



ILMI

INDEPENDENT LIVING
MOVEMENT IRELAND

A GUIDE TO THE LAW IN IRELAND IN RELATION TO DISABILITY

ANNA O'DUFFY

December 2018



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FREEDOM • RIGHTS • EMPOWERMENT

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Foreword



Our new strategic plan sets an ambitious set of objectives to bring about change for disabled people across Ireland and to build an Ireland where disabled people are empowered to live Independent Lives with control, choice and options. One of our core strategic aims is the promotion of equality and accessing human rights. Over the course of this plan Independent Living Movement Ireland's work will be grounded in equality and a rights-based approach, working towards an inclusive Irish Society.

As Chairperson of the Board of Independent Living Movement Ireland I would like to thank Anna O'Duffy for her expertise and hard work in putting this valuable resource together. It is an excellent resource that clearly informs disabled people about their rights, the laws that relate to disabled people and what disabled people can do if they believe their rights have been violated.

ILMI will use the information in this booklet to deliver workshops across the country over the course of 2019 to promote awareness of the human rights and equality infrastructure. We will work to empower disabled people to challenge inequalities that they face through legal means if required. This work will require ILMI to build on our strong links with the Free Legal Advice Centres (FLAC), Public Interest Law Alliance (PILA) and National University of Ireland Galway (NUIG) Centre for Disability Law and Policy in order to create a legal support structure for disabled people who face discrimination.

We will also look to build strong links with the equality and human rights infrastructure such as the Irish Human Rights Equality Commission and the Workplace Relations Commission.

I would like to thank all the ILMI board, members and staff who provided feedback to Anna in the development of this booklet and look forward to working with all ILMI members to ensure that equality and human rights approaches are central to all our work.

Shelly Gaynor
Chair, ILMI



Introduction



The work of Independent Living Movement Ireland (ILMI) is grounded in equality and a rights-based approach, working towards an inclusive Irish society. This guide has been created to inform people about the laws in Ireland relating to disability, as part of ILMI's strategy of promoting awareness of human rights.

The guide outlines the rights of disabled people that are protected by Irish law and provides information on the processes available to secure those rights.

The work undertaken by disability rights activists and organisations in Ireland has already advanced the rights of disabled people. However, while the law provides a significant opportunity to challenge discrimination and barriers faced by disabled people in Irish society, the number of cases appearing in Irish courts on issues involving disability rights remains small.

This guide informs disabled people about their rights, outlines the laws in Ireland relating to disability and most importantly, explains the routes available to people to protect their rights themselves.

This fits with ILMI's vision of an Ireland where disabled people have freedom, choice and control over all aspects of their lives and can fully participate as equals in an inclusive society.

I would like to express my sincere gratitude to all who have contributed to the development of this guide. Particular thanks is due to the staff and Board members of ILMI and to Judy Walsh, Director of the UCD Equality Studies Centre at the UCD School of Social Policy, Social Work and Social Justice, for her invaluable expertise and advice.

Anna O'Duffy

ILMI - Who is ILMI?

ILMI was originally established as the Center for Independent Living in 1992 by and for disabled people. Its aim was to make sure that disabled people achieved Independent Living, choice and control over their lives and full participation in society as equal citizens.

We are a campaigning, national representative organisation that promotes the philosophy of independent living and seeks to build an inclusive society. Central to the way we work is to make sure that policy decisions that impact on the lives of disabled people have to be directly influenced by those whose lives are directly affected.

Our philosophy can be summed up as: 'Nothing about us without us!' and 'Rights Not Charity'.

Our vision is an Ireland where disabled persons have freedom, choice and control over all aspects of their lives and can fully participate in an inclusive society as equals.

We are working collectively to create an Independent Living Movement in Ireland which is led by disabled people and promotes a rights-based social model of disability, challenging the unacceptable charity / medical model of disability.

We are working towards the removal of societal barriers that prevent active equal participation of disabled people, challenging the denial of people's rights and the promotion of the philosophy of Independent Living.

Our core values are underpinned by the philosophy of Independent Living and all activities are aimed towards promoting: **Independence, Options, Rights, Empowerment.**

Independent Living Movement Ireland recognises that language is a very powerful and evocative tool. Therefore, the language and terminology used in this document has been carefully chosen to reflect the values of equality and empowerment. The term 'disabled people' has been used throughout the document in accordance with the UPIAS classification of disability and impairment which has been developed by disabled people themselves (UPIAS 1976). Where disabled people are referred to in this document this should be understood to include all disabled people, including those with learning difficulties, mental health difficulties and sensory impairments.



Introduction


- **This guide aims to inform disabled people and people in the disability community about their rights.**
- **This guide explains the laws in Ireland that relate to disability and disabled people.**
- **It sets out the routes available if you believe your rights have been violated / breached / disregarded.**
- **This guide is not legal advice nor legal interpretation and should not be used as such. It is an aid to provide clear information about the law in Ireland in relation to disability.**

The Census 2016 figures showed that 13.5% of the Irish population had a disability.

In Ireland, disabled people are more than twice as likely as non-disabled people to experience discrimination in many areas of life: at work, in applying for jobs and in accessing public and private services (ESRI, 2017).

The law can be a useful tool to advance equality for all.

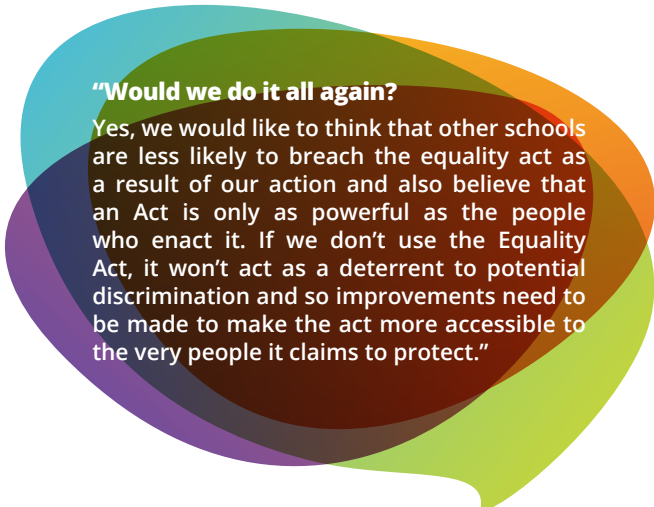
Here is what some people had to say about their experience engaging with the legal system in Ireland to achieve equality for disabled people:



"Knowing your rights under equality legislation. is very useful because it gives you an idea of the minimum standards you are supposed to get in provision of services. Very often the system comes nowhere near what it should provide, and that's when you start thinking with a view to legal action."

Robbie Sinnott, ILMI Member

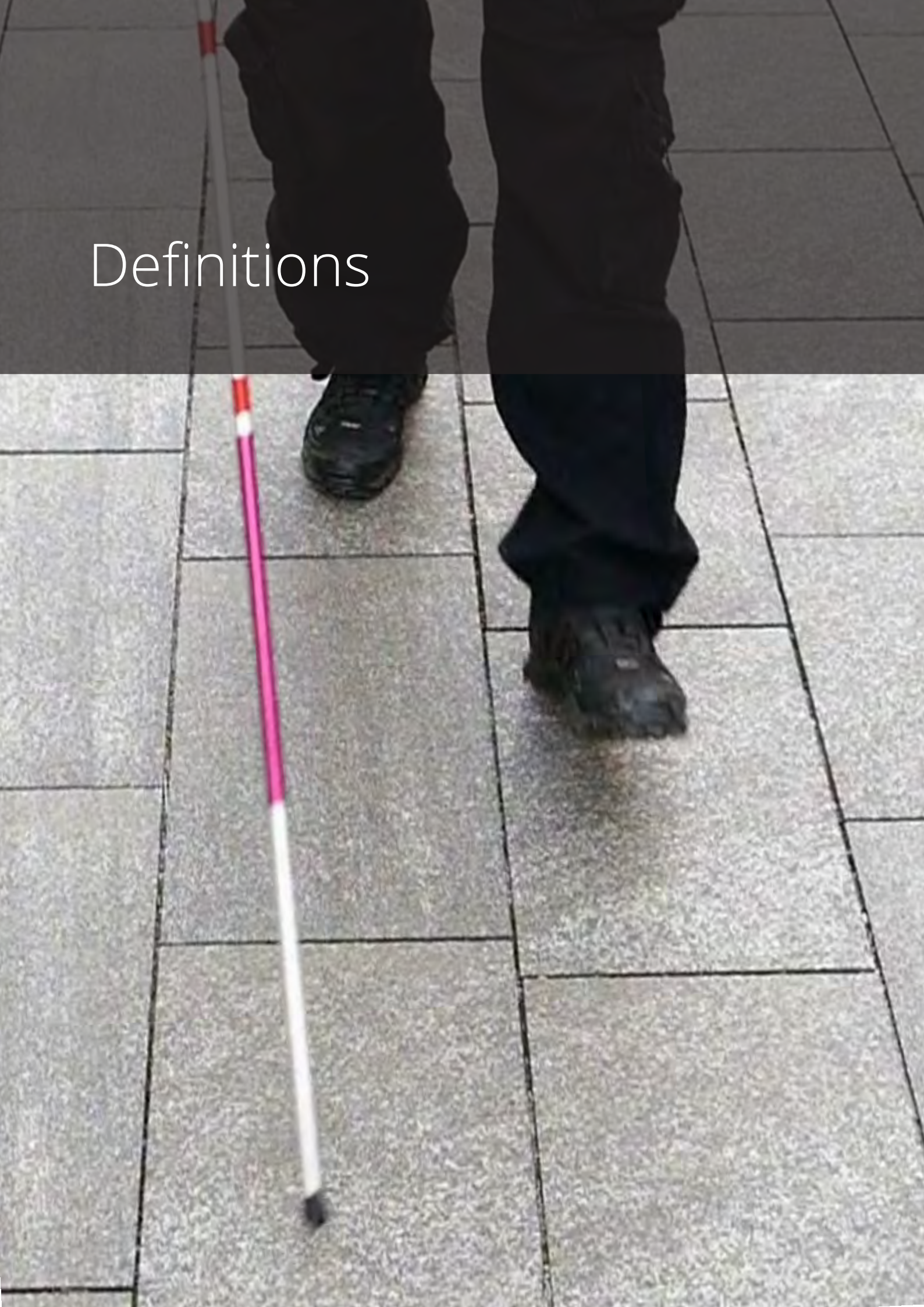
"Would we do it all again?"



Yes, we would like to think that other schools are less likely to breach the equality act as a result of our action and also believe that an Act is only as powerful as the people who enact it. If we don't use the Equality Act, it won't act as a deterrent to potential discrimination and so improvements need to be made to make the act more accessible to the very people it claims to protect."

Mother who made a discrimination complaint on behalf of her son

Definitions



Disability

The social model of disability says that disability is caused by the way society is organised, rather than by a person's impairment or difference. It looks at ways of removing barriers that restrict life choices for disabled people. When barriers are removed, disabled people can be independent and equal in society, with choice and control over their own lives.

Disabled people developed the social model of disability because the traditional medical model did not explain their personal experience of disability or help to develop more inclusive ways of living.

In Ireland, there is no definitive list of what is considered to be a disability. Instead, the law says that disability is: "a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State, by reason of an enduring physical, sensory, mental health or intellectual impairment" - (Disability Act 2005).

An impairment is defined as long-term limitation of a person's physical, mental or sensory function.

Discrimination

Usually, discrimination involves treating a person less favourably than somebody else in a similar situation, because of one of nine discriminatory grounds:

1. Gender
2. Civil status
3. Family status
4. Sexual orientation
5. Religion
6. Age (except if a person is under 16)
7. Disability
8. Race
9. Membership of the Traveller community

If you are renting property another ground applies. The housing assistance ground means that you cannot be discriminated against because you are getting Rent Supplement, HAP, or any social welfare payment.

Sometimes, discrimination can occur based on a number of grounds, at the same time.

Disability is one of these nine grounds. This means that if you are treated unfairly or less favourably because of your impairment, you may have experienced discrimination. There are laws in Ireland which make discrimination unlawful.

Discrimination can be separated into a number of different categories. Two of these categories are:

1. Direct discrimination: when someone is treated less favourably than another person because of who they are.
2. Indirect discrimination: where a rule, which appears to be neutral / fair, would actually put a person at a disadvantage on any of the nine discriminatory grounds.

The Employment Equality and Equal Status Acts

The Employment Equality Acts 1998 - 2015 protect you from discrimination in employment and vocational training and the Equal Status Act 2000 - 2018 protect you from discrimination in the provision of goods and services.

These Acts make it clear that every person, regardless of their identity (gender, civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community) is to be considered equal. This also means that the Irish government must not make laws that treat some people less favourably than others.

You have the right to equal treatment if you are disabled, regardless of your impairment.

This can be a physical disability, intellectual disability or learning disability. It also includes certain mental health issues or particular medical conditions, which are potentially chronic, long-term, debilitating or that get worse over time.

If you are treated less favourably because you have a different impairment to another person's impairment, this can be discrimination too.

Legislation

Disability Act 2005



Disability Act 2005

The Disability Act 2005 became law on 8 July 2005

- It says that Government departments and public bodies must work to improve the quality of life for disabled people
- This Act also empowers the Ombudsman to improve access to public services and facilities for disabled people

The Ombudsman

The Ombudsman can look at complaints about the administrative actions of a range of public service providers such as Government Departments, Local Authorities and the Health Service Executive (HSE). For example: in 2017, a complaint that succeeded before the Ombudsman, related to Tusla's failure to backdate payments a woman was receiving for two children with intellectual disabilities she was fostering.

The Ombudsman can also examine complaints about:

- Access
- Sectoral Plans

Access

Access refers to access by disabled people to public buildings, and services provided by a public body, information and heritage sites.

If you want to complain about access, you must complain directly to the public body concerned. An Inquiry Officer appointed by the public body will investigate your complaint and decide if the body is complying with the relevant part of the Act.

The public bodies covered by the Disability Act are generally:

- Government departments (for example the Department of Transport, Tourism and Sport)
- local authorities (for example, county councils)
- the Health Service Executive (HSE)
- semi-state bodies (for example Enterprise Ireland, Teagasc, Údarás na Gaeltachta and the Health and Safety Authority)
- most other state organisations

Sectoral Plans

Six Government Ministers are required to prepare sectoral plans. Sectoral plans explain what the Ministers intend to do to make sure that services are provided to disabled people:

- Minister for Transport, Tourism and Sport
- Minister for Health
- Minister for Jobs, Enterprise and Innovation
- Minister for Housing, Planning and Local Government
- Minister for Social Protection,
- Minister for Communications, Climate Action and Environment

If you want to complain about the requirements in a sectoral plan, you must use the Complaints Procedures set out in the relevant sectoral plan. A Complaints Officer appointed under the sectoral plan will consider this type of complaint and decide if the public body or other person is complying with the requirements in the sectoral plan.

Making a complaint to the Ombudsman under the Disability Act 2005

The Ombudsman deals with all complaints independently and impartially. The service is free to use.

Before you complain to the Ombudsman, you must first put your complaint to the public body which has denied you access or Minister responsible for the Sectoral Plan you are complaining about, and allow them time to investigate the matter.

If you fail to achieve a solution to your complaint with the public body or relevant sectoral plan Complaints Procedure directly, you can then ask the Ombudsman to investigate the matter.

Anyone, including public representatives, companies or organisations, can complain to the Ombudsman.

However, only people specified in the Disability Act 2005 may complain to the public body concerned (for example the disabled person or their spouse, parent, legal representative or personal advocate).

Potential Ombudsman Responses

Once it is established that the Ombudsman can examine your complaint, it will ask the public body or other person to send them a report. If necessary, the Ombudsman may also examine the files and records and may question people involved with the complaint. It can take time to gather the necessary information.

After investigating the complaint, the Ombudsman may conclude that a public body or other person has failed to comply with a provision of Part 3 of the Disability Act 2005 or a sectoral plan.

The Ombudsman may decide that this failure has negatively affected the person making the complaint or any other person. If so, the Ombudsman may recommend that the public body or Minister responsible (in the case of a sectoral plan) take one of the following actions:

- further consider the matter that led to the complaint
- take action to remedy the complaint
- reduce or change the action that led to the complaint or
- tell the Ombudsman why it took the action.

The length of time taken to reach a decision will vary from case to case. However, the Ombudsman should try to keep you updated on what is happening.

The Ombudsman has no role in relation to public service employment (Part 5 of the Disability Act 2005) or in relation to the Equal Status Acts 2000 - 2012.

Contacting the Ombudsman

You can write to the Ombudsman:

The Office of the Ombudsman, 18 Lower Leeson Street, Dublin 2.

You can call the Ombudsman:

Phone: Lo Call 1890 22 30 30 or 01 639 5600

You can look at their website:

www.ombudsman.ie

The Ombudsman for Children (OCO)

The OCO is a human rights institution that promote the rights and welfare of young people under 18 living in Ireland. The OCO receives and investigates complaints made about a range of public service providers.

The complaint mechanism can be used to ensure that services provide for and accommodate the needs of disabled children.

For example, in 2016 a mother of a child with an intellectual disability placed in a hospital by the HSE, complained about the lack of provision of a long term residential placement for her child. The OCO contacted the HSE who discharged the child and placed them in a residential unit for disabled children.

Before making a complaint to the OCO, you must engage with the service concerned, make a formal complaint to it and allow time for the service to put things right.

If you are still unhappy, you can make a complaint to the OCO. This can be done by:

- completing the online form at: www.oco.ie
- printing off, completing and returning the form by post to: 52-56 Great Strand Street, Dublin 1
- telephoning the office on: 1800 20 20 40

Legislation

Equal Status Acts 2000 - 2018



- These Acts outlaw discrimination in providing goods and services
- Specifically, goods and services include professional or trade services; health services; access to accommodation and education; facilities for banking, transport and cultural activities

Any barrier that prevents a disabled person accessing or using goods and services can amount to discrimination. Barriers may be the lack of disabled toilets on the premises or inadequate disability awareness training of staff.

If you believe you have been discriminated against by a person or body in looking for or getting goods or services, you can make a complaint, using the Workplace Relations Commission (WRC) complaints procedure.

Making a complaint to the Workplace Relations Commission

Step 1

Using an ES1 form, explain clearly the discrimination which you experienced and send it directly to the respondent (not to the Workplace Relations Commission). The respondent is the organisation that provides the goods or services, such as a government department or a landlord. This complaint form should be sent to the Respondent within two months of the discriminatory act (or the most recent one of a series) occurring.

The ES1 form is available on the Workplace Relations Commission website. When the complaint is heard, the 2 month deadline may be extended by the Workplace Relations Commission, but complaints often fail because the notice wasn't sent or sent late. For that reason, it's very important to take action quickly if think you have been discriminated against.

A Complainant is a person making a complaint

A Respondent is an organisation that provides the goods or services, such as a government department or a landlord. It is an organisation which is alleged by the complainant to have acted discriminatorily

Instead of using the ES1 form, you can also write your own letter of notification to send to the Respondent.

Your letter should meet all the requirements of a notification as set out in the Equal Status Acts:

- It should include the nature of the allegation of discrimination
- What happened or if ongoing, what is happening that you believe is discriminatory
- Your intention that if you are not satisfied with the Respondent's response to the notification, you will refer the allegation to the WRC

In your notification you may also ask the Respondent questions, to get information to help you decide whether or not you will proceed to the WRC.

When sending either your ES1 form or your own letter, make sure:

- You keep a copy of it for your records
- You use either Registered Post or ask for a Certificate of Posting from the Post Office. This is proof that you have sent your complaint to the service provider

If there are other people with you who are thinking about complaining about the same incident (for example, if your group of friends were all denied access to a shop), each person affected should send their own ES1 form or letter.

The Respondent is not required to respond to this notification, but may use the ES2 Form to do so, if they wish. Therefore, if you wish to do so, you can include the ES2 form in the envelope when sending your complaint, for the Respondent to use to reply to your complaint.

Step 2

If there is no reply via an ES2 form or otherwise from the Respondent after 1 month or if you are not satisfied with the reply you have received, you can then complain directly to the Workplace Relations Commission (WRC) using the Online Complaint Form. The website for this is: www.workplacerelations.ie/en/complaints_dispute/refer_a_dispute_make_a_complaint

If you prefer to use a manual form, you can request a manual form to be sent to you, by writing to or telephoning the WRC. You can also contact your local Citizens Information office and they can assist you.

If your complaint is made in time and is considered valid, an Adjudication Officer from the WRC will be appointed to your case and they will examine your complaint.

The WRC will deal with your complaint either through mediation or adjudication:

Mediation

Mediation is a structured process where a neutral, independent third party (i.e. the WRC), helps the parties to sort out a conflict. Mediation requires active participation and engagement with the process from all parties. Both sides must agree to take part in the mediation.

If a successful mediation occurs, a legally binding agreement is signed at the conclusion of the process. Legally binding means lawfully enforceable.

Adjudication

If mediation is not agreed to or no agreement can be reached between the parties, an Adjudication Officer can review the complaint and make a decision instead. This will involve a hearing of the case, which you must attend. Hearings take part at various locations around the country. A decision made by the WRC is legally binding.

These decisions can order the Respondent to pay compensation, or order the respondent to take a specified action that changes the discriminatory practice such as revising a policy or training employees about equality law.

It is important to know that you do not need a lawyer to represent you at the WRC and make your complaint for you. You can do so yourself or have another person represent or assist you.

The Equal Status Acts also make unlawful the following actions:

- Harassment on any of the nine grounds or sexual harassment. Harassment occurs when a person subjects another person to any unwelcome act, request or behaviour. This can include words, gestures or the production, display or circulation of written words, pictures or other material which is based on a discriminatory ground and which could reasonably be regarded as offensive, humiliating or intimidating to him or her.
- Victimisation: Victimisation is unfair treatment of a worker by an employer because of some action the worker has taken. The Acts say that your employer may not penalise / punish you by dismissal, unfair treatment or an unfavourable change in your employment conditions, for taking an action against them.
- Failing to make 'reasonable accommodation' for disabled people.

'Reasonable accommodation' means providing or allowing special treatment or facilities if, without it, it would be impossible or too difficult for a person to use a service.

Examples of reasonable accommodation may include: providing employee manuals or information in appropriate formats, providing a ramp to ensure people who use wheelchairs can access a bank, allowing guide dogs to enter shopping centres or including subtitles on television broadcasts where audio is used.

Failing to provide reasonable accommodation for disabled people is discrimination. However, it is not discrimination if providing reasonable accommodation would create a cost more than a nominal cost to the service provider.

Nominal cost means very small. However, a nominal cost is not a fixed sum, therefore it depends on the size of the service, its budget and how much the service provider earns.

For example, the nominal cost for providing reasonable accommodation for a large, city centre hotel would be much higher than a small, independent rural B&B.

EMPLOYMENT

Employment Equality Acts 1988 - 2015



Employment Equality Acts 1988 - 2015

The Employment Equality Acts 1988 - 2015 ('EE Acts') aim to ensure equality in all aspects in the workplace.

The Acts make discrimination in employment illegal

If you have a claim under this legislation, the Workplace Relations Commission is where you should direct your complaint.

The EE Acts cover the following aspects of employment:

- Access to employment. for example to read: who you are, for example, mandatory height restriction which applies equally to men and women, will most likely be harder for women to meet
- Conditions of employment
- Pay
- Training or experience for or in relation to employment
- Promotion or re-grading
- Classification of posts
- Dismissal / termination of employment
- Advertising

The employees covered by the EE Acts are public and private sector workers, full-time and part-time, agency workers (in certain circumstances), self-employed and apprentices. The EE Acts do not cover volunteers.

You can make a complaint under the EE Acts even if you have less than 12 months continuous service with an employer.

The EE Acts make indirect discrimination illegal, which is when you're treated in the same way as other people at work, but it has a worse effect on you because of who you are. Indirect discrimination is only allowed if the employer is able to justify the requirement with a legitimate aim and prove that the way of achieving the aim is necessary and does not go further than necessary.

The Acts also cover discrimination by association. This is when a person is treated less favourably because of a connection or a relationship with a person who is part of the one of the nine protected groups. For example, a complainant might be discriminated against on disability grounds for seeking flexible working arrangements in order to assist and support a family member who is disabled.

Making a Complaint to the WRC under the Employment Equality Acts

You can submit your complaint using the online complaint form on the Workplace Relations Commission website.

You do not need to notify your employer before you make the complaint, however the WRC will contact your employer once you have submitted the complaint.

Your complaint can be about your employer or another employee or workmate. It is the employer's responsibility to ensure that discrimination does not happen in the workplace. The employer is responsible if the discrimination occurred during work or at a work-related function. This is called vicarious liability.

However, the employer will not be responsible if they can prove that they took reasonably practicable steps to prevent the employee from acting in a discriminatory way.

Preparation for making your complaint

1. Before making a complaint to the WRC, under the EE Acts, you must establish a comparator, in order to show that discrimination has occurred. This means when making a complaint of discrimination on the basis of one or more of the nine discriminatory grounds, you need to show that you have been treated less favourably compared to another person in a similar position.

- If you want to show that you have suffered direct discrimination, you need to compare your treatment with the treatment of someone else who doesn't have the same protected characteristic as you, that is a 'comparator'.
- The comparator is someone who is in the same or similar situation to you, but who doesn't have the same protected characteristic as you.
- If you are directly discriminated against because of your impairment, the comparator would be someone who doesn't share your disability but who has the same abilities and skills as you. The comparator can be someone who is not disabled or someone with a different impairment.
- Example: You can type 50 words per minute using an adapted keyboard, but only 30 words per minute on a normal keyboard. If you're discriminated against when applying for a job, your comparator would be someone who doesn't share your impairment but who can also type 50 words per minute using a normal keyboard.

2. Before making your complaint to the WRC, you can also gather information in order to prove you have been treated discriminatorily. In order to receive information from your employer / prospective employer which may be of assistance to your claim, you can request information from them using an EE2 form.

Under the EE Acts, there is special provision for a right to information which provides assistance to a person who considers that they may have been discriminated against, victimised, dismissed or have an equal pay claim under the EE Acts.

The right to information is aimed at assisting an individual in deciding whether or not to bring a claim. It is possible to ask your employer for information in relation to:

- Their reasons for doing or omitting to do any relevant act and any practices or procedures around the act.
- Pay or treatment of other people in the same or a similar position as the person seeking the information (other than confidential information).
- Other information that is not confidential information or information about the scale or financial resources of the employer's business and which, in the circumstances of the case in question, it is reasonable for the person seeking the information to require.

The forms for seeking this information and replying to a request are known as the EE2 form and the EE3 form. These are available on www.workplacerelations.ie.

The employer can respond to the EE2 form using the EE3 form. There is no legal obligation for the employer to respond. However, if there is no reply or if the replies are false or misleading, this may be taken into account in deciding the case.

Timeframe

There are strict time limits for making a complaint under the EE Acts to the Workplace Relations Commission.

You must make your complaint to the Workplace Relations Commission within six months of the last act of discrimination.

The Workplace Relations Commission can extend this to 12 months if you can show that there were “exceptional circumstances”, such as severe illness, that prevented you from making a complaint within the six month period. You should contact the WRC as soon as possible, setting out the reasons for the delay in making a complaint and include any documents to prove the reasons.

If the WRC consider your complaint to be petty or pointless, they can dismiss your complaint. You can appeal the decision to dismiss your complaint to the Labour Court.

The time limit for equal pay complaints specifically is six years, however, not six months.

‘Reasonable accommodation’ under the EE Acts requires all employers to take appropriate measures, where needed, to make sure a disabled person can participate in employment, unless such measures would impose a disproportionate burden on the employer.

Reasonable accommodation is where an employer makes a change to the tasks and structure of a job or makes changes to the workplace environment to ensure a disabled employee is able to do the job to the best of their ability and enjoy equal employment opportunities.

The purpose of reasonable accommodation is to remove the barriers to effective participation of disabled people in the workforce. These can be physical barriers and also work patterns.

An employer is not required to make reasonable accommodation if the measures would cause a disproportionate burden on the employer. The costs of the measures should be realistic for the business to meet.

Research shows that most accommodations (changes to workplace or work patterns) cost nothing or only a one-off expense. Research has also shown that inclusivity in the workforce benefits the entire workforce and improves business. They can be understood as simple workplace adjustments = smart changes.

Some examples of reasonable accommodation:

- Accepting potential alternative ways of accomplishing a task/objective which weren't considered in the job description.
- Providing company info in appropriate formats and assisting in communication where necessary.
- Assistive Technology is also a significant part of reasonable accommodation including voice recognition software, ergonomic keyboards and alternative mice. AT is any device or process that assists a disabled person to do something that could otherwise be difficult or impossible for them to do.
- Accessible buildings.
- Creating an inclusive workplace which can be achieved by holding disability awareness training and teamwork building workshops.

The following factors must be considered when deciding what would be a disproportionate burden:

- (1) the financial and other costs involved;
- (2) the scale and financial resources of the employer's business;
- (3) the possibility of obtaining public funding or other assistance.

The EE Acts do not require an employer to recruit, promote, or retain a person in employment if they are no longer competent and able to undertake the duties attached to the job role.

Employment Supports

When seeking employment or while in employment, there are a number of supports available to employers to ensure that they are providing equal treatment to disabled employees. These are coordinated by the Department of Employment Affairs and Social Protection (DEASP).

All disabled people wishing to enter the open labour market may call into an Intreo Office to get full information, advice and guidance in relation to training and employment. Intreo is the single point of contact in Ireland for all employment and income supports.

There are specific employment supports for disabled people in the private sector. The following employment supports are available to the private sector only.

- Wage Subsidy Scheme
- Reasonable Accommodation Fund for the Employment of Disabled People
- Employee Retention Grant Scheme
- Workplace Equipment Adaption Grant
- Job Interview / Induction Interpreter Grant
- Personal Reader Grant
- Disability Awareness Support Scheme
- EmployAbility Service
- Employer Job (PRSI) Incentive Scheme

The application forms for the supports can be accessed online or manual copies can be collected from a Citizens Information office or an Intreo office.

For more information on these supports

Contact your local Intreo office:

http://www.welfare.ie/en/pages/intreo_home.aspx

Log on to:

http://www.welfare.ie/en/Pages/Workplace-Supports_holder.aspx

Employment Equality Acts



‘Positive Action’

The Disability Act gives legal effect to the 3% target for the employment of disabled people in the public service, which many public bodies had previously been pursuing as a ‘positive action’ measure.

Under the EE Acts, ‘positive action’ means that the employer can take steps that are not required under the law to promote equality for all their workers. In particular, employers can take positive action measure in relation to the gender, age, disability and membership of certain communities.

For example, it would be positive action if an employer sought to attract more disabled employees by making the work premises accessible. This might give someone who has a physical impairment the same opportunity of employment as someone without a physical impairment.

Under the Acts, employers are also allowed to offer different pay rates to disabled workers if their disability means that they cannot do the same amount of work in the same time as a co-worker without a disability.

Public Sector Employees

Each Government Department or Agency (public sector) must fund its own “reasonable accommodations”.

Public sector employers (Government departments, State agencies, Local Health Offices, local authorities, and so on) must make sure that the needs of their disabled employees are met. This means making Assistive Technology, adaptive equipment and facilities, aids, appliances and services available to their disabled employees.

If you are already a public sector employee and will be attending an interview within the public sector, your employers are obliged to provide interpretation services to you if you request them. You are therefore not entitled to claim the Job Interview Interpreter Grant.

Education

Education for Persons with Special Educational Needs (EPSEN)



Special needs education means the particular educational arrangements in place for disabled children.

Under the Irish Constitution, all children have a right to free primary education. Children with special educational needs have the right to free primary education up to age 18.

The Department of Education and Skills (DES) is responsible for providing special needs education, through a number of support mechanisms, depending on the child's assessed disability.

The EPSEN Act 2004 requires that a child with special educational needs be educated in an inclusive environment with children who do not have such needs, as far as possible.

In general, education for children with special needs takes place in:

- Special schools;
- Special classes attached to ordinary schools
- Integrated settings in mainstream classes

The Department of Education aims to achieve integration as much as possible. Where education in an integrated setting is considered to be the appropriate response, resource teaching or special needs assistant support, or both, will be provided depending on the child's assessed level of need.

The Act provides for the assessment of children who may have special needs and the creation of an Individual Education Plan (IEP) for each child who is assessed as having special needs. An IEP is a written document prepared for a named child that sets out the learning goals that are to be achieved by the child over a certain time period and the teaching strategy, resources and supports necessary to achieve those goals. The IEP requires collaboration by the school, parents, child and any other relevant persons or agencies.

Where integration in a classroom with children who do not have special educational needs is not appropriate, the alternative services range from special schools dedicated to particular disability groups, through to special classes / units attached to mainstream schools.

If you wish to have a child assessed for educational needs, you can apply to: the school principal, the HSE or the National Council for Special Education.

The 2004 Act provides for the establishment of the Special Education Appeals Board to resolve disputes and determine appeals. The Board is not yet in operation.

When the Appeals Board comes into operation, the Act provides for the following:

- If the Council refuses to arrange an assessment of a child or to prepare an education plan, the parents of the child or the school principal may appeal to the Appeals Board.
- The Appeals Board will have the power to direct the Council to arrange the preparation of an assessment or an education plan. In this case, the Council must comply with the direction of the Appeals Board.
- The Appeals Board may dismiss the appeal of the parents or principal. The 2004 Act also provides for a process of mediation following the exhaustion of any rights of appeal under the legislation.

Sexuality, Relationships and Parenthood

The Criminal Law (Sexual Offences) Act 2017 removed from Irish law the criminal offence of engaging in a sexual act with someone with an intellectual disability.

The 2017 Act makes it a crime to engage in a sexual act with a 'protected person'.

A 'protected person' is someone who does not have capacity to consent to the sexual act because of a mental or intellectual disability or mental illness and is not able to:

- Understand the consequences of the sexual act.
- Evaluate the necessary information in order to decide whether or not to engage in that act.
- Communicate his or her consent by speech, sign language or otherwise.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) establishes the equal rights of disabled people in relation to relationships, parenthood, fertility and for respect for home and family.

Article 23 of the UNCRPD requires Ireland to make sure that no discrimination against disabled people occurs in all matters relating to marriage, family, parenthood and relationships, so as to ensure that disabled people who are aged 18 or over have their right to marry and start a family on the basis of free and full consent of their spouse.

Article 23 also recognises the rights of disabled people to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education and the provision of the means necessary to enable them to exercise these rights. It also states that disabled people retain their fertility on an equal basis with others. This means that a disabled person should not have their ability to have children removed (by a medical procedure), because of their impairment.

The UNCRPD sets out that Ireland must provide appropriate assistance to disabled people to perform their child-rearing responsibilities. Ireland must also make sure that disabled children have equal rights with respect to family life, including the right of a child not to be separated from his or her parents on the basis of an impairment of either the child or one or both of the parents.

Where the family is unable to care for a disabled child, Article 23 requires Ireland to provide alternative care in the child's wider family where possible or, if not possible, care in a family setting.

Article 25 of the CRPD relates to health. Under the Convention, Ireland is required to provide disabled people with the same variety, quality and standard of free affordable health care and programmes as are provided to other people, including sexual and reproductive health.

Personal Assistance Service

Independent Living is the right of all persons regardless of age or impairment to live in the community; to have the same range of choices as everybody else in housing, transportation, education and employment; to participate in the social, economic and political life of their own communities; to have a family; to realise their own potential and have the freedom to lead the lives they wish to in an inclusive society.

The Personal Assistance Service (PAS) is a tool that allows us to live independently. The PAS enables us to do all the tasks that we cannot do for ourselves. It provides us with the freedom and flexibility we need to live our lives as we chose. A Personal Assistant (PA) is hired to assist us (disabled people) with a range of day-to-day tasks that we cannot physically do for ourselves.

With PAS we are in control and direct our PA to carry out tasks both inside and outside of the home, including personal care, domestic duties, assisting in day-to-day tasks such as shopping, support in the workplace or socialising. A PA does not "look after" or "care for" us. We delegate these tasks to our PAs and in doing so take back control of our lives.

A distinct benefit of PAS is that it reduces our dependence on our family and friends. The confidential relationship that develops between our PAs and us allows us to maintain a private life and our dignity. The PAS is often the difference between existing and living for many of us.

Currently, the Personal Assistant scheme is still on a pilot status. It has no legal basis. Therefore, to avail of personal assistance, you must apply to the HSE/ service provider.

Ongoing Developments

Public Sector Duty (IHREC 2014 Act)

“Public bodies are not simply providers of services, they play a central role in what is often referred to as ‘place-shaping’: promoting the feeling of belonging to local areas, strengthening notions of citizenship and celebrating values of diversity”, (Equality and Rights Alliance, March 2015).

Public bodies play a key role in enhancing social cohesion and it is, therefore, a welcome step, to require public bodies take a more proactive approach to addressing equality and human rights concerns. The new duty, introduced in Section 42 of the Irish Human Rights and Equality Commission (IHREC) Act 2014, is the first combined equality and human rights public sector duty to be introduced in domestic legislation in an EU Member State.

The Public Sector Duty, a legal requirement, was introduced by the IHREC Act 2014. It means that the public sector now has a duty to place non-discrimination, equality and human rights centre-stage in their planning, policy-making, employment, service provision and procurement.

United Nations Convention on the Rights of Persons with Disabilities (CRPD)

Ireland ratified this Convention on 7 March 2018. Ratification of the CRPD means Ireland is bound now by it as international law. This means that Ireland must report on its progress in upholding disabled people’s human rights to a United Nations committee every four years.

The reporting process shines an international spotlight on violations of the Convention and welcomes submissions from non-state organisations and individuals.

Successive governments argued that the delay was due to seeking to ensure all the relevant legislation would be in place and amended where necessary before the Convention was ratified, in order to avoid a contradiction in laws.

The State ratified the Convention but still has legislative issues to resolve such as the Assisted Decision - Making / Capacity Bill 2015.

The Convention insists on equal rights and equal treatment for disabled people.

While Ireland’s ratification of the CRPD is an important milestone, it has been described as ‘toothless’ by commentators. This is because the Optional Protocol (OP) on the CRPD, an associated measure, was not ratified by Ireland at the same time.

The Optional Protocol to the Convention gives the Committee power to examine individual complaints with regard to alleged violations of the Convention by States who have ratified the Protocol.

The OP is very important as it acts as a complaints mechanism. It allows people or groups or third parties on behalf of people affected, who believe their rights under the Convention have been violated, to take a case to the UN, after it has been proven that the complainant has already tried all domestic remedies (i.e. tried to achieve a solution using the different avenues in Ireland).

Complaints can only be made against a State Party using the OP, if the State has ratified the OP. This means that a person cannot make a complaint about Ireland to the UN Committee on the Rights of People with Disabilities until Ireland ratifies the Optional Protocol.

Minister for Justice and Equality Charlie Flanagan has indicated that the signing / ratifying of the OP will be reviewed after first reporting cycle is complete, but no exact date has been confirmed.

Disability (Miscellaneous Provisions) Bill 2016 (pending)

This Bill is currently at the Committee stage or 3rd Stage, before Dail Eireann. At the Second Stage, Deputy Finian McGrath said that this piece of legislation was crucial to the enforcement of the UNCRPD, which came into force in April 2018. The most recent debate on the Bill was in February 2017.

The primary purpose of the Bill was to address the remaining legislative barriers to Ireland's ratification of the CRPD. The Bill sought to address a range of legislative barriers to ratification which are not addressed separately in other legislation (mainly in the Assisted Decision - Making (Capacity) Act 2015) and it seeks to progress a number of other miscellaneous amendments to equality and disability legislation.

One of the major proposed changes is replacing the 'nominal cost' threshold under Equal Status Act with 'disproportionate burden' as under the Employment Equality legislation for certain service providers.

Among its provisions, the Bill brings civilian staff of An Garda Síochána back within the terms of Part 5 of the Disability Act (requiring a 3% public sector employment quota for disabled people).

Section 6 of the Bill provides for IHREC to act as an amicus curiae in the Court of Appeal as well as the High and Supreme Court as already provided for.

The role of an amicus curiae is to offer insight and expertise on a case, without being specifically involved in the case. Importantly, the Bill also grants a supervisory role to IHREC in relation to the CRPD.

Criminal Law (Hate Crime) Bill 2015 (pending)

A hate crime is, typically, a violent crime driven by prejudice, when a perpetrator targets a victim because of their perceived membership of a certain social group.

A hate crime is comprised of a criminal act and a bias motive.

- (1) Criminal act: Hate crimes are acts which are treated as crimes in criminal law, such as assaults, theft, criminal damage, arson or murder.
- (2) Bias motive: Hate crimes are motivated, at least in part, by hatred of someone's real or supposed identity or background.

People targeted by hate-motivated crime in Ireland are usually:

- From an ethnic minority background (racist hate crimes)
- From a religious minority (religious hate crimes)
- Lesbian, gay or bisexual (homophobic hate crime)
- Transgender (anti-transgender hate crimes)
- Disabled People (disablist hate crime)

Currently, the Irish Government has not introduced the recommended Hate Crime Legislation into law, which means that minorities in Ireland are not protected from hate crime.

For more information, visit

<http://enarireland.org/the-national-steering-group-against-hate-crime/>



ILMI is a member of the Coalition Against Hate Crime Ireland, which campaigns for the introduction of the Criminal Law (Hate Crime) Bill. The introduction of this law against hate crime would result in:

The creation of special new categories of aggravated offences:

Crimes will be treated more seriously by the courts if they were motivated by racism or other forms of hatred. Those offences include:

- Murder
- Assault, including Assault Causing Harm or Serious Harm
- Harassment
- Theft
- Fraud
- Criminal Damage to property or threat of criminal damage
- Rape or Sexual Assault
- Public Order Offences (disorderly conduct, threatening and abusive behaviour, affray, violent disorder)

The provision of enhanced sentencing:

Offenders will get a longer sentence for a crime committed with a bias element against named protected categories such as the following:

Race, colour, ethnic or social origin, genetic features, language, religion or belief, national minority, Travellers and Roma, disability, age, gender, gender expression, gender identity, sexual orientation, residence status, health, sex characteristics and ability to communicate.

Everyone has a right to live safely and to participate fully, without fear, in all aspects of life. Having hate crime legislation makes a strong statement that we value an inclusive society where crimes committed on the basis of a victim's identity are not tolerated.

The psychological impact of hate crime is deeper than regular crime, with the distress and fear lasting longer. Hate crime dehumanises, goes to the heart of a person's identity, impacts on personal dignity and forces people to change their behaviour. Having specific protection in law for victims of hate crime recognises the seriousness and greater damage done by those crimes.

The Freedom of Information Act 2014

The FOI Act gives every person the following legal rights:

- the right to access official records held by Government Departments or other public bodies as defined by the act.
- the right to have personal information held on them corrected or updated where such information is incomplete, incorrect or misleading
- the right to be given reasons for decisions taken by public bodies that affect them.

In certain circumstances, parents, guardians and next-of-kin may apply to exercise these rights on your behalf.

People can look for personal information held on them, no matter when the information was created.

They can also seek to access other records created after the effective date.

A record includes a book or other written or printed material which is in any form including in any electronic device. It can be a map, plan or drawing, a disc, tape or film which contains visual or non-visual images or a copy of any of these.

Personal Info

Where a person requests personal information about themselves from an organisation and the records were created before 21 April 2008, the person is entitled to access the records as far back as the date on which the records were created.

Costs

The body you are requesting information from may apply charges for the time spent finding and retrieving records, and for any copying costs incurred by it in providing you with the material requested. It is very unlikely that any charges will be applied in respect of personal records, except where a large number of records are involved.

If the cost of search, retrieval and copying is €100 or less, no charge applies.

If the charge exceeds €100, full fees apply, but you cannot be charged more than €500.

There are reduced fees for those requesting information who are medical card holders or their dependants.

How to make your request

If the information you require is not readily available on the website or elsewhere, you must make your request in writing to the FOI Unit of the body and your application should refer to the Freedom of Information Act 2014. If you need the information to be in a particular form (for example, photocopy or searchable electronic format) you should specify this in your request.

In your request, make sure you are as specific as you can be to help the body identify the information you require, for example by including the time period for which you wish to access records.

Timeframe

The FOI body must acknowledge a request for records within 2 weeks and, in most cases, respond to it within 4 weeks. However, if a third party is involved, there may be another 3 weeks before you receive a response.

Further Steps

If you are not satisfied with the response of the FOI Unit to any aspect of your request for information (for example, refusal of information, form of access, charges) you can seek to have the decision re-examined. Also, if you have not received a reply within four weeks of your initial application, this is considered to be a refusal (of your request and) you can seek to have the decision re-examined.

Your FOI request should be sent to the FOI Unit of the body that holds the records.

To ask for review of a decision, you can apply to the FOI Unit of the body that made the decision.

If you have a further appeal, you should address it to:

Office of the Information Commissioner, 18 Lower Leeson Street, Dublin 2, D02 HE97, Ireland

Check out <https://foi.gov.ie/> for more information on how to request information



Useful Contacts

Citizens Information	Citizens Information is a statutory body that provides information and advice on a broad range of public and social services.	www.citizensinformation.ie
Irish Human Rights and Equality Commission (IHREC)	IHREC is a Ireland's national human rights and equality institution, which operates to promote and protect human rights and equality in Ireland.	www.ihrec.ie
FLAC (Free Legal Advice Centres)	FLAC is an organisation which promotes access to justice. It provides legal help through legal advice clinics, telephone information and referral line and online legal information.	www.flac.ie
Legal Aid Board	The Legal Aid Board provide civil and criminal legal aid, advice and family mediation	www.legalaidboard.ie/en/
National Disability Authority	The NDA is an independent statutory body that informs and advises the Irish Government on policy and practice that relates to disabled people's lives.	www.nda.ie
Independent Living Movement Ireland	ILMI is an organisation led by disabled people that promotes a rights-based social model of disability and challenges the denial of people's rights, to promote the Independent Living philosophy.	www.ilmi.ie
Workplace Relations Commission	The WRC is an independent, statutory body, responsible for matters such as promoting the improvement of workplace relations and encouraging compliance with relevant enactments. It receives employment rights complaints and provides mediation, advisory and conciliation services.	www.workplacerelations.ie/en/
The Office of the Ombudsman	This organisation examines complaints made by people who feel they have been unfairly treated by public service organisations. It has the power under the Disability Act 2005 to examine complaints about Part 3 of the Act which relates to access and sectoral plans.	www.ombudsman.ie
UN Convention of the Rights of Persons with Disabilities	The Convention brings together all the existing rights in one place. It provides a framework to protect and promote the rights of all disabled people and promote equal rights in all aspects of life.	https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html





Nothing about us without us

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