be allowed to unduly restrict the general prohibition on discrimination.

There are specific exemptions that apply to particular areas. These are set out below as they arise.

Discrimination

Discrimination has a specific meaning in the Acts and there are different types of discrimination covered including indirect discrimination by association. It is defined as the treatment of a person in a less favourable way than another person **is, has been or would be** treated in a comparable situation on any of the nine grounds which

- Exists**
- Existed**
- May exist in the future, or**
- Is imputed to the person concerned.**

-**Indirect Discrimination** – happens where there is less favourable treatment by impact or effect. It occurs where people are, for example, refused a service not explicitly on account of a discriminatory reason but because of a provision, practice or requirement, which they find hard to satisfy. If the provision, practice or requirement puts people belong to one of the grounds covered by the Acts at a particular disadvantage, then the service provider will have indirectly discriminated, unless the provision is **Objectively justified by a legitimate and the means of achieving that aim are appropriate and necessary.**

-**Discrimination by Association** – This happens where a person associated with another person (belonging to the discriminatory grounds) is treated less favourably because of that association.

Disability – Reasonable Accommodation

A person selling goods or providing service, a person selling or letting accommodation or providing accommodation, educational institutions and clubs must do all that is reasonable to accommodate the needs of a person with a disability. This involves providing **special treatment or facilities** in circumstances where without these, it would be impossible or unduly difficult to avail of the goods, services, accommodation etc.

However, they are not obliged to provide special facilities or treatment when this costs more than what is called a nominal cost. What amounts to nominal cost will depend on the circumstances such as the size and resources of the body involved. If the State provides grants or aids for assisting in providing special treatment or facilities, they may be an onus on the service providers etc. to avail these grants.

Sexual Harassment and Harassment

Sexual Harassment and Harassment in the provision of goods and services, accommodation and educational establishment is prohibited.

A person ("the harasser") shall not harass or sexually harass another person ("the victim" regardless of their gender) in the following circumstances:

- 1) The victim uses goods or services provided by the harasser (or seeks to);
- 2) The victim obtains, or proposed to obtain, accommodation or related service from the harasser;
- 3) The victim is a student at, or has applied for admission to, or seeks to avail of any services offered by an educational establishment at which the harasser is in a position of authority.

What is harassment / sexual harassment?

Harassment is any form of **unwanted conduct** related to any of the **discriminatory grounds**.

Sexual harassment is any form of **unwanted verbal, nonverbal or physical conduct of a sexual nature**.

In both cases it is conduct which has **the purpose or effect of violating person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person**.

In both cases the **unwanted conduct** may include **acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material**.

A person's rejection of, or submission to, sexual or other harassment may not be used by any other person as a basis for a decision affecting that person.

Reasonable person – Liable for sexual harassment/harassment

A person who is responsible for the operation of any place that is an educational institution or where goods, facilities or services are offered to the public or a person who provides accommodation must ensure that any person, who has a right to be there, is not sexually harassed or harassed. The 'reasonable person' will be liable for the sexual harassment or harassment unless he or she took reasonable practicable steps to prevent it.

Positive Action

The Acts allow preferential treatment or the taking of positive measures which are bona fida intended to:

- 1) **Promote equality of opportunity** for disadvantaged person;
- 2) **Cater for the special needs** of persons, or a category of persons who because of their circumstances, may require facilities, arrangements, services or assistance.

Victimisation

Victimisation is prohibited.

Victimisation occurs where adverse treatment by a provider of goods and services, of accommodation, or by an educational establishment or club is made as a reaction to:

- A complaint of discrimination having been made to the Equality Tribunal;
- A person having been witness in any proceeding under the Equal Status Act, 2000 to 2004;
- A person having opposed by lawful means an act which is unlawful under the Act.

Vicarious Liability

Employers are liable for discriminatory acts of an employee in the course of his or her employment, unless they can prove that they took reasonably practicable steps to prevent the conduct.

Advertising

A person shall not publish or display, or cause to be published or displayed, an advertisement which indicates an intention to discriminate, harass, sexual harass, or might reasonably be understood as indicating such an intention.

Goods and Services

What is prohibited?

People can discriminate (subject to certain exemptions):

- When they are providing goods and services to the public (or a section of the public);
- Whether these are free or where the goods and services are sold, hired or rented or exchanged;
- Access to and the use of services is covered.

What is service?

It is a facility or service (of any nature) including facilities for:

- Banking, insurance, grants, loans, credit or financing;
- Entertainment, recreation or refreshment;
- Cultural activities;
- Transport or travel;
- A service or facility provided by a club (which is available to the public or a section of the public);
- A professional trade or service.

This list is not exhaustive. A broad view of what constitutes a service is taken by Act.

Services provided by the State (health service executive areas, local authorities etc.) are covered (subject to exemptions). The main exemption is that anything required by Statute, or EU law is exempted. This exemption would not cover circumstances where there is an element of choice or discretion as to how the services are provided. There are specific exemptions on the nationality ground in relation to the treatment by public authorities of certain non-nationals.

The Acts allow that:

People can be treated differently in certain circumstances:

1. Exemptions on the ground of gender

The Acts allow people to be differently on the gender ground in relation to:

- a) Cosmetic services
Covering cosmetic, aesthetic or similar services which involve physical contact (e.g. hairdressing)
- b) Privacy/Embarrassment
Where embarrassment or breach of privacy could reasonably be expected to happen on account of the presence of a person of another gender.

2. Exemption on the ground of religion

The Acts allow people to be treated differently on the religion ground in relation to:

- a) Religious goods and services
Where the goods and services are provided for religious purposes.

3. Exemption on the ground of age

The Acts allow people to be differently on the age ground in relation to:

- a) Adoption/Fostering
Where age requirements are applied for a person to be an adoptive or foster parent where this is reasonable having regard to the needs of the child.

4. Exemption on the ground of gender, age, disability and/or race/nationality

- a) Sporting events
The Acts allow people to be treated differently on the basis of their gender, age, disability or nationality in relation to providing or organising sporting facilities or events but only if the differences are reasonably necessary and are relevant;
- b) Drama and Entertainment
The Acts allow people to be treated differently on the gender, age, disability

or race ground in connection with a dramatic performance or other entertainment but only if the differences are reasonably required for reasons of authenticity, aesthetics, tradition or custom.

5. Exemptions on all grounds

The Acts allow people to be differently on any of the grounds in relation to:

- a) Insurance
Covering annuities, pensions, insurance policies and other matters relating to risk assessments but only if the differences are based on actuarial or statistical data or other relevant underwriting or commercial factors and are reasonable having regard to the data or other relevant factors;
- b) Wills/Gifts
Where goods are disposed of by will or by gift;
- c) Promotion of special interests
Where services are provided for the principal purpose of promoting for a bona fide purpose and in a bona fide manner, the special interests of persons in a particular category, but only to the extent that the different treatment is reasonably necessary;
- d) Special Needs
Where goods and services are provided which can reasonably be regarded as being suitable only to the need of certain persons.

Accommodation

What is prohibited?

The general rule is that there can be no discrimination on the specified grounds in relation to:

- Disposing of any estate
- Terminating a tenancy
- Providing accommodation or any accommodation related services or amenities
- Ceasing to provide accommodations

The Premises or accommodation must be available to the public generally or a section of the public.

The Acts allow different treatment in certain circumstances:

1. Exemptions on all grounds

The Acts allow people to be treated differently on any of the discriminatory grounds in relation to:

- a) Wills/Gifts
Where property is disposed of by will or by gift;
- b) A person's home
Where the provision of accommodation by a person is in a part (other than a separate and self-contained part) of the person's home, where the provision

of the accommodation affects the person's private or family life or that of any other person residing in the home;

c) Use by persons in a particular category

Where premises/accommodation are reserved for:

- Religious purposes
- Refuse
- Nursing home
- Retirement home
- Home for persons with a disability
- Hostel for homeless persons/or for a similar purpose

2. Exemptions on the ground of gender

The Acts allow people to be treated differently on the gender ground in relation to:

a) Privacy or Embarrassment

Where embarrassment or infringement of privacy can reasonably be expected to result.

3. Exemptions in relation to a number of specified groups

The Acts allow Housing Authorities to provide different treatment in relation to housing accommodation based on:

- Family size
- Family status
- Marital status
- Disability
- Age
- Membership of the Traveller community

The Minister may provide different treatment on these ground and also the gender and nationality ground.

Educational Establishments

This covers pre-school service, primary or post primary schools, adult, continuing or further education, university or other third level or high level institution. It includes public and private educational establishments.

What is prohibited?

An educational establishment shall not discriminate in relation to:

- a) The **admission** or the terms or conditions of admission
- b) The **access** of any student to any course, facility or benefit
- c) Any other **term or condition** of participation
- d) The **expulsion** of a student or sanction.

The Acts allow different treatment in certain circumstances:

1. Exemptions on the ground of gender

The Acts allow people to be treated differently on the gender ground in:

a) Single Sex Schools

Where primary and secondary schools may be for one gender only.

2. Exemptions on the grounds of religion and gender

The Acts allow people to be treated differently on the gender and religion ground in relation to:

a) Religious Training

Where institutions established for providing training to ministers of a particular religion may admit students of only one gender or religious belief.

3. Other Exemptions

a) Ethos of the school

The Acts allow primary and post primary schools which have the objective of providing education in an environment which promotes certain religious values, to admit persons of a particular religious denomination in preference to others and to refuse to admit a student who is not of that denomination if it is proved that the refusal is essential to maintain the ethos of the school.

b) Mature students

The Acts allow universities or other third level or adult education institutions to provide different treatment in the allocation of places to mature student.

c) Scholarship

The Acts allow universities or other third level or adult education institutions to offer assistance to particular categories of persons by way of sponsorships, scholarships, bursaries or other awards but only if these are justified by historical or traditional considerations.

d) Student exchange

The Acts allow universities or other third level or adult education institutions to allocate places for exchange students.

e) Grants, fees, allocation of places

The Acts allow institutions providing adult, continuing or further education or universities or other third level institutions to treat nationals of EU member state differently to those who are not, in relation to fees for admission or attendance and the allocation of places.

- The Acts allow the Minister for education and Science to require grants to be restricted to nationals of an EU member state or to require such nationals to be treated differently in relation making grants.

f) Sporting facilities and events

The Acts allow educational establishment to provide different treatment on the gender, age or disability grounds in relation to the provision or organisation of sporting events or facilities but only to the extent that the differences are necessary having regard to the nature of the facilities or events.

g) Disability – presumption of mainstreaming

The Acts allow educational establishments to treat students with disabilities differently (apart from making reasonable accommodation subject to nominal cost exemption) only if the disability is making the provisions of educational services **impossible** to other students or having a **seriously detrimental effect** on that provision.

Discriminating clubs

The specific provisions relating to clubs refer to bodies that have applied for or hold a certificate of registration allows clubs to sell alcohol to members and certain visitors. Unlike the provisions in relation to goods and services, the Equal Status Acts, 2000 to 2004 do not ban discrimination outright.

What is a discriminating club?

In general, a club will be treated to be a discriminating club if:

- 1) It has a rule, policy or practice which discriminates against a member or applicant or
- 2) A person involved in its management discriminates against a member or applicant in relation to the affairs of the club.

This includes issues of admission, terms and conditions of membership, termination membership and making reasonable accommodation for members with disabilities (subject to nominal cost exemption).

What is allowed?

A club will not be considered to be a discriminating club if:

1. The principal purpose of the club is to cater only for the needs of persons of a particular gender, marital status, family status, sexual orientation, religious belief or none, age, disability, nationality or ethnic or national origin or members of the Traveller community.
2. It confines benefits or privileges to particular categories of age or gender where it is not practicable for those outside the category to enjoy the benefit or privilege at the same time as members within the category. The clubs must make arrangement to offer the same or a reasonably equivalent benefit or privilege to those members outside the category.
3. It has different types of membership, access to which is not based on any discriminatory ground.
4. It seeks to eliminate past discrimination by offering particular fee rates or membership arrangement to persons of a particular gender, by reserving places on the management board etc. or takes other steps for the principal purpose of obtaining a more equal involvement in club matters of persons who are members of a particular category.

5. It provides reasonably necessary different treatment to members of a particular gender, age, disability, nationality or national origin as regards sporting facilities or events.

Enforcement – Discriminatory Clubs

Any person, including the equality Authority, can apply to the District Court for a declaration that a club is a discriminating club. If it is found to be a discriminating club and it is the first such order made against the club, the District Court can suspend a club's certificate to sell alcohol for a period of up to 30 days. The effect of the suspension is that the club cannot sell alcohol drinks. While a second or subsequent determination that a club is a discriminating club remains in effect, no certificate of registration shall be granted or renewed. Employees of the club should not be disadvantaged by this order.

The Act provides for an appeal to the Circuit Court and a club can apply to the District Court for a declaration as to whether it remains a discriminating club.

General Exemptions

There are several significant exemptions in the Act. These exemptions should be read restrictively and should not be allowed to unduly restrict the general prohibition on discrimination.

1) Statutory exemption

A general exemption provides that nothing in the Act shall prohibit the taking of any action that is required under:

- a) Statutory provision, court order
- b) Any act done or measure adopted by the EU or
- c) Any international treaty which imposes an obligation on the state.

Only actions that are mandatory are covered. Where the measure leaves some discretion the anti-discrimination provisions do apply.

2) Certain Non-Nationals

Public authorities can treat certain non-nationals differently, on the basis of their nationality, who are outside the State or unlawfully present in it (for the purposes of the Immigration Act 2004) or in accordance with any provision or condition made by or under any enactment and arising from his or her **entry to or residence** in the State.

3) Risk of criminal or disorderly conduct

A provider of good/services, or a person providing accommodation or related services, can refuse service/accommodation to a person if a reasonable individual, having the knowledge and experience of the provider, would form the belief that the provision of service/accommodation to the customer would produce a substantial risk of criminal or disorderly conduct or behaviour, or damage to property in or around the area where the service is provided.

4) Other exemptions

- a) The different treatment of a person does not constitute discrimination where

the person is treated solely in the exercise of a clinical judgement in connection with a diagnosis of illness or his/her medical treatment.

b) Treating a person differently does not constitute discrimination if the person:
-is incapable of entering into an enforceable contract or
-is incapable of giving informed consent and for that reason the treatment is reasonable.

c) Providers of goods and services, providers of accommodation and clubs are allowed to impose and maintain **a reasonable preferential fee, charge or rate in respect of anything offered to persons together with their children, married couples, persons in a specific age group and persons with a disability.**

Making a Claim

The Equality Tribunal, District Court and Circuit Court have roles in relation to claims under the Equal Status Acts, 2000 to 2004. All claims (except for claims in relations to discriminating clubs) under the Equal Status Acts 2000 to 2004 are brought to the Equality Tribunal which is the quasi judicial body established to investigate, hear and decide claims under the Equal Status Acts.

Step 1: Written notification

Anybody wishing to make a claim of discrimination must notify the person against whom the claim is being made, in writing within two months of the date of the most recent occurrence of the discrimination.

This written notification can be done by acquiring and filling out form ODEI 5 (available from the Equality Tribunal, 3 Clonmel Street, Dublin 2. Telephone: (01) 477 4100 or www.equalitytribunal.ie). This notice must identify the nature of the claim and the intent to seek redress. The complainant who wishes to obtain information must do so in the written notification. If this written notification is not sent, a claim cannot be pursued.

People with intellectual or psychological difficulties.

A parent, guardian or other person acting in place of a parent can be the complainant where a person is unable by reason of an intellectual or psychological disability to pursue a claim effectively.

Step 2: Making a Claim

If there is no reply or if the reply is unsatisfactory the complaint should be referred to the Equality Tribunal within six months of the discrimination. This written notification can be done by acquiring and filling out form ODEI 2 (available from the Equality Tribunal, 3 Clonmel Street, Dublin 2. Telephone: (01) 477 4100 or www.equalitytribunal.ie).

The Director of the Equality Tribunal for reasonable cause can

- 1) Extend the period of written notification from two to four months,
- 2) Extend the 6 month time limit to 12 months.

(In exceptional circumstances the Director may waive some or all of the written notification requirements).

Step 3: At the Equality Tribunal

Mediation

The Director of the Equality Tribunal can at any stage with the consent of both parties, appoint a mediation officer. If the mediation reaches a settlement between both parties then the terms are legally enforceable.

Investigation

If the case is not dealt with by mediation or the mediation fails, the claim then proceeds to be investigated and the Director of the Equality Tribunal appoints an **Equality Officer** to investigate, hear and decide the claim. Investigations are held in private. The Equality officer will issue a determination.

Representation and costs

A complainant may represent themselves or be represented by a lawyer, trade union, community group or other representative. In general, costs are not awarded. Costs in respect of travelling and other expenses (except expenses of representative) can be awarded where a person obstructs or impedes the investigation or appeal.

Remedies

If there is a finding in favour of the person making a complaint, compensation of up to € 6,350 in total can be ordered. The Equality Officer can also order persons to take specified courses of action.

Strike out of claim

The Director of the Equality Tribunal can dismiss a claim if she/he is of the opinion that has been in bad faith, or is frivolous, vexatious or misconceived or relates to a trivial matter or after a year it appears that the complainant has not pursued the claim.

Appeals

All decisions (including decisions on time limits and striking out if the claim) may be appealed to the Circuit Court not later than 42 days from the date of the decision. There is no further right of appeal except to the High Court on a point of law.

Enforcement

A decision of the Director or a mediation settlement which has not been complied with, may be enforced through the Circuit Court.

Equality Authority

The Equality Authority has a broad mandate under the Equal Status Acts 2000 to 2004 to

- a) Combat discrimination in the areas covered by the Acts
- b) Promote equality of opportunity in the areas covered by the Acts
- c) Provide information on the Acts to the general public
- d) Keep the operation on the Acts under review and make recommendations to the Minister for Justice, Equality and Law Reform as appropriate.

The Equality Authority provides information to the public on the Equal Status Acts 2000 to 2004. It has a series of published supporters available to potential complainants, including guides to the Acts and training videos. The Equality Authority provides additional information through www.equality.ie and an automated telephone voice message service which also refers the caller directly more detailed information on your enquiry.

The Equality Authority may at its discretion, where the case has strategic importance, provide legal assistance to people who wish to bring claims, subject to the criteria set out by the Board the Equality Authority. If the Equality authority does not grant/or is unable to offer legal assistance, this does not disqualify the person from taking a case on their own behalf, directly to the Equality Tribunal. A complainant may represent themselves or be represented by a lawyer, trade union or other representative.