

**DRAFT: Submission to the Department of
Children, Equality, Disability, Integration and
Youth Consultation on the Review of the Equality
Acts**

December 2021



Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Ag Eisteacht
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Aoibhneas
AslAm
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLoNG To Youth Services
Blossom Ireland
Catholic Guides of Ireland
Childrens Books Ireland
Children's Grief Centre
Child Care Law Reporting Project
Childhood Development Initiative
Childminding Ireland
Children in Hospital Ireland
Clarecare
COPE Galway
Cork Life Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Educate Together
EPIC
Equality for Children
Extern Ireland
Féach
Focus Ireland
Foróige
Gaelscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children

Irish Traveller Movement
Irish Youth Foundation (IYF)
Jack & Jill Children's Foundation
Jigsaw
Katharine Howard Foundation
Kids' Own Publishing Partnership
Kinship Care
Leap Ireland
Let's Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
My Mind
My Project Minding You
Museum of Childhood Project
Music Generation
New Directions
National Childhood Network
National Council for the Blind
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Private Hospitals Association
Psychological Society Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
TASC
Teachers' Union of Ireland
Transgender Equality Network Ireland
The Ark, A Cultural Centre for Children
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Women's Aid
Young Ballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

Children's Rights Alliance

7 Red Cow Lane, Smithfield, Dublin 7, Ireland

Ph: +353 1 662 9400

Email: info@childrensrights.ie

www.childrensrights.ie

1. Introduction

The Children's Rights Alliance unites over 130 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights.

The Children's Rights Alliance welcomes the opportunity to make a written submission to the Department of Children, Equality, Disability, Integration and Youth on the review of the Equality Acts. Our submission focuses in particular on the impact of the Equality Acts upon children, shortcoming in the Acts as they stand, and how the effectiveness of the Acts to tackle discrimination may be increased.

2. Age- based Discrimination

Currently section 3(3) of the Equal Status Act as amended, provides that treating a person under 18 less favourably is not actionable as age-based discrimination. Differential treatment in some instances on the basis of a child's age is justified - for example, in using age as a proxy for capacity to consent to certain forms of medical treatment. However, section 3(3) permits a blanket indemnity and so could protect unequal access to services for children provided by public and private bodies. As Judy Walsh, Assistant Professor at the School of Social Policy, Social Work and Social Justice in UCD has observed, this means a health authority could decide that speech therapy will only be afforded to children under six, introducing an arbitrary cut off for access to a vital service.¹ These decisions could be challenged using the Equal Status Act, but for section 3(3)a.² It would be preferable to strengthen and clarify the provisions on positive action, ensuring that any differential treatment on the basis of age is evidence-based.

Recommendation: Consideration should be given to removing the age restriction in section 3(3) of the Equal Status Act.

2. Discrimination Based on Nationality

Section 14(aa) exempts 'any action taken by a public authority in relation to a non-national... in accordance with any provision or condition made by or under any enactment and arising from his or her entry to or residence in the State.' This exemption affords a very wide range of public bodies discretion to discriminate on grounds of nationality in relation to certain non-nationals, most notably those in direct provision. As the Ombudsman for Children has noted, children in direct provision face significant discrimination and '*bullying related to race, religion and nationality in school*'.³ Excluding

¹ Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing 2013) 59

² Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing 2013) 59

³ Ombudsman for Children, 'Direct Provision Children's views and experiences of living in Direct Provision' A report by the Ombudsman for Children's Office 2020' <chrome-extension://efaidnbmnnnibpccjpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.oco.ie%2Fapp%2Fthemes%2Ffoco%2Fimages

these children from bringing claims either to do with discrimination in regards their age, under section 3(3), or their nationality, under section 14(aa); leaves this particularly vulnerable group in society totally without adequate protection against discrimination.

In particular, the Alliance notes the 2018 case of *NHV v Minister for Justice* where the Supreme Court expanded the constitutional protection of equality under the law to include persons in direct provision.⁴ The Alliance believes that the Department should follow the Court's understanding that the Constitution seeks to protect the dignity and personhood of all, including non-Irish nationals, and expand the protection of the Equality Acts to this group, to protect non-Irish nationals from assaults on their dignity arising from discrimination.

Recommendation: Consideration should be given to removing the restriction in section 14(aa).

3. Awareness and Underuse of the Equality Acts

The Department seeks submissions on the degree to which those experiencing discrimination are aware of the Equality Acts and whether there are obstacles which deter people experiencing discrimination from taking an action. The Alliance views the relatively low rate of discrimination cases concerning children coming before the Equality Tribunal or Workplace Relations Commission as indicative of the low effectiveness of the mechanisms established by the Acts at present. In 2020, of 123 cases determined by the Workplace Relations Commission, only 10 concerned children. This may in part be due to the combined effects of s.3(3) and s.14(aa) of the Equal Status Act, as noted above. However, even accounting for that, it appears to be a noticeably low rate of challenges to discrimination.

This is particularly so when discrimination against children is well-reported. For instance, consider that BeLonG To found that, of the 788 participants aged between 13 and 20 in their 2019 School Climate Survey, 77% had experienced verbal harassment and 86% had experienced feelings of social exclusion due to their sexuality or gender.⁵ An estimated 29,000 young people identify as LGBT+ representing a sizeable minority of the school population in Ireland.⁶ Notwithstanding this, there was only one case referred to the Workplace Relations Commission in the past five years concerning sexual orientation discrimination, and it was unsuccessful.⁷ Likewise, in the EU Agency for Fundamental Rights survey of the experience of Travellers in Irish society, 13% of respondents felt discriminated against because of being a Traveller when in contact with school authorities either as a parent/guardian or as a student.⁸ It is hard to avoid the conclusion from these findings that the Equality Acts are currently not effectively tackling discrimination faced by children in this area.

Consideration should be given to the expansion of civil legal aid to include representation before quasi-judicial tribunals such as the Workplace Relations Commission. Currently, Legal Aid is generally unavailable in discrimination cases under the Equality Acts, regardless of the severity of discrimination, harassment, sexual harassment or victimisation the case is concerned. This makes it extremely difficult and burdensome to bring cases, particularly in relation to complex provisions

[%2Fdirect-division%2Fpdf%2FOmbudsman-for-Children-Direct-Division-Report-2020.pdf&clen=10426911&chunk=true](#) > (accessed 10 December 2021) 4.

⁴ *NHV v Minister for Justice* [2018] IESC 35

⁵ Oren Pizmony-Levy & BeLonG To Youth Services, The 2019 School Climate Survey Report: The experience of lesbian, gay, bisexual and trans young people in Ireland's schools' (2019) <<https://www.belongto.org/professionals/research/key-findings-school-climate-survey-2019-2/>>. (accessed 10 December 2021) 8.

⁶ Agnes Higgins et al, The LGBTIreland Report: national study of the mental health and wellbeing of lesbian, gay, bisexual, transgender and intersex people in Ireland (GLEN and BeLonGTo 2016) 8..

⁷ *A Shopper (on behalf of son) v A Retailer* ADJ-00005113

⁸ European Union Agency for Fundamental Rights 'Travellers in Ireland 2019' (2019) <

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-roma-and-travellers-survey-country-sheet-ireland_en.pdf > (accessed 10 December 2021)

such as that on indirect discrimination, which may require complainants to present statistical evidence. As children will almost always not have the financial resources to bring complaints themselves, in most instances, the parents of a child facing discrimination will be the party to take complaints before such tribunals. The Alliance observes the considerable financial burden this places on parents. , Alongside tackling socioeconomic status-based discrimination, the Alliance proposes that tribunals established under the Equality Acts should also be made more accessible to socioeconomically disadvantaged victims of discrimination, by expanding access to civil legal aid.

Recommendation: Consideration should be given to the expansion of civil legal aid to include representation before quasi-judicial tribunals such as the Workplace Relations Commission.

4. Traveller Children

An analysis of cases before the Workplace Relations Commission (WRC) shows a clear trend that, in the limited instances in which discrimination faced by children is considered, the grounds on which discrimination is found to have occurred are predominantly disability and membership of the Traveller community.⁹ In regard to the Traveller Community ground, the WRC found discrimination in the provision of hotel accommodation,¹⁰ housing provision,¹¹ and in the field of leisure and entertainment.¹²

Whilst the successful findings for the victims of discrimination in these instances is encouraging, the Alliance also notes the decision of the Supreme Court in *Stokes v Christian Brothers High School, Clonmel*.¹³ In *Stokes*, a child from the Traveller Community alleged he was indirectly discriminated against contrary to section 3(1)(c) of the Equal Status Act, by being refused admission to the respondent school by the effect of an admissions policy favouring boys whose fathers had gone to the same school. The Supreme Court held that the appellant alleging indirect discrimination had to show, through statistical analysis, that the effect of the policy was the exclusion of Traveller boys. This places an excessively onerous burden on victims to establish a prima facie case of discrimination.

Recommendation: Consideration should be given to reforming the guarantee of protection against indirect discrimination under the Equality Acts, in order to expand the capacity of people experiencing discrimination to successfully challenge their treatment. For instance, Section 3(3A) could be amended to provide that: “In any proceedings statistics are admissible, but not necessary, for the purpose of determining whether discrimination has occurred by virtue of subsection (1)(c).”

5. Children with Disabilities

The reasonable accommodation duty under the Equal Status Acts should be revised to take account of Ireland’s obligations under the UN Convention on the Rights of People with Disabilities (UNCRPD). In particular, the review should assess the compatibility of the nominal cost threshold with UNCRPD.¹⁴

The nominal cost limit weakens the impact of the ESA and doesn’t adequately tackle barriers in children’s access to crucial services, including education. Where there have been successful

⁹ See also Maria Quinlan, ‘Out of the Shadows: Traveller & Roma Education: Voices from the Communities’

¹⁰ *A Family v A Hotel* ADJ-00002800; *A Minor v A Hotel* ADJ-00017903

¹¹ *A Member of the Travelling Community v A County Council* ADJ-00008050,

¹² *Three Complainants v Multiplex Cinemas* DEC-S2018-012

¹³ *Stokes v Christian Brothers High School, Clonmel* [2015] IESC 13

¹⁴ Equal Status Act 2000 – 2018 s.4(2)

challenges by children experiencing discrimination on the basis of their disability, it has only been where no additional costs would be incurred as a result of making accommodations, such as by permitting an assistance dog onto school grounds,¹⁵ maintaining an emergency medical kit,¹⁶ or permitting a child with autism to maintain his dietary routine while accepting school transport.¹⁷

Recommendation: Children should be protected against disability discrimination even when it is not cost-neutral. Consideration should be given to the removal of the nominal cost threshold for State-funded entities such as schools.

6. Religious Discrimination and Religious Ethos in Schools

The Alliance welcomes the implementation of the Education (Admission to Schools) Act 2018. As well as removing the so-called baptism barrier for primary schools, the Act imposes an obligation on recognised schools to prepare and publish admissions policies to ensure schools do not discriminate on protected grounds.¹⁸ This legislative change goes some way towards implementing the 2016 recommendation of the UN Committee on the Rights of Children to '[e]xpediently undertake concrete measures to significantly increase the availability of non-denominational or multid denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions, including the Equal Status Act'.¹⁹ However, the Alliance notes further progress is needed in this area. In *A Student v A School*, a non-Catholic child was found to be discriminated against in the granting of homework passes, in the context of a system wherein passes were granted for participating in religious ceremonies such as choir practice.²⁰

Purported conflicts between schools' religious ethos and non-discriminatory practices has also surfaced in the context of relationships and sexual education (RSE) programmes. A review conducted by the National Council for Curriculum and Assessment highlights the need for further direction for schools concerning the relationship between RSE education and their ethos.²¹

Recommendation:

Given the predominance of Catholic-ethos schools in the provisions of education, the review should consider further mechanisms aimed at ensuring that schools are aware of and proactively comply with their obligations under the ESA while upholding a particular religious ethos. This could entail, for instance, a ministerial request that IHREC prepare a code of practice,²² or the consideration of a duty to adopt an equality plan (as is the case in Finland, where a legal duty to advance equality in education has seen the implementation of non-discrimination measures in hundreds of schools and municipalities.)²³

¹⁵ *A Mother v Board of Management of a National School* DEC-S2016-048

¹⁶ *Parents v Board of Management of a Gaelscoil* DEC-S2016-053

¹⁷ *A Schoolchild v Bus Éireann* ADJ-00008539

¹⁸ Education (Admission to Schools) Act 2018 s.6(1)

¹⁹ United Nations Committee on the Rights of Children, 'Concluding observations on the combined third and fourth periodic reports of Ireland (2016)' <<https://www.childrensrights.ie/resources/un-committee-rights-child-concluding>> (Accessed 10 December 2021) 64(a)

²⁰ *A Student v A School* ADJ-00023650

²¹ National Council for Curriculum and Assessment, *Report on the Review of Relationships and Sexuality Education in primary and post-primary schools* (NCCA 2019), pp. 37-38.

²² Section 31, Irish Human Rights and Equality Commission Act 2014.

²³ European Commission Network of Legal Experts in Gender Equality and Non-Discrimination, 'Country Report - Non Discrimination: Finland' (2021) <<https://www.equalitylaw.eu/downloads/5507-finland-country-report-non-discrimination-2021-1-21-mb>> (Accessed 10 December 2021)

7. Socio-Economic Ground

The Alliance supports the Department's proposal to introduce socioeconomic status as a ground for discrimination. Children are currently being treated unequally on the basis of poverty and socioeconomic status.²⁴ The 2019 Survey on Income and Living Conditions demonstrates that children are most vulnerable to poverty, with 8.1 per cent of children living in consistent poverty, while 15.3 per cent of children were at risk of poverty.²⁵ It is estimated that in 2019 just over 96,000 children were living in consistent poverty, equating to 34 per cent of those living in consistent poverty.²⁶ Among the children living in consistent poverty 43 per cent are in deep poverty, where household income is 50 per cent or less of median income.²⁷

One parent families are significantly more vulnerable to experiencing poverty with 17.1 per cent living in consistent poverty versus 6.1 per cent of two parent families.²⁸ Lone parents in Ireland are almost five times more likely to experience in-work poverty than other households with children.²⁹

Mindful of how directly poverty and socioeconomic status affects child welfare, the Alliance supports the inclusion of socioeconomic status as a protected ground under the Equality Acts. The Alliance further supports the expansion of discrimination to protect against intersectional discrimination, for reasons that can be identified by considering the above discussion of socioeconomic status as a potential protected ground. As stereotypes based on low socioeconomic status often conflate with other forms of discriminatory exclusion of groups such as children, Travellers, and the disabled, it is vital to develop a system that treats discrimination as it is experienced by those who are subjected to unequal treatment due to a compound of discriminatory factors.

Recommendation: Consideration should be given to the inclusion of socioeconomic status as a protected ground under the Equality Acts. Provision should be made for multiple-ground complaints.

²⁴ See also Tamas Kadar, 'An Analysis of the introduction of socio-economic status as a discrimination ground' *Equality & Rights Alliance*

²⁵ Central Statistics Office, Survey on Income and Living Conditions (SILC) 2019. (CSO 2020).

²⁶ Department of Children and Youth Affairs, Income, poverty and deprivation among children: A statistical baseline analysis (DCYA 2020).

²⁷ Ibid

²⁸ Central Statistics Office, Survey on Income and Living Conditions (SILC) 201. (CSO 2019)

²⁹ Society of St Vincent de Paul, Working, Parenting, and Struggling? An analysis of the employment and living conditions of one parent families in Ireland (SVP 2019) accessed 10 September 2020