

*Experiencing both types of discrimination – Workplace discrimination and discrimination in Accessing services – was reported by just 3.5% of persons aged 18 years and over. Over one in ten (10.8%) of unemployed persons experienced both types of discrimination.*

# INOUE Submission to the Review of the Equality Acts

December 2021

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## Introduction

The Irish National Organisation of the Unemployed (INOUE) welcomes this opportunity to make a submission to the consultation on the Review of the Equality Acts being undertaken by the Department of Children, Equality, Disability, Integration and Youth.

The INOU welcomes the acknowledgement on the Department's website that "*The Programme for Government commitments on the introduction of a socio-economic ground for discrimination and the amendment of the gender ground will be considered as part of the review.*"

In his speech to the 17th Annual Civil Society Forum on Human Rights<sup>1</sup>, President Michael D Higgins noted that "*The economic and social rights enumerated in Articles 22 to 27 of the Universal Declaration – the right to work, to protection against unemployment, to join trade unions, to holidays and leisure, and most radically, to an adequate standard of living – all demand collective action, and a role for the State, to be both secured and provided.*"

The quote on the cover of this submission is from the Central Statistics Office (CSO) statistical release, using Labour Force Survey data from Quarter 1 2019, which explored respondents experience of equality and discrimination<sup>2</sup>.

In the release they noted that *Persons who experienced Workplace discrimination were predominantly from the following groups:*

- *Unemployed (24.6%)*
- *Non-white ethnic backgrounds (19.8%)*
- *Persons who identify as LGBTI+ (17.5%)*
- *Non-Irish (14.4%)*
- *Persons with a disability (12.3%)*
- *Persons aged 25 to 44 years (11.0%)*
- *Females (10.6%) compared to 8.2% of males*

As Ireland's equality legislation stands at present, the group with the highest rate of Workplace discrimination, the unemployed, could not use this legislation to address their experience of discrimination. The only way an unemployed person could use any of the redress mechanisms under the equality legislation is if they felt that they had been discriminated against on any of the existing grounds, for example, their age, their ethnicity or that they had a disability.

**To address this serious gap socio-economic status must be added as a ground into Ireland's equality legislation as a matter of urgency.**

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<sup>1</sup> Link: <https://president.ie/en/media-library/speeches/speech-at-the-17th-annual-civil-society-forum-on-human-rights>

<sup>2</sup> Link: <https://www.cso.ie/en/releasesandpublications/er/ed/equalityanddiscrimination2019/>

## Irish National Organisation of the Unemployed (INOUE)

*“The INOU is a federation of unemployed people, unemployed centres, unemployed groups, community organisations and Trade Unions. The INOU represents and defends the rights and interests of those who want decent employment and cannot obtain it. We promote and campaign for policies to achieve full employment for all. We also campaign for an acceptable standard of living for unemployed people and their dependents. The INOU is an anti-sectarian, anti-racist, non-party political organisation which promotes equality of opportunity within society.”* (INOUE Mission Statement)

The organisation has over two hundred affiliated organisations and six hundred individual members. We work at the local and national level on issues affecting unemployed people through the provision of training and welfare rights information services; analysis of Government policies and related advocacy work; and working with a wide range of other organisations on issues of common concern.

The INOU is member of the **#Addthe10th Alliance** and worked with other members on the Alliance’s submission to this consultation. Amongst the issues raised was that *“The member organisations of the Alliance have a close connection to the people and communities they represent. They see first-hand the impact of discrimination and inequality on people and communities experiencing socio-economic disadvantage and the lack of protection offered by Irish equality legislation.”*

This submission will be mindful of the six questions posed on the Department’s website, but will primarily focus on question three, and the implications for people experiencing socio-economic exclusion of the challenges and concerns people covered by the existing grounds have raised, and how these might impact on people experiencing socio-economic exclusion.

The six questions / themes posed include:

- 1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality;
- 2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;
- 3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;
- 4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;
- 5) Whether existing exemptions in the legislation should be modified or removed;
- 6) Any other issues arising from the legislation.

➤ *The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality*

The INOU is keenly aware from affiliated organisations and other community and voluntary sector organisations whose issue is covered by one or more of the existing grounds, that seeking and acquiring redress under the current legislation is challenging.

The legislation requires that an individual must take a case against an employer or a service provider within a certain time period. This time period, six months under the Employment Equality Act and two months to initiate a complaint under the Equal Status Acts, requires a certain level of knowledge and confidence that people who experience discrimination and inequality may not have, and which the situation they seek to redress may have further undermined.

The incorporation of the work of the Equality Tribunal into that of the Workplace Relations Commission has added to the difficulties in this regard. Where a person making a complaint to do with employment may see it as reasonable to go to a body called the 'Workplace Relations Commission', it is unlikely that a person seeking to make a complaint under the Equal Status Act would make this connection, unless they were already knew or had been informed by someone with a wider knowledge.

Concerns have also been raised by CVS organisations who play a more active role in the taking of legal cases, that the process has become more formalised and as a consequence more costly as those responding to a complaint are more likely to be able to afford and avail of legal representation in the proceedings.

This development can make it extremely difficult for people without resources to take a case and ultimately undermines the role and impact of this legislation to address discrimination and promote equality.

The INOU strongly believes that this dynamic could be a particular issue for people who would be using the legislation to address their socio-economic exclusion and experience of discrimination when a socio-economic status ground is introduced into the legislation.

It will be essential that every effort is made to make Ireland's equality legislation as user friendly, as accessible and affordable as possible. To that end properly resourcing community based organisations working with people to challenge discrimination and realise a more equitable and inclusive Ireland will be important.

➤ *The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action*

The awareness of people who experience discrimination of what action they could take to address it varies considerably. It appears that if people are aware of Ireland's equality legislation, it is due, for example, to their employer having in place clear and well communicated policies, or their involvement with or awareness of community based organisations who will inform them of their rights and entitlements and how these can be exercised.

As noted earlier the time limits under which people must take action causes confusion on the ground, with some people only becoming aware of the action they could take after the time has expired. Concerns in particular have been raised with the process under the Equal Status Act where the process has two deadlines the complaint must bear in mind. The following text from the Workplace Relations Commission website<sup>3</sup> spells out the steps:

1. *Before you make a complaint to the Workplace Relations Commission (WRC) in regard to perceived discrimination or unlawful treatment, you must first send a Notification in writing to the respondent (person/company against whom you are considering the complaint). This notification must contain specific information concerning the alleged discrimination and must be received by the respondent within 2 months after the occurrence of the event in question; in order to assist you with this process, you may use the Equal Status Form ES1 (see link at foot of page). The ES1 form should be sent directly to the respondent, and not to the WRC.*
2. *The Respondent is not obliged to respond to this notification, but may use Form ES2 to do so, if they wish. It should be noted that if the respondent does not reply, or if they provide false or misleading information, an Adjudication Officer may, if appropriate, take account of this when he or she is deciding your case.*
3. *If you have not received a reply from the respondent within one month, or if you are not satisfied with a reply you have received, you can then make a complaint to the WRC using the online Complaint Form available on the 'Refer a Dispute/Make a Complaint' page. A copy of the notification and response should be sent with the complaint form to the WRC. Please note the time limit for making a complaint is **within 6 months of the incident** you are complaining about (or six months from the last incident, if there have been similar incidents). This may be extended in certain circumstances. (See link at the foot of the page for further explanatory notes)*
4. *Complaints in respect of registered clubs and licensed premises may only be taken in the District Court.*

On the assumption that Ireland will finally introduce a socio-economic status ground, serious consideration must be given to how people will be informed of this development; how they will be supported to make use the legislation appropriately; how people who do not have the literacy or digital skills to go through the process outlined above will be supported to exercise their rights.

At the very least serious consideration must be given to rebranding / refocusing the Workplace Relations Commission so that the breath of their remit and role in addressing discriminatory practices in service delivery in Ireland is clear and visible to all.

The Employment Equality Acts 1998–2015 outlaw discrimination in a wide range of employment and employment-related areas. These include recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment including sexual harassment. As highlighted in the CSO statistics on page one, unemployment was the single biggest issue cited under the heading *Persons who experienced Workplace discrimination*. It will be critical that the socio-economic status ground facilitates

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<sup>3</sup> Link: [https://www.workplacelrelations.ie/en/what\\_you\\_should\\_know/equal-status-and-employment-equality/equal-status/](https://www.workplacelrelations.ie/en/what_you_should_know/equal-status-and-employment-equality/equal-status/)

unemployed people to challenge this exclusion and to ensure that this quote from Ireland's Economic Recovery Plan 2021 is realised: *"An increased focus will be placed on building an inclusive society and labour market with greater emphasis on good quality employment, increasing participation and reducing barriers as the economy recovers, ensuring the benefits of the recovery are widely shared."*

- *The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination*

This submission will focus on the inclusion of the ground of socio-economic status.

In a letter to the Joint Committee on Justice and Equality, in 2018 the Economic, Social and Cultural Rights Initiative stated that *"On the 19th June, 2015 the United Nations Committee on Economic Social and Cultural Rights published their concluding observations on Ireland's report (ref: E/C.12/IRL/CO/3). On the issue of 'non-discrimination' (Article 2.2) the Committee recommended "that the State party adopt comprehensive anti-discrimination legislation that includes all the grounds for discrimination set out in article 2, paragraph 2, of the Covenant." A development that member organisations welcomed at the time as issues like unemployment are not covered by Ireland's equality legislation. There has, unfortunately, been a lack of movement on this important recommendation."*

In the Equality Rights Alliance's report<sup>4</sup>, *An analysis of the introduction of socio-economic status as a discrimination ground*, chapter 7 explores *Defining a socio-economic status ground*. In this chapter the report notes *"Many countries stipulating a socio-economic status ground do not provide a specific definition for the ground. However, given the number of different categories used it is advisable to offer a definition or a number of indicators to avoid incertitude. The 2004 report in Ireland lists a number of possible key indicators to define socio-economic status, such as level of education, level of literacy, homelessness, geographical location, source and level of income, type of work or profession, and employment status. These indicators are still valid and can be used in defining this ground."*

Further on in the report *"It is suggested that the definition of a socio-economic status ground could be built by taking into account all the above elements to ensure that it follows an asymmetric approach and enables a situation-specific analysis, responding to disadvantages in the fields of: Economic and financial means, Education, Employment, Family background, Health, Housing, including the geographic location, and Social class."*

In our work with other CVS organisations on the issue of socio-economic exclusion a number of issues arise regularly, including address, accent, how people look, how they dress, the schools they went to, the type of accommodation they live in, whether or not they are employed. In keeping with the experiences of people from ethnic minorities, people facing socio-economic discrimination often experience it at both an individual, familial and communal level. This in turn impacts on peoples experiences of a range services and opportunities including education, health, economic and social services. There is a well-

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<sup>4</sup> Link: <https://equineteurope.org/wp-content/uploads/2020/07/Analysis-of-socio-economic-status-as-discrimination-final.pdf>

established correlation between educational status and employment status. The impact on peoples self-esteem, their confidence, undermines their ability to engage with socio-economic opportunities and to secure a decent job.

➤ *Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds*

Many people experience discrimination for a variety and often interconnected number of reasons. In making a complaint under Ireland's equality legislation people must assess and decide whether or not to take a case on one or more of the existing equality grounds. They may feel that they would have a stronger or more straight forward case just using one ground, they may be concerned about the need to establish that it had happened on each of the grounds named. But what happens for people who feel that it is the combination of identities, the cumulative impact of lived experiences that has led to the negative experience for which they are seeking redress? For example, if they feel they experienced discrimination because they are an older woman; a person with a disability from an ethnic minority; a young person from a certain area or community. Of course, in the latter example, the young person concerned will only be able to make a complaint once the ground of socio-economic status is added to the equality legislation.

Without a doubt the experiences of people who face other forms of discrimination are exacerbated if people are less well off, have less resources, and also experience socio-economic exclusion. To that end, for Ireland's equality legislation to offer meaningful redress it must provide the wherewithal to address the intersection of discriminations and their cumulative impact. CVS organisations working on communal experiences and the impact on people's lives, note that many people internalise this experience, that it can take time to tease it out and articulate it, time that the parameters of taking a case rarely affords.

Equality legislation that acknowledges intersectionality, the complexity of life, could inform more holistic policy making and delivery. It could encourage a pro-active equality proofing continuum from when the policy is being made, to being implemented, to being reviewed and revised in light of the review.

Intersectionality must be properly acknowledged in Ireland's equality legislation; people must be able to take cases on the grounds they believe they were discriminated on; policy making and implementation must also acknowledge the complexity of life and the multiple dimensions to any issue and its appropriate redress; CVS organisations working on the cumulative and collective impact of inequality and exclusion must be properly supported so that structural inequalities can be articulated and addressed.

➤ *Whether existing exemptions in the legislation should be modified or removed*

The INOU is keenly aware, from its work with organisations whose issue of concern is covered by the existing grounds, of the impact of the exemptions the State currently enjoys under Section 14 of the Equal Status Act. In particular the situation whereby other primary legislation takes precedence over this Act: *an 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 other unlawful activities, to provide for the administration by the Equality Authority of various matters pertaining to this Act, to amend the Employment Equality Act, 1998, in relation thereto and in certain other respects and to provide for related matters.*<sup>5</sup>

It is critical that the State is seen to and abides by its own equality legislation, that it plays a leading and active role in addressing socio-economic discrimination, inequality and exclusion. This will be particularly important for people who experience discrimination because of their socio-economic status, as the State is a key player in their lives.

The introduction of the Public Sector Duty in the 2014 Act that established IHREC was a welcome development. Ideally it should encourage the State to play a more positive and pro-active role in addressing inequality and breaches of human rights, though much work remains to be done to ensure this Duty is delivering on its potential. Of course, without the incorporation of a socio-economic status ground into Ireland's equality legislation it is of limited use to people who experience of this type of discrimination.

It will also be vital that people who feel the State has discriminated against them should be able to use Ireland's equality legislation when they are seeking redress. To that end the exemptions Section 14 afford the State must be properly addressed.

➤ *Any other issues arising from the legislation*

In the *Programme for Government* the Government says it will “Fully implement Sustainable, Inclusive and Empowered Communities, the five-year strategy to support the community and voluntary sector in Ireland up to 2024.” (p107) The values underpinning this five year plan are particularly important including: active participation; collectivity; social justice; sustainable development; social inclusion; human rights, equality and anti-discrimination; and empowering communities. These values are pertinent to the work and role of Ireland's equality legislation and should inform this review.

Community and voluntary sector organisations must be properly resourced to work with people who experience socio-economic discrimination and inequality, are living with socio-economic exclusion including people who are unemployed. This will become particularly important when the ground of socio-economic status is incorporated into Ireland's equality legislation. It will be critical that community based organisations have the wherewithal to support people who wish to make a complaint, and are facilitated to play an active part in the development and implementation of equitable and inclusive policy making and practice.

*Thank you for your time and consideration*

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<sup>5</sup> Link: <https://www.oireachtas.ie/en/bills/bill/1999/19/> Of course the Equality Authority referred to in this quote no longer exists and was incorporated into the Irish Human Rights and Equality Commission (IHREC).