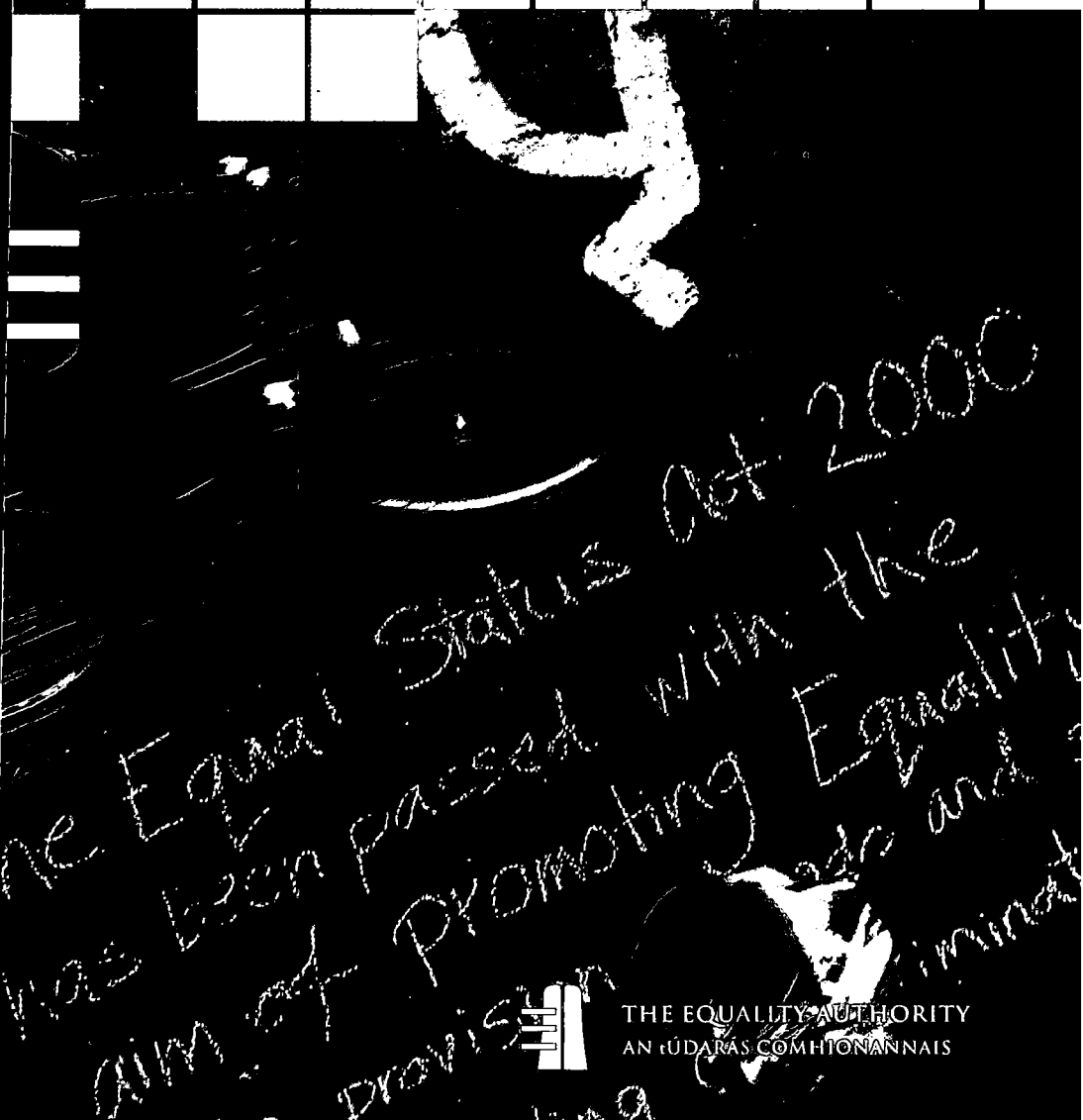


An Introduction to

# The Equal Status Act 2000



The Equal Status Act 2000  
has been passed with the  
aim of promoting Equality  
provision and eliminating discrimination



THE EQUALITY AUTHORITY  
AN AÚDARÁS COMHIONANNAS



# Introduc

The Equal Status Act, 2000:

- Promotes Equality
- Prohibits certain kinds of discrimination (with some exceptions)
- Prohibits Sexual Harassment and Harassment (on the discriminatory grounds). This covers people who:
  - Buy goods
  - Use services and facilities
  - Obtain accommodation
  - Attend educational establishments
- Prohibits victimisation
- Provides that clubs which discriminate may lose their licence to sell alcohol.

The Equal Status Act, 2000 prohibits discrimination on the following grounds:

**The gender ground:** A man, a woman or a transsexual/transgendered person.

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

**The family status ground:** Pregnant, parent or the resident primary carer.

**The sexual orientation ground:** Heterosexual, gay, lesbian or bisexual.

**The religion ground:** Different religious belief, or none.

**The age ground:** Everybody over 18 (the other eight grounds include cover for those under the age of 18).

**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 members of the Traveller community.

**There are several significant exceptions in the Act – the most important is that anything mandated by an Act of the Oireachtas or EU law is allowed. These exceptions should not be allowed to unduly restrict the general prohibition on discrimination.**

Discrimination is described as the treatment of a person in a less favourable way than another person is, has been or would be treated on any of the nine grounds.

There are three types of discrimination – ***direct, indirect, discrimination by association.***

- **Direct Discrimination** – happens where a person is treated less favourably specifically on one of the discriminatory grounds.
- **Indirect Discrimination** – is more subtle and happens where there is less favourable treatment in effect. It happens where people are refused a service not explicitly on account of a discriminatory reason but because of a practice or requirement which they cannot satisfy. If the practice or requirement is found to have the effect of excluding a large amount of the protected group from the service, then the service provider will have indirectly discriminated, if the practice or requirement is not reasonable.
- **Discrimination by Association** – this happens where a person associated with another person (belonging to the specified groups) is treated less favourably because of that association.

## Disability – reasonable accommodation

People with disabilities have special needs as regards anti-discrimination measures. A person selling goods or providing services, 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 by providing special treatment or facilities in circumstances where without these, it would be impossible or difficult to avail of the goods, services, accommodation etc.

However, service providers are not obliged to provide special facilities or treatment when the cost involved is greater than a nominal cost. The definition of nominal cost depends on the circumstances of each case. If the State provides grants or aids for assisting in providing special treatment or facilities, there may be an onus on the service providers etc. to avail of these grants.

# Sexual harassment/ harassment

A person ("the harasser") shall not harass or sexually harass another person ("the victim") in the following circumstances.

- (i) the victim uses, or seeks to use, goods, facilities or services provided by the harasser;
- (ii) the victim obtains, or proposes to obtain, accommodation or related services from the harasser;
- (iii) 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 sexual harassment?

It takes place where a person subjects the victim to an act of physical intimacy or any request for sexual favours from the victim, or subjects the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material.

- (a) These actions must be unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating, or
- (b) the victim must be treated differently because of the rejection of or submission to such actions.

## What is harassment?

This harassment is like sexual harassment but without the sexual connotation. The harassment must be based on one of the discriminatory grounds. Harassment takes place where a person subjects the victim to any unwelcome act, request or conduct

including spoken words, gestures or the production, display or circulation of written words, pictures or other material which is **based on any discriminatory** ground and which could reasonably be regarded as offensive, humiliating or intimidating to the victim

## Liability

A person who is responsible for the operation of any place that is an educational institution, or a person who provides accommodation or where goods, facilities or services are offered to the public is under a duty to take steps to ensure that another person does not suffer sexual or other harassment.

## Vicarious Liability

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

# Goods and Services

## What is prohibited?

People cannot discriminate (subject to certain exceptions):

- 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 a 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 the Act.

## Public Services

Services provided by the State – health board, local authorities etc., are covered (subject to exceptions). The main exception 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.

## What is allowed:

People can be treated differently in relation to:

a) **Cosmetic services**

Because of their sex in relation to aesthetic or cosmetic services which involve physical contact e.g. hairdressing.

b) **Insurance**

In relation to annuities, pensions, insurance policies, and other matters relating to risk assessments. The differences must be based on:

- reliable actuarial or statistical data, or
- other relevant underwriting or commercial factors.

c) **Religious Goods and Services**

In relation to goods and services provided for religious purposes.

d) **Sporting Events**

Because of their gender, age, disability or nationality in relation to providing or organising sporting events or facilities.

e) **Privacy/Embarrassment**

Because of their sex – where embarrassment or breach of privacy could reasonably be expected to happen on account of the presence of a person of another gender.

f) **Promotion of Special Interest or Groups**

In relation to services which promote for bona fide purposes and in a bona fide manner the special needs of persons.

g) **Drama and Entertainment**

- Because of their **age, gender, disability, race**
- If these differences are reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.



h) **Adoption/Fostering**

- because of their **age**
- in relation to requirements for adoption or fostering where it is reasonable having regard to the needs of the child.

i) **Wills/Gifts**

The discriminatory provisions of the Act do not apply where goods are disposed of by will or by gift

j) **Special Needs**

In relation to goods or services which are suitable only to the needs of certain persons for e.g. There would be no requirement to provide ante-natal care to people who are not pregnant.

## 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
- Ceasing to provide accommodation.

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

### What is allowed?

People can be treated differently in relation to:

- a) The disposal of property by **Will or Gift**.
- b) The provision of accommodation where the provider or a near relative resides or intends to reside in the premises where the premises is a small premises (with accommodation for not more than three households or where there is not normally accommodation for more than six people (in addition to the seller, owner or near relative and anyone residing with that person)).
- c) Accommodation to persons of one gender in circumstances where embarrassment or infringement of privacy can reasonably be expected to happen from the presence of a person of another sex.
- d) Where premises/accommodation are reserved for:
  - Religious purposes
  - Refuge
  - Nursing Home
  - Retirement Home
  - Home for persons with a disability
  - Hostel for homeless persons/or for a similar purpose.
- e) Housing Authorities can provide different treatment in relation to housing accommodation based on:
  - Family size
  - Family status
  - Marital status
  - Disability
  - Age
  - Membership of the Traveller community

# 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 other sanction.

## What is allowed?

### 1) **Single Sex Schools**

- in non third level institutions, schools may be for one gender only.

### 2) **Religious Training**

- Institutions established for providing training to members of religion, may admit students of only one gender or religious belief.

### 3) **Ethos of the School**

- Primary and post primary schools which have the objective of providing education in an environment which promotes certain religious value, may admit persons of a particular religious denomination in preference to others and may 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.

#### 4) **Non EU Nationals, Sponsorships, Scholarships, Student Exchanges**

- A third level institution, or one that provides adult, continuing or further education can provide different treatment in relation to fees for admission, the attendance at the institution, and the allocation of places between persons who are nationals of EU member states and person who are not.
- Sponsorships, scholarships bursaries, and other awards which can be justified with regard to traditional and historical considerations.
- The allocation of places under a student exchange agreement between institutions here and those abroad.

(These exceptions are without prejudice to the rights of a person who may have refugee status under the Refugee Act, 1990).

#### 5) **Mature Students**

A university or other third level institution may provide different treatment in relation to the allocation of places to mature students.

#### 6) **Sporting Facilities and Events**

Educational establishments may provide different treatment that is reasonably necessary on the gender, age or disability ground in relation to the provision or organisation of sporting events or facilities.

#### 7) **Disability – Presumption of Mainstreaming**

Educational establishments can treat students with disabilities differently (apart from the nominal cost exemption) only if the disability is making the provision 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 under the Registration of Clubs Act, 1904 to 1999. This registration allows clubs to sell alcohol to members and certain visitors. Unlike the provisions in relation to goods and services, the Equal Status Act, 2000 does not ban discrimination outright.

## What is prohibited?

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 include issues of admission, terms and conditions of membership, terminating membership and making reasonable accommodation for members with disabilities (subject to nominal cost exception).

## 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 particular group from within the nine grounds.
- 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 arrangements 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
- 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

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 Court can suspend a club's certificate for a period of up to 30 days. The effect of the suspension is that the club cannot sell alcoholic 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

## What is allowed?

- 1) The most important general exemption provides that nothing in the Act shall prohibit the taking of any action that is required under:
  - (a) Statutory provision or court order *or*
  - (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 rules do apply.

- 2) 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 person 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.
- 3) 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.
- 4) 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.

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

## Positive Action

The Act allows preferential treatment or the taking of positive measures which are bona fide intended to:

- (i) promote equality of opportunity for disadvantaged persons,
- (ii) cater for the special needs of persons, or a category of persons whom because of their circumstances, may require facilities, arrangements, services or assistance.





## Making a claim: Time Limits

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 incident.** This notice must identify the nature of the claim and the intent to seek redress. In exceptional circumstances the two-month time limit may be extended for up to another two months. (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.**

If there is no reply or if the reply is unsatisfactory the complaint should be referred to the Office of the Director of Equality Investigations, 3 Clonmel Street, Dublin 2. This must be done within **six months** of the incident. In exceptional circumstances this may be extended for up to a further six months.

The Office of the Director of Equality Investigations can, with the consent of both parties, appoint a mediation officer or can investigate the matter. If there is a finding in favour of the person making a complaint, compensation of up to £5,000 can be ordered and a course of action can be required of the person against whom the complaint was made. These orders are enforceable through the Courts.

The Equality Authority can provide information to the public on the Equal Status Act. It may, at its discretion, where the case has strategic importance, provide a legal service by assisting people bringing claims.



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