

Treoir



Treoir is the national federation of services for parents who are not married to each other, and we work in partnership with our member agencies to promote their rights and best interests.

Treoir provides a National Specialist Information Service to parents, their extended families and those working with them via the telephone, our information website, through publications, and outreach workshops. We co-ordinate the National Teen Parents Support Programme and advocate for constitutional and legal equality and improved services for parents and their children. We host Kinship Care Ireland and promote and support shared parenting. We conduct research to better understand the needs of unmarried parents, children, and kinship carers and collaborate with other agencies to promote equality for them.

Treoir recognises the diversity of family life in Ireland and believes all families, irrespective of status should have a right to be respected, cared for, and supported by the state. We support and promote the rights of all children as per the Constitution and the UN Convention on the Rights of the Child.

Submission to the Review of the Equal Status Acts

December 2021

Introduction

As the Equality Acts begin their third decade in operation Treoir welcomes this opportunity to reflect on the impact and limitations of the legislation. The Acts include the Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015 which prohibit discrimination, harassment, and victimisation in the provision of goods, services, education, and accommodation. They cover the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community. In the Programme for Government a commitment was given to look at the possibility of adding economic status as an additional ground.

A new ground of socio-economic status arises from Ireland's international obligations to address visible gaps in equality legislation in Ireland. International obligations contained in Article 6 of the Treaty on the European Union recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights. Article 21 of the Charter represents a progressive understanding of discrimination, covering a considerably wider scope than that in previous European Treaties.¹

This open-ended understanding of discrimination and the naming of the ground of social origin reflects a broad concept of discrimination that usefully links poverty and discrimination. In the second cycle of the UN's Universal Periodic Review (UPR) in 2016, it was recommended that Ireland adopt comprehensive anti-discrimination legislation to cover all grounds of discrimination including "social origin, property, birth or other status"². Seen in this context the current review of the Acts comes at a time of significant social disruption as a result of the Covid19 pandemic. The pandemic highlighted inequalities in Irish society that had unfortunately become 'normalised, such as care for children, the digital divide, access to health services, educational disadvantage etc.'

The Context

When it comes to caring, the pandemic highlighted a significant gender imbalance and its impact on women's precarious position within the labour market. The importance of accessible and affordable childcare was underscored as was the critical role of state intervention especially in the form of the Pandemic Unemployment Payment (PUP). The latter at its highest rate was closer to the Minimum Essential Standard of Living (MESL)³ than current social welfare payments. Covid19 laid bare the extent of domestic abuse and brought to the fore the significant vulnerabilities of adults and children living in homeless accommodation. All of the above created increased awareness of the fissures in Irish society and an appreciation for the importance of universal access to key public services and state intervention especially in the areas of housing and health.

¹ It stipulates that 'any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.'

² McKeon (2019).

³ Vincentian Partnership for Social Justice (2020) Budget 2021 Impact Briefing
https://www.budgeting.ie/download/pdf/budget_2021_-_mesl_impact_briefing.pdf

Gender inequalities and differences based on marital and family status are added to by issues to do with class, racial & ethnic identity, and levels of ability and disability. The intersectional nature of all of the above and the ways in which they cut across each other to both produce and reproduce inequalities is of critical importance in terms of the review of the Equal Status Acts. Contemporary Irish society is complex in terms of its demography and social makeup – and when it comes to family type, gender, and racial identity the old binary opposites are of limited use. Indeed, the multifaceted nature of identity formation and its embeddedness within socioeconomic relationships means some inequalities are more difficult to shift than others.

Intersectionality and Economic Status

In Ireland one in four families with children is a one-parent family. This amounts to 218,817 (25.4%) of family units, 86.4% of which are headed by a mother. Of these 90,000 were single, while 68,378 were separated or divorced, and 50,496 were widowed. A total of 356,203 children lives in one-parent families making up 21.2% of children in family units.⁴ When it comes to housing, one-parent families are disproportionately affected by homelessness. Despite making up only 20 per cent of families in Ireland, they comprise 54 per cent of all homeless families.⁵ Lone parent families are also heavily dependent on the private rental sector and on state transfers in the form of the Housing Assistance Payment (HAP). This has a significant impact on parents and children, particularly in relation to their health and wellbeing.⁶ **Currently there is no right to housing in Ireland, yet the right to adequate housing is a key element of international human rights agreements that Ireland has signed up to.**

In term of socioeconomic disadvantage, lone parents in Ireland have the second highest rate of income poverty, persistent poverty, and severe deprivation among all EU-15 countries.⁷ Those living in households with one adult and one or more children aged under eighteen had the highest deprivation rate in 2019, at 45.4%. People in lone parent households continue to have the lowest disposable income out of all households with children in the State, consistent with 2016 data.⁸ Data from October 2020 showed the employment rate of lone parents was

⁴ Census 2016.

⁵ It is important to note the numbers include only those living in homeless accommodation and exclude those who may be living with relatives or in some other type of arrangement. Department of Housing, Local Government and Heritage Housing Report – March 2021.

⁶ See Monitoring Adequate Housing in Ireland, by the Irish Human Rights and Equality Commission and the Economic and Social Research Institute (ESRI). Dublin, June 2021. The report looks at six dimensions of housing adequacy – accessibility, affordability, security of tenure, cultural adequacy, quality, and location.

⁷ The Survey on Income and Living Conditions (SILC) 2018 and 2019. Households that are systematically excluded and marginalised from consuming goods and services which are considered the norm for other people in society due to an inability to afford them, are considered to be ‘deprived’.

⁸ According to data published by the Central Statistics Office (CSO) and the Economic and Social Research Institute in 2019, the poverty line is calculated as being 60% of median income — €275.73 a week.

60.7% but that they are more likely to be employed on a temporary contract when compared to adults in two parent families.⁹

People who live on low incomes have to be extraordinarily creative to survive materially from one day to the next. When people are treated less favourably than others because of their address, accent, or the way they dress it has detrimental impact on their life opportunities. Considering the already precarious position of lone parents, the pandemic has the potential to place additional psychological and financial burdens on these families.¹⁰ The above figures highlight the gendered nature of inequality in lone parent households (in terms of parenting and economic survival) and the importance of progressive and proactive state intervention especially in key areas such income, housing, and access to childcare.¹¹ **Treoir welcomes the Programme for Government commitment to examine the introduction of a “disadvantaged socio-economic status” ground to the Equal Status Acts.**

It is debateable whether the grounds covered in the Equal Status Acts accord with how inequality is experienced in 2021.¹² The legislation does not explicitly allow for claims of intersectional discrimination. Yet we know that in today’s Ireland a lone parent can experience discrimination on the basis of her gender¹³, marital status, ethnicity as in the case Traveller or Roma women, class position and on the basis of her disability. **Treoir believes it is imperative the Acts prohibit discrimination based on socio-economic status as status-based discrimination is closely related to disadvantaged economic status, as illustrated by the treatment of Travellers and Roma, people with disabilities and the gender pay gap.**¹⁴

Gender and Marital Status

While all children in lone-parent families have fathers, many do not reside or have contact with their children. However, in 2021 we know extraordinarily little if anything at all, about this cohort,¹⁵ other than that they have no automatic right of access or custody to their children, and that they are notable in the Constitution by their absence.¹⁶ Despite the

⁹ CSO Labour Force Survey Households and Family Units Q2 2020.

¹⁰ Collins, M. (2020) *The Hidden Cost of Poverty: Estimating the Public Service Cost of Poverty in Ireland*. Report commissioned by Society of St Vincent de Paul, Dublin.

¹¹ Working, Parenting and Struggling (2019) Society of St Vincent de Paul, Dublin.

¹² Barry, E. (2021) Paper presented at FLAC Seminar on the Equal Status Acts, Dublin.

¹³ Aedin. D. (2019) Ireland’s Gender Wage Gap, Past and Present, *The Economic and Social Review*, Vol. 50, No. 4, Winter 2019, pp. 667-681.

¹⁴ The Citizens Assembly on gender equality has recommended that anti-discrimination and equality legislation should be regularly reviewed to ensure effective monitoring, investigation, reporting and enforcement.

¹⁵ McKeown, K. (2000) Families and Single Fathers in Ireland. Paper delivered at a conference organised by Cherish in Dublin.

¹⁶ White, G. (2017) The Constitutional Status of the Unmarried Family and its Constituent Members. Paper presented at Treoir AGM, Dublin.

existence of the Equal Status Acts which prohibit discrimination in the provision of goods and services on several grounds including gender, marital status and sexual orientation, there is persistent inequality in how the law treats various families and individuals¹⁷. For example, when it comes to Section 14 of the Act which deals with the important Public Sector Duty, the state has legislated itself out of significant sections with the result that the private sector now bears a higher responsibility for compliance under the Acts.¹⁸

As a direct result the Act is subject to a number of exemptions and any measures required by other laws cannot be challenged and the definition of 'service' does not include several key government functions. The import of this is that a father who is not married to or living with the mother of his children has to show 'proof' by way of a court order that he has access to his children when applying for local authority housing and HAP. Deliberate institutional discrimination on the basis of marital status or the lack thereof is clearly at odds with an Ireland that claims to prioritise equality, and the rights and best interests of children.¹⁹ **Treoir is calling for clarity on what defines a service; for certain functions of the state and public bodies to fall within a new definition and that the latter is aligned with Ireland's requirements under EU law.**

According to Census 2016 the number of cohabiting couples with children in Ireland increased by 24.4 per cent to 75,587. Cohabitants are two adults living in a long-term, committed relationship, sharing expenses, but not in a legal union. To be considered a cohabiting couple, a couple must have lived together for five years, or two years if they have children. Serious anomalies exist in the area of welfare rights and entitlements for unmarried cohabiting opposite-sex and same-sex couples. For example, although the State does not allow unmarried opposite-sex cohabiting couples to benefit from joint taxation, it does recognise the existence of the relationship for certain welfare entitlements. By way of example, individuals cannot claim the One Parent Family Payment if they are cohabiting.

Likewise, the existence of a relationship is not recognised if one of the partners dies. Opposite-sex cohabiting couples cannot apply for Widow's or Widowers (Contributory) Pension or the Widowed Parents Bereavement Grant. However, if a person applies for Unemployment Assistance, the Department of Employment Affairs and Social Welfare will subject the individual and their partner to a joint household income means test.²⁰ The imposition of financial penalties in the event of cohabitation discourages or at least impedes joint responsibility for the care of children.²¹ **Treoir believes there should be clarity**

¹⁷ Walsh, J. (2012) *Equal Status Acts 2000–2011: Discrimination in the Provision of Goods and Services*. Lonsdale Publishing, London.

¹⁸ Baker, J. & Lynch, K. (2016) Cutting back on Equality, in *Defining Events: Power, Resistance and Identity in Twenty-First Century Ireland* pp181-199 edited by Meade, R., and Dukelow, F. Manchester University Press, Manchester.

¹⁹ Egan, S., Thornton, L., Walsh, J. (2014) *Ireland and the European Convention on Human Rights: 60 Years and Beyond*. Bloomsbury, London.

²⁰ Walsh, J. (2006) in *Equality for Families*, Irish Council for Civil Liberties, Dublin.

²¹ Working, Parenting and Struggling: An Analysis of the Employment and Living Conditions of One Parent Families in Ireland. (2019) Society of St Vincent de Paul, Dublin.

concerning the scope of the legislation and that it is imperative the reformed Acts cover social welfare and what are referred to, as social advantages under EU law.

Reforming the Workplace Relations Commission

The Workplace Relations Commission (WRC) is an important part of the state's equality infrastructure. However, its title gives no hint to its equality mandate and this lack of visibility fails to maximise the potential of both the Acts and the Commission as vehicles for social change. To maximize this untapped potential requires more – first people must know about the equality legislation, what exactly it covers and how they can seek redress under it. This requires a public information campaign; funding for awareness education which is targeted at specific groups; the availability of advocacy services, and that proactive efforts are made to empower communities to take ownership of the legislation. **To realize this the state needs to empower groups and communities to act as advocates for themselves – to self-support. It must also acknowledge the importance of representative action and permit NGOs to take equality cases on issues of generalised discrimination.**

Improving access

As a first step, it is imperative access to the WRC is improved. Currently there is no specific complaint form to deal with discrimination under the Equal Status Act. This needs to be rectified and greater emphasis given to assisting people with poor literacy skills, disabilities, or limited means, to access the service. There must be greater awareness of the digital divide²² and of how online form filling can be a barrier to people.²³ Access to justice is a basic principle in a functioning democracy.²⁴ The current situation whereby people have no statutory entitlement to legal aid for cases taken under the Acts is not acceptable. Most people who experience discrimination are from marginalised groups and the unmet legal need of Travellers, the working class, and people with disabilities is well documented. Discrimination has often been described as a form of violence, in terms of its impact on the person. Thus, to challenge an organisation, institution, or business that has access to significant resources and legal expertise is daunting if one is unrepresented and without legal advice. Only a statutory entitlement to specialist legal aid can address this issue. Moreover, where a case is successful it is important robust sanctions are applied and the current cap of €15,000 on awards is removed. It is worth stating that the Equal Status Acts serve a function other than an outlet for an individual to deal with discrimination. **The legislation can have a societal wide transformative effect in challenging the acceptance of discrimination as a fact, in promoting equality and human rights, and assist in creating a culture of compliance.**

²² Digital Inclusion in Ireland: Connectivity, Devices and Skills. National Economic & Social Council (NESCC) No 154, June 2021.

²³ It is estimated that 17.9% or about 1 in 6 of Irish adults may be unable to understand basic written information (OECD Adult Skills Survey).

²⁴ Shannon, J. (2019) Paper presented to the Joint Committee on Justice and Equality.

Recommendations

The Minister and IHREC

- The relevant Minister for Equality, currently the Minister for Children, Equality, Disability, Integration & Youth to submit an Annual Report to the Dáil and the relevant Oireachtas Committee on progress made, barriers encountered, and the steps needed to advance specific objectives;
- The Irish Human Rights & Equality Commission (IHREC) to review progress and policy priorities and submit a yearly report with a list of recommendations to the relevant Minister for Equality, currently the Minister for Children, Equality, Disability, Integration & Youth;
- IHREC to have a statutory obligation to collect and disseminate data on organisational compliance, which is communicated to the public with the aim of increasing awareness of the social impact of the legislation;
- IHREC to be strengthened and resourced to carry out its functions under the Acts.
- IHREC's remit to be broadened to include the establishment of an independent civil society advisory group to ensure stakeholder engagement in the equality bodies.

The Equal Status Acts

- All exemptions under the Acts should be removed so that religious, educational, public, or private entities or businesses cannot discriminate against people.
- Treoir believes it is imperative the reformed Acts cover social welfare and what are referred to as social advantages, under EU law.
- There needs to be a full review of Section 14 of the Act and greater clarity as to what exactly constitutes a service. Any new definition must align with EU law.
- As discrimination on the basis of socio-economic status can manifest itself in a variety of ways it is imperative a person's accent, dress code, place of birth/living, are included in a clear and succinct statement implementing socio-economic status as a tenth ground of discrimination;
- Training to be provided to all public bodies on how gender, marital status, race, disability etc., interact with one another to produce socio-economic inequality and for intersectionality to be factored into departmental policy development;

The Workplace Relations Commission

- The Workplace Relations Commission (WRC) should be renamed so that its equality mandate is clearly visible in any new title and branding, and in recognition of its work in creating a culture of compliance.

- Additional resources to be given to the WRC to enable it to increase its staffing levels with the aim of reducing caseloads, shortening waiting times, and ensuring adjudicators have sufficient time to deal with a case;
- Improve access to the WRC and ensure people taking cases under the Equal Status Acts have a right to legal aid;
- The WRC need to be resourced to assist people with poor literacy skills and disabilities, and there needs to be greater awareness of the digital divide.
- Currently there is no specific complaint form to deal with discrimination under the Equal Status Act, this needs to be rectified.
- Extend the requirement for a complainant to notify the respondent of their intention to make a complaint from two months to four months;
- Remove the €15,000 cap on awards so penalties for intersectional discrimination are robust and act as a deterrent;
- Amend the Acts to permit NGOs take equality cases on issues of generalised discrimination. Reform of the Acts must prioritise systemic compliance and there should be less reliance on individual complaints to bring about change.