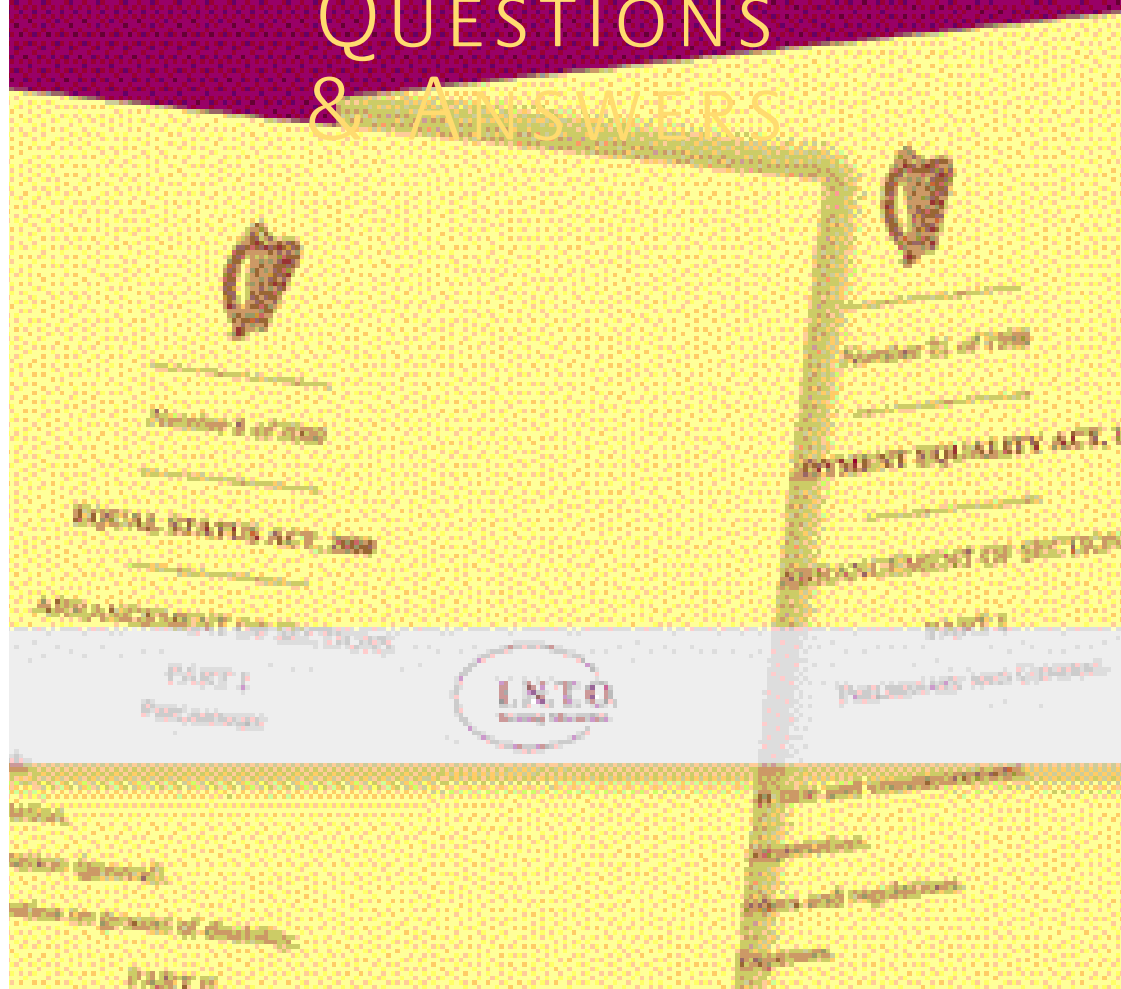


# Employment Equality Act 1998

## Equal Status Act 2000

### QUESTIONS & ANSWERS



# **EMPLOYMENT EQUALITY ACT 1998**

**AND**

# **EQUAL STATUS ACT 2000**

## **QUESTION AND ANSWER GUIDE**



An INTO Publication

**Irish National Teachers' Organization**  
35 Parnell Square  
Dublin 1

Telephone: 01 804 7700  
Fax: 01 872 2462  
Email: [info@into.ie](mailto:info@into.ie)  
Web: <http://www.into.ie>

**General Secretary**  
John Carr

**Cumann Múinteoirí Éireann**  
35 Cearnóg Pharnell  
Baile Átha Cliath 1

Guthán: 01 804 7700  
Fax: 01 872 2462  
Ríomhphost: [info@into.ie](mailto:info@into.ie)  
Gréasán: <http://www.into.ie>

**Ard Rúnaí**  
John Carr

## **CONTENTS**

	<b>PAGE</b>
<b>Foreword</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Q&amp;AGuide to the Employment Equality Act</b>	<b>7</b>
<b>Summary of Employment Equality Act Key Sections</b>	<b>14</b>
<b>Q&amp;AGuide to the Equal Status Act</b>	<b>19</b>
<b>Summary of Equal Status Act Key Sections</b>	<b>25</b>
<b>Appendix – Useful Contacts</b>	<b>28</b>

## FOREWORD

The INTO has a long record of seeking fair treatment for our members in the areas covered under employment equality legislation. In addition, putting into practice the principles of inclusion and equality is at the heart of teachers' work in schools.

The enactment of two new pieces of equality legislation in 1998 and 2000 has set out clearly the rights and responsibilities of teachers, schools and those availing of schools' services, and has provided for redress in the event of discrimination occurring.

This guide complements that to the Education and Education Welfare Acts, issued by INTO in 2001. Until the publication of this booklet, schools have had no specific guidance as to the provisions of equality legislation, the Employment Equality and Equal Status Acts. This is a gap the INTO is pleased to fill and we believe that the Question and Answer format will make this a user-friendly, succinct and accessible publication.

This booklet arose out of a proposal by the INTO Equality Committee, whose remit now covers the nine grounds in the legislation, and I wish to record the Organization's appreciation of the initiative and work of the Committee under the extended remit.

The original draft was prepared by Noel Ward (Senior Official – Equality) in collaboration with our Legal and Industrial Relations Section, headed by Anne McElduff (Assistant General Secretary). Our thanks also to Lori Kealy and Cecilia Power (Communications, Principals and Social Inclusion Section) and their team who managed the project through to publication.

We hope that the work involved will prove beneficial to the advancement of equality in employment and in education.



John Carr MA(Ed)  
General Secretary  
July, 2003.

## INTRODUCTION

Equality and equal treatment have been central themes in Irish and European law for many years. There are many different understandings of what equality means (from 'equality of opportunity' to ideas such as 'equality of outcome' and 'equality of condition'). A number of approaches have been taken in law.

Understandings of equality and equality law itself are subject to constant review. Since the year 2000, for example, there have been three EU Directives on aspects of equality. Member States are obliged to adopt the legislative provisions necessary to comply with the Directives.

In this State, equality legislation is regarded as being advanced by European standards. The Irish 'equality' Acts, while aiming to promote inclusion in important areas of life, are essentially anti-discrimination law.

The key pieces of Irish legislation are:

- The Employment Equality Act 1998, and
- The Equal Status Act 2000.

This booklet deals with each of these Acts, and is structured in four parts.

These are, in sequence,

- Employment Equality Act 1998
  - Question and Answer Guide
  - Summary of Key Sections
- Equal Status Act 2000
  - Question and Answer Guide
  - Summary of Key Sections

There are some key similarities, as well as a number of differences, between these two Acts as set out below.

### **SIMILARITIES**

The two pieces of legislation are similar in the areas of:

- The general definition of discrimination as “less favourable treatment”.
- The nine grounds on which discrimination is specifically outlawed.
- The prohibition on victimising any person who seeks to avail of the protection of the legislation.
- The ban on harassment and sexual harassment.
- Specific provisions regarding education and schools are contained in each of the Acts.
- Both Acts cover discriminatory advertising.
- Redress is provided for, generally through the Office of the Director of Equality Investigations (ODEI – The Equality Tribunal).
- Mediation may be offered to complainants as an alternative, or a precursor, to a formal hearing before the Equality Tribunal.
- Provision is made for complainants’ access to information needed in taking a case.
- Exceptions are provided for, including measures or activities which might appear discriminatory but which are not prohibited.

### **DIFFERENCES**

The two pieces of legislation are concerned with separate aspects of life, as suggested by their titles.

- The Employment Equality Act promotes equality and prohibits discrimination in employment and related matters. It provides, for example, protection against discrimination to teachers and to other school employees.

- The Equal Status Act promotes equality and prohibits discrimination in the provision of goods and services to the public. Parents (on behalf of their children) are the most likely users of this Act in a school context.

Apart from the different purposes of the pieces of legislation, other key differences relate to:

- Slight variations in definitions in areas such as harassment.
- Two types of discrimination, (direct and indirect) are provided for in the Employment Equality Act, whereas there is an additional type (discrimination by association) covered by the Equal Status Act.
- Discrimination on the age ground is more narrowly defined in the Employment Equality Act.
- Time limits for initiating a claim of discrimination vary (generally, the limit is six months in the case of employment, and two months in the area of equal status).

#### **REVIEW**

Both pieces of legislation are currently due to be reviewed and it is intended to update this booklet in the light of any reviews conducted. Information given herein is based on the Acts as they are in force at summer 2003.

**Finally, the purpose of this booklet is to provide general information which will be of assistance to teachers and schools in becoming aware of and in asserting their rights and meeting their obligations under the Acts. This is not a legal interpretation of the Equality Acts.**



# **EMPLOYMENT EQUALITY ACT 1998**

## **QUESTION AND ANSWER GUIDE TO THE EMPLOYMENT EQUALITY ACT 1998**

### **1 WHAT IS THE PURPOSE OF THIS LEGISLATION?**

This Act promotes equality between employed persons, prohibits discrimination in connection with employment, training and membership of certain bodies, deals with harassment in employment and in the workplace, and provides redress when prohibited behaviour occurs.

The previous Employment Equality Act of 1977 (which dealt with discrimination on gender and marital status grounds only) and the Anti-Discrimination Pay Act of 1974 were repealed on the coming into operation of the Employment Equality Act of 1998.

### **2 WHAT DOES 'DISCRIMINATION' MEAN, AND WHAT ARE THE NINE GROUNDS ON WHICH IT IS OUTLAWED?**

The Act defines discrimination as occurring when one person is treated less favourably than another is, has been or would be treated on any of nine grounds.

Two types of discrimination are covered by the Act.

- Direct discrimination occurs when there is different treatment specifically based on one or more of the grounds.
- Indirect discrimination is said to occur when a condition related to employment appears to be neutral but in practice discriminates against a much greater number of people on one of the grounds specified. If, for example, an employer awarded points in a selection process which were based on participation in school activities after normal working hours, s/he might argue that this was an objective criterion. It might, however, be



open to challenge on grounds of indirect discrimination, for example on the family status ground. The nine grounds on which discrimination is outlawed are: gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. (The nine grounds are outlined in more detail at Question 2 in the part of this document on the Equal Status Act).

Victimisation of a person for using or supporting the use of the Act to challenge something which is unlawful is defined (Section 74) and is also prohibited.

### **3 HOW ARE SCHOOLS AFFECTED BY THE EMPLOYMENT EQUALITY ACT?**

Schools as employers are bound by the terms of the Act. The Act provides protection for teachers and other employees on the discriminatory grounds and for redress if discrimination occurs.

### **4 IN WHAT AREAS OF EMPLOYMENT IS DISCRIMINATION PROHIBITED?**

The prohibition refers to:

- access to employment,
- conditions of employment,
- training or experience,
- promotion or regrading, or
- classification of posts.

Each of these areas is detailed in Section 8 of the Act. For example, an employer may not discriminate in relation to conditions of employment which include employment terms, working conditions and disciplinary measures, or in relation to training and experience which include opportunities for employment counselling, training and work experience.

### **5 HOW ARE CASES INVOLVING CLAIMS OF DISCRIMINATION TAKEN?**

Cases where discrimination is alleged to have occurred are processed

through and heard before the appropriate statutory authority which is generally the Office of the Director of Equality Investigations (ODEI – the Equality Tribunal).

There is a requirement to complete standard forms in order to process a claim at ODEI – The Equality Tribunal. The INTO is prepared to advise and, where appropriate, to assist members in the preparation and processing of claims.

When a claim has been lodged within the time limit, the ODEI may offer the option of mediation on the claim. If mediation is not acceptable to either side, the claim goes to hearing. Hearings are normally held in private, (whereas all findings are published, usually accompanied by the names of the parties involved) and if there is a finding in favour of the complainant, redress is ordered under the terms of Section 82. This redress may take the form of one or more of the following options: compensation of up to two years' salary in equal pay cases, orders for equal pay, compensation for the effects of discrimination/victimisation, equal treatment orders, orders for other courses of action.

Findings of ODEI – The Equality Tribunal may be appealed within 42 days to the Labour Court.

At hearings before The Equality Tribunal, cases are judged on the “balance of probabilities” as opposed to the more demanding standard in, for example, the criminal courts of “beyond reasonable doubt”. In the first instance, the onus is on a complainant to present evidence of discrimination, in order to establish a ‘prima facie’ case.

## **6 HAVE THERE BEEN CASES TAKEN BY OR ON BEHALF OF TEACHERS?**

Yes, a number of teachers (including INTO members) have taken cases to The Equality Tribunal. A full record of all cases may be viewed on the website [www.odei.ie](http://www.odei.ie) and this is regularly updated.

Further information on the Equality Legislation and related matters, including the texts of the Equality Acts, may also be accessed and downloaded on the website of the Equality Authority, [www.equality.ie](http://www.equality.ie). Alternatively, go to the Government website ([www.irlgov.ie](http://www.irlgov.ie)) and locate the Employment Equality Act 1998 in the ‘Irish Statute Book’ section.

**7 ISN'T THERE AN OPT-OUT CLAUSE FOR DENOMINATIONALSCHOOLS?**

When the legislation was being drafted, there was considerable controversy about Section 37(1) which allows a partial exemption to schools in certain circumstances. The declared purpose of this provision was to allow denominational institutions to ensure that the religious ethos of the institution is protected. There has not as yet been an interpretation of Section 37(1) in case law.

**8 WHAT DOES SECTION 37(1) SAY?**

This Section can be availed of by schools controlled by a religious body or by those “whose objectives include the provision of service in an environment which promotes certain religious values”.

Such schools are allowed:

- To give more favourable treatment on the religion ground to an employee or prospective employee “where it is reasonable to do so in order to maintain the religious ethos of the institution” or;
- To take “reasonably necessary” action to prevent an employee “from undermining the religious ethos of the institution”.

**9 DOES SECTION 37 (1) ALLOW A SCHOOL WITH A RELIGIOUS ETHOS TO DISMISS A TEACHER WHO CONVERTS TO ANOTHER RELIGION?**

How Section 37(1) might operate in practice is unclear since it is untested in case law. In the example mentioned, the test would be whether that action by school management is “reasonably necessary” in order to prevent that employee “undermining” the school’s religious ethos.

The same test would apply in relation to an employee who was concerned that his/her sexual orientation or marital status, for example, might be a cause for action against them. The “undermining” referred to in the Act is not defined and it is not clear whether active or passive undermining is at issue. It is important, however, to recall that the Section 37(1) exemption applies to the religious ground only and not to discrimination on any of the other nine grounds.

The INTO opposed the introduction of Section 37(1), has sought its deletion and has made it clear that it will support any teacher who is being targeted by his/her employer in relation to matters concerning his/her private life.

**10 ARE THERE ANY OTHER EXCEPTIONS SPECIFIED UNDER THE ACT?**

Several matters are specified under the Act as not being discriminatory.

These include:

- Under **Section 12**, it is not discrimination on the religion ground to reserve places on a training course for teachers for primary schools in order to maintain the religious ethos of the schools. The Minister for Education and Science is entitled to make an Order to provide for reservation of such places “as seem reasonably necessary”.
- **Section 12** also provides for special regulations in relation to age and race in respect of fees, allocation of places, and bursaries/scholarships in “any course of vocational training”.
- **Section 16 (5)** exempts an employer from discrimination when s/he takes action in the case of an individual who engages “in any form of sexual behaviour which is unlawful”.
- **Sections 24 and 33** provide for positive action in order to promote gender equality and to integrate into the workplace persons over 50 years of age, persons suffering from disability, and members of the Traveller Community. By Order, the relevant Minister is also enabled to certify that a provision is necessary for a disadvantaged group to receive training or work experience.
- **Sections 25 and 34** provide for exceptions where, for example, to be of a particular gender is an “occupational qualification” for a job (as might be the case in a job such as acting). Discrimination is also allowed to occur where there is actuarial evidence in such areas as varied retirement ages, maximum recruitment ages and improved payment based on seniority.
- **Sections 27 and 37** provide for other exceptions, including

exceptions in respect of the Garda Síochána, the prison service and the Defence Forces. Section 37(5) exempts employment of any person for the purposes of a private household from coverage on most of the discriminatory grounds.

### **11 WHAT ELSE IS PROHIBITED BY THE ACT?**

Prohibitions also apply to a number of other actions related to employment, including:

- Employment advertisements which indicate discrimination (Section 10),
- Discrimination by any organisation of workers or professional group in relation to membership or benefits related to that particular profession or occupation (Section 13),
- Sexual harassment (Section 23) and harassment in the work place (Section 32).

### **12 IF A PERSON FEELS THAT S/HE IS DISCRIMINATED AGAINST, WHAT SHOULD S/HE DO?**

In the first place, a teacher in this situation should, where relevant, formally request that the discrimination stop, and should contact the INTO District Representative or Head Office. Where it is adjudged that a member has a case under the legislation, INTO is prepared to assist as outlined at No. 5 above.

The Act established the Office of the Director of Equality Investigations (Section 75), which now operates under the working title ODEI – The Equality Tribunal. The Equality Tribunal hears most cases under the Act and its Equality Officers issue legally binding recommendations.

### **13 DO TIME LIMITS APPLY WHEN TAKING A CASE?**

Yes. Under Section 77 of the Act, a person must seek redress by referring the case to the Director (ODEI) within six months “from the date of the occurrence or, as the case may require, the most recent occurrence of the act of discrimination or victimisation to which the case relates” (Section

77(5)). Only in exceptional circumstances can a claim be pursued after the 6 months' deadline.

#### **14 WHAT IS THE ROLE OF THE EQUALITY AUTHORITY?**

The Act established An tÚdarás Comhionannais, the Equality Authority, in order to:

- Work towards elimination of discrimination,
- Promote equality of opportunity,
- Provide information to the public,
- Keep legislation under review.

In certain circumstances, the Equality Authority may help a person to pursue a claim for redress to The Equality Tribunal under the Act. In practice, the Authority will recommend to trade union members that they seek the advice and assistance of their union in any claim.

## **SUMMARY OF THE KEY SECTIONS CONTAINED IN THE EMPLOYMENT EQUALITY ACT 1998**

(The Act consists of a Preamble and seven Parts, with a total of 105 Sections.)

### **PREAMBLE**

The Preamble sets out the main purpose of the Act:

- To make provision for the promotion of equality between employed persons,
- To make provision with respect to discrimination in connection with employment, training and membership of certain bodies,
- To make provision regarding equal pay for men and women and equal treatment of men and women in the workplace,
- To make provision with respect to harassment in employment and in the workplace,
- To establish procedures for investigation and remedying of various matters,
- To repeal certain earlier enactments.

### **ARRANGEMENT OF SECTIONS**

#### **Part 1 – Preliminary and General (Sections 1 - 5)**

**Section 2** sets out definitions of important terms of the Act. The definition of disability includes a condition “which results in a person learning differently from a person without the condition” or “a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgements or which results in disturbed behaviour”. The definition of disability also includes a disability “which may exist in the future or which is imputed to a person”.

**Part 2 – Discrimination – General Provisions (Sections 6 - 17)**

**Section 6** defines discrimination. It sets out the nine grounds on which discrimination is prohibited and provides for use of a comparator in a discrimination case (discrimination is described as occurring “as between any two persons”).

**Section 8** specifies the areas in which discrimination by an employer is prohibited.

**Section 12** entitled ‘Vocational Training’ includes provisions to ensure the availability of teachers for denominational primary schools.

**Section 15** sets out the vicarious liability of employers for actions by a person in the course of his/her employment.

**Section 16** defines the nature and extent of an employer’s obligations. It is specified that nothing requires an employer to recruit or promote an individual if that individual will not undertake the duties attached to the position, accept conditions under which the duties are to be performed, or if that individual “is not fully competent and available to undertake, and fully capable of undertaking, the duties attached to that position...”.

Section 16 (3) states that for the purposes of the Act a person who has a disability “shall not be regarded as other than fully competent to perform duties if, with the assistance of special treatment or facilities, such person would be fully competent to undertake... those duties”. That Section sets out the obligation on an employer to make reasonable accommodation for disabled persons in employment. Section 16, sub-sections 5 and 6, seeks to provide special protection against sexual abuse in the case of employments which involve “access to minors or to other persons who are vulnerable”.

**Part 3 – Specific Provisions as to Equality between Men and Women (Sections 18 – 27)**

**Part 3** generally sets out provisions regarding equal pay for like work, equality clauses relating to gender issues, indirect discrimination on the gender ground, sexual harassment in the workplace (Section 23), positive action on equal opportunities (Section 24), exclusion of



discrimination if, for example, specific gender is an “occupational qualification” for a post (Section 25).

**Part 4 – Specific Provisions as to Equality between Other Categories of Persons (Sections 28 - 37).**

**Part 4** generally sets out parallel provisions in respect of the non-gender discrimination categories, similar to those provided for in Part 3.

The definition of a comparator is set out at Section 28. As in Part 3, letters are used to represent two persons who differ in a particular way or ways which relate/s to the grounds (Section 6). For example, in pursuing a claim on the ground of sexual orientation this provides that persons “C and D are of different sexual orientations”.

**Section 31** defines indirect discrimination as including a practice which can be complied with by a substantially smaller proportion of the employees or prospective employees having the same relevant characteristics as employee C when compared with those having the same relevant characteristics as employee D, and which practice “cannot be justified as being reasonable in all the circumstances of the case”.

**Section 32** prohibits harassment in the workplace on the discriminatory grounds.

**Section 33** permits positive action to integrate into the workplace persons of over 50 years of age, persons with disability or persons who are members of the Travelling community.

**Section 34** sets out savings and exceptions relating to the family, age and disability grounds. For example, existing retirement ages may continue and benefits may be provided to assist with care of a family member.

**Section 36** provides that the imposition of certain requirements are lawful. Such requirements include at Section 36 (3) an Irish language qualification for teachers in primary schools.

**Section 37** excludes discrimination on particular grounds in certain employments. This Section specifically provides that a school “whose objectives include the provision of services in an environment which promotes certain religious values” does not discriminate if:

- “it gives more favourable treatment on the religion ground to an employee or perspective employee... where it is reasonable to do so in order to maintain the religious ethos of the institution”, or;
- “it takes action which is reasonably necessary to prevent an employee or prospective employee from undermining the religious ethos of the institution”.

**Section 37** also provides for certain other exclusions in relation to other employments.

### **Part 5 – Equality Authority (Sections 38 – 57)**

**Section 38** continues the previously-titled Employment Equality Agency as the Equality Authority, An tÚdarás Comhionannais.

**Section 39** sets out the functions of the Authority as:

- to work towards the elimination of discrimination in relation to employment,
- to promote equality of opportunity,
- to provide information to the public, and
- to keep under review the working of the Pensions Act 1990 as regards the principle of equal treatment.

Other Sections relate to the membership of the Equality Authority, the conduct of its business, accountability, staff, and reporting.

**Section 56** provides that the Authority may submit to the Minister draft Codes of Practice on certain matters which may be approved by the Minister for the purposes of the Act and may then be admissible in evidence.

**Section 58** allows the Equality Authority to conduct inquiries.

**Section 62** provides for the issuing of non-discrimination notices by the Authority, and specifies what such a notice may contain.

**Part 6 – Equality Reviews and Action Plans and Review of Legislation (Sections 68 - 73)**

**Section 69** defines equality reviews and action plans and provides for the Authority to carry out such reviews and to prepare action plans in respect of workplaces.

**Section 70** provides that such equality reviews and action plans may be enforced in businesses with not less than 50 employees.

**Section 73** provides for a review of the legislation.

**Part 7 – Other Remedies and Enforcement (Sections 74 - 105)**

**Section 74** sets out a definition of victimisation as prohibited under the Act.

**Section 77** prescribes the forum for seeking redress, and sets out the four types of claim which can go to the Director of Equality Investigations. A six month time limit is specified in Section 77 (5).

**Section 78** provides for mediation on a voluntary and private basis where the parties agree to this is a particular case.

**Section 81** sets out the consequences of the failure of a person to supply information as requested by the Director, the Labour Court or the Circuit Court.

**Section 82** specifies the redress which may be ordered in specific types of cases.

Several of the succeeding sections deal with the questions of appeals and enforcement powers.

**Section 89** provides for the publication of decisions and determinations of the Labour Court and of the Director of Equality Investigations.

**Section 98** specifies that dismissal of an employee for exercising rights is an offence.

**Section 100** deals with general provisions in relation to offences (such as obstruction of an authorised person) and sets out penalties which may be imposed by the Courts.

# **THE EQUAL STATUS ACT 2000**

## **QUESTION AND ANSWER GUIDE TO THE EQUAL STATUS ACT 2000**

### **1 WHAT IS THIS ACT ABOUT?**

The Equal Status Act aims to promote equality, and to prohibit discrimination and harassment, in connection with the provision of services and property, and to provide for remedies when prohibited behaviour occurs.

It aims to equalise access to publicly accessible services and places. Persons should not be refused access on unreasonable, discriminatory grounds.

### **2 WHAT DOES DISCRIMINATION MEAN AND ON WHAT GROUNDS IS IT PROHIBITED?**

Discrimination takes place where, on any of the grounds, a person is treated less favourably than another person is, has been or would be treated. Three types of discrimination are provided for in the Act; direct discrimination, indirect discrimination, and discrimination by association. Indirect discrimination occurs where a practice or requirement has the effect of excluding a large number of a particular group from that service. Discrimination by association occurs where a person who is associated with another person is treated less favourably on one of the grounds, by virtue of that association.

There are nine grounds on which discrimination is outlawed.

These are:

- Gender.
- Marital status (Being single, married, separated, divorced or widowed).

- Family status (pregnant, parent or the resident primary carer).
- Sexual orientation (heterosexual, gay, lesbian or bisexual).
- Religion (different religious beliefs, or none).
- Age (this ground applies to persons over eighteen only).
- Disability (broadly defined).
- Race (including different colour, nationality or ethnic or national origin).
- The Traveller community.

Victimisation of a person who has taken or been involved in a case under the Act, or has opposed lawfully an act which is unlawful under the Act, or has given notice of doing any of these things, is also expressly prohibited.

### **3 ARE SCHOOLS INCLUDED UNDER THE EQUAL STATUS ACT?**

Yes.

Schools are, for example, included in the definition of “provider of a service” at Section 4.6(e) of the Act.

In addition, Section 7 of the Act is devoted in its entirety to the duties of educational establishments.

### **4 ARE ALL SCHOOLS COVERED?**

Yes. The words “educational establishments” in Section 7 have a very wide meaning and include pre-schools, primary and post-primary schools, third-level colleges and any institution providing education “whether or not supported by public funds”.

### **5 WHAT EXACTLY IS A SCHOOL PROHIBITED FROM DOING?**

A school is prohibited from discriminating in four specific areas.

- Admission or the terms or conditions of admission.
- Access to any course or facility.

- Any other term or condition of participation in the school.
- Expulsion or any other sanctions against a student.

## **6 WHEN ARE SCHOOLS ALLOWED TO TREAT PUPILS DIFFERENTLY?**

The Act specifically allows schools operating in an environment which promotes “certain religious values” to admit preferentially persons of a particular religious denomination or to refuse to admit persons of another denomination. Any refusal of admission, however, has to be “essential to maintain the ethos of a school” (Section 7.3.(c)).

Differences in treatment on the gender, age and disability grounds may also be allowed in sports facilities and events where “reasonably necessary”.

In addition, different treatment is permitted where compliance with the legislation in relation to a student with a disability would “cause harm” or have a “seriously detrimental effect on” provision of a school’s services to other students. Although these exceptions are provided for in Sections 4 and 7 of the Act, schools should be aware that any instance of less favourable treatment may be open to challenge on one or more of the grounds.

## **7 WHAT OTHER EXCEPTIONS APPLY UNDER THE ACT?**

In education, single sex schools are permitted (except at third level) and there are specific provisions for religious training institutions, mature students and for third level fees, scholarships and student exchanges.

More broadly, the Act allows for people to be treated differently (on certain grounds) in a number of cases including insurance/pensions, adoption/fostering, disposal of property by will or gift, and certain special offers. Section 5.2 of the Act lists a number of such exceptions, including (for example) different treatment on the gender ground in relation to cosmetic services “where the services require physical contact between the service provider and the recipient”.

**8 DOESN'T THE EDUCATION ACT ALREADY LEGISLATE FOR SCHOOL ENROLMENT/ADMISSIONSPOLICY?**

Yes. No Act is an island and the provisions of Section 15 of the Education Act 1998 continue to apply. These require publication of the school's enrolment/admission policy, including its policy regarding expulsion and suspension. The Equal Status Act makes unlawful certain conditions in relation to admission and sanctions. You should note, however, that the agreed policy on enrolment between the INTO and Management Authorities is based on the key principles of inclusiveness and equality with respect to maximum access and participation in the school. The Education Welfare Act 2000 is also relevant here in that it specifies that a Board will be required to notify parents of their decision on enrolment of a child within 21 days of receiving relevant information. The INTO advises that schools should append their Code of Behaviour to the enrolment/admissions policy (pending the implementation of the Education Welfare Act 2000 and specifically the issuing of appropriate guidelines by the National Education Welfare Board).

**9 DOES THE PROHIBITION OF HARASSMENT AND SEXUAL HARASSMENT APPLY IN SCHOOLS?**

Yes. Section 11 of the Equal Status Act prohibits harassment of a person who is availing of a service or who is a student or seeks to avail of any service offered by an educational establishment.

The Act specifies that a person "responsible for" the operation of a school "shall not permit another person who has a right to be present in or to avail himself or herself of any facilities, goods or services provided at that place, to suffer sexual harassment or harassment at that place". (Section 11.2).

Harassment is defined as taking place where a person "subjects another person to any unwelcome act, request or conduct... which in respect of the victim is based on any discriminatory ground and which could reasonably be regarded as offensive, humiliating or intimidating to him or her" (Section 11.5). Sexual harassment is defined in Section 11.4 and includes any act, request or conduct unwelcome to a victim and which could reasonably be regarded as offensive, humiliating or intimidating.

**10 IS POSITIVE DISCRIMINATION ALLOWED?**

Only in certain limited cases. Positive measures intended to promote equality of opportunity or to cater for special needs are provided for under Section 14. An example is provision to promote equality for disadvantaged persons “who have been or are likely to be unable to avail themselves of the same opportunities” as others.

#### **11 HOW DOES A PERSON PURSUE A DISCRIMINATION CLAIM UNDER THE ACT?**

Any person who believes s/he was discriminated against must in the first instance, within two months of the alleged discrimination, notify the respondent (the person who carried out the discrimination) in writing of the allegation and of his/her intention if not satisfied with the respondent's response, to seek redress by referring the case to the Director of Equality Investigations. The respondent has one month in which to respond, including having the option to answer questions put by the complainant in the notification.

Other than in exceptional circumstances, a claim for redress must be lodged with the Director within six months of the alleged prohibited conduct.

#### **12 HOW ARE CLAIMS DEALT WITH?**

There are two options. Mediation is provided for if both parties agree. If mediation is not possible or satisfactory, the case is investigated by the Director. This usually involves a hearing before an Equality Officer and such hearings at ODEI – the Equality Tribunal are private. If discrimination is found, redress (either or both of compensation and a course of action) will be ordered.

The Director's decision may be appealed to the Circuit Court within 42 days.



Decisions, and the reasons for these, are generally published. The Director of Equality Investigations also has considerable powers in the areas of obtaining information and enforcing decisions or mediated settlements.

The issue of enforcement is dealt with comprehensively in Part 3 of the Act.

**13 HAVE CASES UNDER THE EQUAL STATUS ACT BEEN TAKEN AGAINST SCHOOLS?**

At the time of writing, the INTO is not aware of the hearing of any cases involving primary schools, but a number of cases have been initiated.

All case reports are published on the Director's website ([www.odei.ie](http://www.odei.ie)) which is regularly updated.

The Equal Status Act 2000 may be downloaded from the website of the Equality Authority ([www.equality.ie](http://www.equality.ie)), or from the 'Irish Statute Book' section of the Government site ([www.irlgov.ie](http://www.irlgov.ie)).

## **SUMMARY OF THE KEY SECTIONS CONTAINED IN THE EQUAL STATUS ACT 2000**

(The Act consists of a Preamble and five Parts, with a total of 48 Sections, and with one Schedule)

### **PREAMBLE**

The Preamble sets out the key objectives of the Act:

- To promote equality and prohibit types of discrimination, harassment and related behaviour in connection with the provision of services, property and other opportunities to which the public generally or a section of the public has access,
- To provide for investigating and remedying certain discrimination and unlawful activities,
- To provide for the administration by the Equality Authority of various matters.

### **ARRANGEMENT OF SECTIONS**

#### **Part 1 – Preliminary (Sections 1 - 4)**

**Section 2** defines certain words used in the Act. Key definitions include that of “disability” which includes learning difficulties and disturbed behaviour, “family status” which here includes pregnancy, “religious belief” which includes background or outlook and “service” which is defined broadly but does not include pension rights.

**Section 3** defines discrimination, including discrimination by association, on each of the grounds, and provides a definition of the victimisation ground.

**Section 4** sets out the meaning of discrimination on the disability ground, provides for “reasonable accommodation” to cater for the needs of a person with a disability, and includes a provision whereby in the case of a person who has a disability which could cause harm, different treatment which is “reasonably necessary to prevent such harm” is not discrimination.

**Part 2 – Discrimination and Related Activities (Sections 5 - 19)**

**Section 5** relates to the disposal of goods and the provision of services and includes several exceptions to the general principle of discrimination.

**Section 7** is titled 'Educational Establishments' and deals comprehensively with discrimination and exceptions related to schools.

**Section 11** defines and is concerned with sexual and other harassment and includes a provision at Section 11 (2) that a person responsible for the operation of a school "shall not permit another person who has a right to be present in or to avail himself or herself of any facilities, goods or services provided at that place, to suffer sexual harassment or harassment at that place".

**Section 12** deals with prohibited advertising.

**Section 14** includes measures and activities which are not prohibited; these include actions pursuant to a court order or international conventions, and certain types of positive discrimination.

**Part 3 – Enforcement (Sections 20 - 38)**

**Section 21** relates to redress in respect of prohibited conduct. Section 21 (2) sets out that a complainant must within two months of the occurrence of discrimination notify the respondent in writing and seek their response. Section 21 (6) specifies a six month time limit within which a claim of discrimination must be pursued.

**Section 25** prescribes procedures for the carrying out of an investigation by the Director of Equality Investigations.

**Section 26** allows inferences be drawn from the failure of a respondent to supply information.

**Section 27** sets out the redress which may be ordered by an Equality Officer.

**Part 4 – Equality Authority (Section 39)**

This Section sets out the main functions of the Equality Authority, additional to those specified in the Employment Equality Act, 1998.

**Part 5 – General (Sections 40 - 48)**

**Section 42** deals with the vicarious liability of employers. Employers are responsible for their employees and for their actions as agents of the employer. However, it is a defence for an employer that s/he took “such steps as were reasonably practicable” to prevent or stop discrimination occurring.

**Section 43** sets out the appropriate fines and other punishments in respect of offences committed under the Act.

**SCHEDULE**

The Schedule amends the Employment Equality Act 1998, and included in the changes is a new definition of ‘Traveller Community’ as meaning; “the community of people commonly so called who are identified (by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”.



## **APPENDIX**

### **Useful addresses and contact numbers**

Irish National Teachers' Organization,  
35 Parnell Square,  
Dublin 1.  
Tel: (01) 804 77 00  
Fax: (01) 872 2462  
Email: [info@into.ie](mailto:info@into.ie)  
Web: [www.into.ie](http://www.into.ie)

The Equality Authority  
2 Clonmel Street,  
Dublin 2.  
Lo Call: 1890 245 545  
Tel: (01) 417 3333  
Fax: (01) 417 3366  
Email: [info@equality.ie](mailto:info@equality.ie)  
Web: [www.equality.ie](http://www.equality.ie)

ODEI – The Equality Tribunal  
3 Clonmel Street,  
Dublin 2.  
Tel: (01) 477 4100  
Fax: (01) 477 4141  
Email: [info@odei.ie](mailto:info@odei.ie)  
Web: [www.odei.ie](http://www.odei.ie)

Irish Congress of Trade Unions  
31-32 Parnell Square  
Dublin 1  
Tel: (01) 889 7777  
Fax: (01) 887 2012  
Email: [congress@ictu.ie](mailto:congress@ictu.ie)  
Web: [www.ictu.ie](http://www.ictu.ie)