

**Irish Centre for Social Gerontology
NUI Galway**

**Submission to the consultation on the review of the
Equality Acts**

8th December 2021

1. Introduction

The Irish Centre for Social Gerontology (ICSG) at NUI Galway welcomes this opportunity to contribute to a consultation on the review of the Equality Acts led by the Minister for Children, Equality, Disability, Integration and Youth, Mr. Roderic O’Gorman T.D.

The ICSG aims, through research, policy analysis, collaboration and research-led teaching and training, to contribute to international scientific knowledge on ageing and public policy and to improve the lives of older people by establishing ageing as a cross-cutting public policy focus in Ireland and in Europe. The work of the ICSG is particularly focused on supporting the voice of marginalised groups of the older population, and integrating these perspectives into research and public policy design and development (ICSG, 2021).

We note that the Department’s statement announcing the review referred to this consultation as the “first phase of a public consultation process”. In that context, our submission summarily outlines key issues related to the age ground for consideration in the review. We would be pleased to participate in subsequent phases of the consultation and to provide more detailed briefings on any of the issues raised on request.

2. Combatting ageism and age discrimination

A key barrier to the effectiveness of the equality legislation in counteracting age discrimination is the influence of ageism. As defined by the World Health Organisation (WHO), “ageism refers to the stereotypes (how we think), prejudice (how we feel) and discrimination (how we act) directed towards people on the basis of their age. It can be institutional, interpersonal or self-directed” (WHO, 2021).

Largely unrecognised, ageism is embedded within societal institutions, policies and practices. One of the key manifestations of ageism is the

homogenisation of older people as a uniform group and the associated devaluation of this group. In reality, older people form a diverse group. Within older cohorts, there are groups who have endured a lifetime of poverty and discrimination on intersecting grounds and who experience the impact of cumulative disadvantage in older age. The breadth and implications of older age diversity for policy and practice have been highlighted in numerous ICSG research studies, for example with older Travellers, older homeless people (e.g. ICSG 2021; Urbaniak and Walsh 2021; Cush et al. 2020; Walsh et al. 2021), older people during COVID-19 (e.g. Hopf et al. 2021) and certain groups of older workers (Ní Léime and Street 2019). The challenges under the current legislation of taking equality cases on multiple grounds of discrimination have been documented previously (Walsh 2020).

If equality legislation, policy and practice are to function effectively to advance inclusion and eliminate discrimination in older age, instruments must be responsive to the heterogeneity of older people and the complexity of life trajectories in older age.

The leadership role of the Irish Human Rights and Equality Commission (IHREC) is potentially of central importance in the context of systemic ageism and age discrimination. The powers of the Commission, as set out in the Irish Human Rights and Equality Commission Act 2014, include the power to carry out equality reviews, to conduct inquiries and to assist statutory and public bodies in meeting their obligations under the Public Sector Equality and Human Rights Duty to eliminate discrimination, promote equality of opportunity and protect the human rights of members, staff and recipients of services.

The ICSG calls for:

- The inclusion of a new ground of socio-economic status in both the Employment Equality and Equal Status Acts;
- Protection and redress for people experiencing discrimination on multiple grounds through prohibition of intersectional discrimination;
- Arising from the current review, the provision of support and resources to IHREC to proactively exercise its powers of review, enquiry and assistance to public bodies in relation to systemic discrimination across all grounds including the age ground.

3. Building awareness of equality and rights among older people

The ICSG engages directly with the lived experience of older people through research, community and stakeholder consultation and collaborative projects with older people's representative organisations. The evidence from this engagement is that older people's awareness of the relevance of equality rights to their lives is limited. This lack of legal awareness contributes to an individualisation of the social problem of discrimination in older age. Thus, efforts to oppose and reject discrimination are therefore less socially organised, but depend on individuals' resources and capacities. It also limits the capacity to recognise and name experiences of discrimination as legal and justice problems.

The ICSG is also aware from the experience of our partner centres in the Institute for Life Course and Society Institute, at NUIG, that the UN Convention on the rights of persons with disabilities and the UN Convention on the rights of the child have had a significant impact on rights awareness among affected groups. There is no comparable international instrument setting standards on the rights of older people. The likelihood is that this is another factor in terms of the low levels of awareness and expectation currently encountered among older people.

If proactive measures were introduced to promote older people's awareness of the legislation and of its relevance to their lives across all grounds, it would remove a barrier to engagement with the equality acts and directly empower older people.

With regard to the age ground, there is also significant scope to make greater use of the positive action provisions of the Equality Acts which allow for measures to promote equality or to cater for the special needs of persons. There are different definitions of "positive action" within the Acts and ICSG agrees with the Equality Authority, Community Work Ireland and FLAC that there should be a single definition for all grounds and sectors.

The ICSG calls for:

- The availability of clear, coherent and accessible information about the equality acts;
- The inclusion of specific case studies on the scope and relevance of the age ground to policy and practice as illustrative examples to build awareness among all stakeholders, including older people;

- The development, in consultation with older people, of positive actions (following a single agreed definition of positive action) to promote age equality and counteract age discrimination;
- Targeted outreach campaigns, as advocated by FLAC, to provide information and promote engagement with the equality legislation, enabled by the provision of dedicated resources to a variety of bodies including IHREC, the Citizens Information Board and civil society organisations;
- Deliberative processes to promote good relations, mutual knowledge and dialogue between stakeholders across all grounds of the legislation.

4. Addressing the impact of exemptions on older people

4.1 Retirement age

There is a lack of coherence between different strands of public discourse and policy on pensions and income in Ireland. On the one hand, concerns are expressed about the burden on the public finances of increased health, social care and pension costs due to population ageing. On the other hand, many older people who might choose to work longer are unable to do so and are required to leave their employment due to fixed retirement ages in their employment contracts. Forced retirement on the age ground flows from a discriminatory exemption permitted under the Employment Equality Act. A further issue is that the exemption is framed without reference to State pension age.

In the context of work, retirement and State pension age, the issue of the heterogeneity of the older population is again of critical importance. There are some older workers who would be disadvantaged by delayed access to retirement and a relatively steep increase in State pension age. This particularly applies to those in physically demanding jobs who may have worked since their early teens and who are more likely to have health problems (Ní Léime and Street 2019). Their rights also need to be addressed in any changes to employment equality legislation.

The ICSG calls for:

- A more gradual increase in State pension age, in accordance with the recommendations of the Pensions Commission in October 2021;
- Exemptions from proposed increases in State pension age for those in physically demanding jobs;

- The removal of the blanket exemption in the Employment Equality Act allowing employers to fix retirement ages in employment contracts;
- Proactive measures – including incentives for implementation of the current Positive Action provision - to facilitate employment and retirement flexibility and work beyond State pension age *for those who wish to do so.*

4.2 Access to goods and services

While the Equal Status Act states that individuals should not experience discrimination in accessing goods and services, there is an exemption for the differential treatment of persons in relation to annuities, pensions, insurance policy where this is related to actuarial or statistical data obtained, other relevant underwriting or commercial factors or “having regard to the data or other relevant factors”. There is an obvious information asymmetry between individuals approaching insurance companies for quotes and the companies providing those quotes.

In the context of this exemption, older people may experience particular difficulties in accessing, for example, affordable travel or motor insurance. This form of discrimination contributes to the social exclusion of older people from participation in diverse spheres which they have a right to access e.g. services, mobility, social relations. It also precludes them from deploying, on an equal basis with others, financial resources they have accumulated over the life course.

The ICSG calls for:

- A review, with results publicly available, of the evidence underpinning the inclusion of this exemption within the equality acts; and of the impacts of this exemption on the age ground.

5. Removing systemic barriers to equality – the case of older people in nursing homes

The percentage of older people living in nursing homes is 3.6 per cent. Two thirds of all nursing home residents aged over 65 are women and three quarters of all aged over 80 are women (Expert panel, 2020). While the percentage is small, this group of older people is characterised by high levels of frailty, disability and underlying illness. There have been longstanding issues in terms of the relationship between the public health system and private long-term care, including differential access to HSE

services as between older nursing home residents and community residing older people. These issues escalated during the pandemic.

As of October 2020, nursing home residents comprised 56 per cent of all COVID-19 deaths in the State in a group that comprised just 0.65 per cent of the total population (Oireachtas Special Committee on COVID-19, 2020). Systemic issues leading to poor outcomes for nursing home residents have been identified by the Special Committee and include:

- The lack of a proper framework relating to the number and skills capacity of health care workers in nursing homes;
- the delay in reviewing the adequacy of the regulatory framework for nursing home care, an issue that has been highlighted by HIQA over a number of years;
- the absence of clinical oversight and care pathways between nursing homes and the public health authorities;
- a policy of privatisation of the nursing home sector that is disconnected from the public health system “without due debate or consultation”; and
- the failure to prioritise empowering older persons to remain at home and to develop models, including smaller domestic-style units integrated into communities.

Both the COVID-19 Nursing Homes Expert Panel and the Oireachtas Special Committee on COVID-19 have made extensive recommendations to address systemic issues and deficits in terms of the residential care of older people. Advancing the implementation of these recommendations will be challenging for older people and the range of bodies supporting older people’s rights to equality and non-discrimination.

In this context, they should be able to avail of the Equal Status Act as a resource and support. In fact, current exemptions in the Act reduce its value in tackling systemic inequalities such as those outlined here.

As highlighted by FLAC, the Equal Status Acts do not clearly apply to Government Departments and Public Bodies carrying out their functions. They also exclude from challenge any action that is required by legislation. What this means in practice is that “any legislation ... which discriminates on one of the nine grounds or which has a disproportionately negative impact on certain groups falls outside the scope of the Equal Status Acts and cannot be challenged under the equality legislation” (FLAC, 2021).

The ICSG calls for:

- The explicit identification of nursing homes as a service in the language of the Equal Status Act;
- An expanded definition of services to include the performance of functions by public bodies;
- Deletion of the exemption for legislation in section 14 of the Equal Status Acts

6. Supporting the ambition for equality with information, data and statistics

Individuals need clear, consistent and adequate information from public bodies about their entitlements and eligibility under legislation and regulations. Where services are discretionary, where regional availability differs (Citizens Information Board, 2021), or where published information about services is incomplete (HSE, 2019:41), individuals cannot assert their rights or firmly identify the discrimination they may be facing, for example in accessing disability, health or social care services.

Across all equality grounds, basic data is needed about levels of availability/capacity of relevant public services, of access to those services and utilisation of services by different groups. In the absence of such data, it is difficult to accurately track unmet need, to mitigate inequalities or to plan effectively to meet future population needs.

The collection and analysis of granular data across the life course is essential to capture unequal ageing and to show how characteristics such as sex, gender, age, sexual orientation, disability, ethnicity influence the accumulation of disadvantage in older age. The ICSG welcomes the Equality Audit initiative undertaken by the Central Statistics Office (CSO 2020). It would be helpful if the CSO were to consult widely with stakeholders across all grounds about any statistical and data implications arising from proposed amendments or additions to definitions of the equality grounds in the Equality Acts as a consequence of the review.

The ICSG calls for:

- A stipulation in the Equal Status Act that all public bodies should provide clear, consistent and adequate information about individuals' entitlements to services under both legislation and regulations;

- A requirement, as part of their Public Sector and Human Rights duty for all public bodies to produce data about service capacity, access to and utilisation of those services by members of the public;
- A proactive consultation by CSO on the equality data potential and implications of any proposed additions or amendments to the definition of grounds in the equality acts
- Measures led by CSO to regularly collect, analyse, disseminate timely data disaggregated by sex, gender, age, ethnicity and disability to inform and track progress on the equality legislation, related policy and practice

7. Equality at the heart of demographic ageing

Population ageing is identified as a global challenge for sustainable development (SD) and a major demographic and societal shift that affirms, and in some cases drives, the need for many of the SD goals (GSD-Report 2019; Conboy, 2021). It is acknowledged as one of three major transformations facing the European Union (European Commission 2020), and its member states. This is reflected within the EU Pillar on Social Rights (specifically principles 1, 3, 5, 15 and 18). But most recently, it is reflected in the European Commission's Green Paper on Ageing, which highlights the implications of ageing for fiscal sustainability, health care, well-being and social cohesion, together with the opportunities it offers for creating new jobs, fostering social solidarity and boosting prosperity. Along with other frameworks (WHO Decade of Healthy and Active Ageing 2020-2030; OECD *Unequal Ageing*) and national strategies, these policy agendas testify to the significance and the urgency of the challenge, and its intersection with every major policy domain. Perhaps more critically, they demonstrate the political commitment to finding innovative means and "*new approaches*" (p.2; Green Paper 2021) to adapt to demographic change.

At global and European levels, demographic ageing is now identified as a major transformational process that requires innovation and integrated solutions across all policy domains. Equality must be a core part of these innovations and solutions, and is essential to enable their effects to be equally distributed.

Enquiries

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