

The Public Sector Duty

Eliminating discrimination, promoting
equality and protecting human rights



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

August 2016

The Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission is Ireland's national human rights institution and national equality body.

The Irish Human Rights and Equality Commission ('the Commission') was established by the Irish Human Rights and Equality Commission Act 2014 ('the IHREC 2014 Act').

The Commission has a statutory remit to protect and promote human rights and equality in the State, to promote a culture of respect for human rights, equality and intercultural understanding and to promote understanding and awareness of the importance of human rights and equality. The Commission is tasked with reviewing the adequacy and effectiveness of law, policy and practice relating to the protection of human rights and equality and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality.

What does the Irish Human Rights and Equality Commission Act 2014 say?

Section 42 of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public sector bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights, in their daily work. This is an innovative development in Irish equality and human rights legislation and presents a valuable opportunity for public bodies to embed human rights and equality considerations into their functions, policies and practices.

Section 42 states that:

42. (1) A public body shall, in the performance of its functions, have regard to the need to:

1. eliminate discrimination,
2. promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
3. protect the human rights of its members, staff and the persons to whom it provides services.



Section 42 of the IHREC Act 2014 sets out three core steps to be taken by public bodies

1. In preparing strategic plans, public sector bodies must assess and identify the human rights and equality issues that are relevant to their functions. These issues must relate to all of its functions as policy maker, employer and service provider.
2. Public bodies must then identify the policies and practices that they have in place or that they plan to put in place to address these issues.
3. Finally, in their annual reports, or equivalent documents, public bodies must report in a manner accessible to the public on their developments and achievement in that regard.

Where the Commission considers there are failures to fulfil the Public Sector Duty, it can invite a public body to carry out an equality and human rights review of the work of the organisation, and prepare and implement an action plan.



What is a Public Body under the IHREC Act 2014?

Section 2 of the Irish Human Rights and Equality Commission Act 2014 defines a public body broadly to include; government departments, local authorities, the Health Service Executive, universities and institutes of technologies, education and training boards, most schools, semi-state bodies, all bodies financed with public money (even partially), including companies whose majority of shares is held by government, or organisations that acts in the public interest.

Therefore the Public Sector Duty applies whether the service is provided directly by the State, or through a non-state actor. The State subcontracts a range of its functions and services, for example in the areas of care, welfare, and health to non-state actors.



Implementing the Public Sector Duty

There are many benefits presented to public bodies by implementing the Public Sector Duty and documented in other jurisdictions. These include:

- more effective use of resources and enhanced quality of policies;
- improved access to and benefit from services for all service users;
- enhanced working environment for employees and improved productivity and creativity;
- Improved provision of quality public services;
- Reduction in inequalities and advancement of the realisation of human rights in the provision of key services such as health, housing, education, social care;
- Supports an evidence-based approach to the work of public bodies;
- Promotes cultural change in the public sector;
- Reduces grievances and litigation.



What does a Public Body need to do?

Initial assessment

Undertake an assessment of human rights and equality issues that are relevant to its functions, to the services it provides, or regulates or oversees, and to its employees. An initial assessment may inform a strategic statement to guide the next phase of the strategic planning process.

Examples:

- Map organisation's functions and emerging human rights and equality issues stemming from legal obligations, complaints, risks identified, industrial relations issues, existing sets of data and consultation reports
- Identify key policies, programmes, national strategies and standards that are relevant to the realisation of human rights and equality in the Irish state



Strategic planning

Integrate human rights and equality initial assessments in the strategic planning process. If working within an already commenced strategic planning cycle, ensure that links between human rights and/or equality statements and related action plans are incorporated into current work activities.

Examples:

- Include human rights and equality issues into your strategic planning process. This should be done while policies are at a formative stage, and not as a rear-guard action
- Make your senior managers aware of the organisational responsibilities under the Public Sector Duty
- Identify key policies, programmes, national strategies and standards that are relevant to the realisation of human rights and equality for employees and service users
- Ensure that the organisation's values and mission include human rights and equality considerations
- Build in a review mechanism to ensure continuous regard to the positive human rights and equality considerations
- Where risks to protected groups or potential human rights breaches are identified, take steps to mitigate those risk where possible

Consultation and participation

Consult broadly with employees, managers, trade unions, individuals and communities accessing and using the services, and other key stakeholders, which may be affected by inequalities and human rights issues.

Examples:

- Set up service users' panels and engage in public consultation thereby giving voice to individuals and groups at risk of discrimination and human rights abuses
- Consult externally and internally at appropriate points of policy and programme development
- Revise internal and external complaints mechanisms, and ensure that human rights and equality aspects are built into these
- Promote informal resolution of internal and external grievances by training staff and managers to deal sensitively with human rights and equality issues
- Ensure that your Human Resources and Service Provision policies are human rights and equality proofed



Training and capacity building

Provide training or information to key staff and managers on human rights and equality and allocate training budgets accordingly.

Examples:

- Offer training on human rights and equality as part of professional development and as an organisational objective
- Include human rights and equality issues within the organisation's communications strategy
- Support initiatives to promote awareness on human rights and equality, such as thematic events/days for staff and service users (UN Days, mental health awareness, etc.), staff briefings
- Organise events celebrating diversity and human rights

Working groups/ committees/ key personnel

A Public Body may need to set up a specific committee or working group to focus on implementing the Public Sector Duty; or it could use an existing structure already in place. Specific roles that include a specific responsibility for the promotion of equality and human rights may need to be assigned or designated.

Examples:

- Assign a working group or committee to take on the role of rolling out the Public Sector Duty
- Ensure organisational commitment with the senior management and leadership team
- Set up a senior management group to advance human rights and equality

Policies, programmes and practices

Screen and analyse policies and programmes from a human rights and equality perspective, identifying which existing policies and practices are particularly relevant.

Examples:

- Include human rights and equality issues on the agenda of all working groups and senior management meetings
- Ensure that your budgets are screened or assessed for human rights and equality impacts
- Ensure that your policies are screened or assessed for human rights and equality impacts for service users and employees – both at an early stage, and on a periodic review basis
- Implement employment policies that are related to equality and human rights
- Clearly document risk areas and take steps to mitigate adverse impact



Action planning

Develop action plans on human rights and equality with defined actions and responsibilities.

Examples:

- Prepare an action plan in relation to a specific policy or programme area or a specific regulatory standard that might have an impact on human rights and equality
- Clearly document risk areas for human rights and equality and take steps to mitigate potential adverse impact
- Consider positive action measures in service provision and employment, and a rights-based approach
- Consider reasonable accommodation measures for people with disabilities in service provision and employment and a rights-based approach
- Clearly designate responsibilities, timeframe, budgets and indicators in the action plan
- Develop a pilot project in key service areas in relation to the public sector duty



Data collection, monitoring and reporting

Collection of data, clearly defined targets, indicators and responsibilities will ensure effective monitoring and reporting on human rights and equality. Achievements and steps taken as part of your human rights and equality action plans will be included in annual reports in an accessible manner.

Examples:

- Promote the collection of data by using human rights and equality indicators in employment and service provision
- Improve your data collection systems and make sure that the equality and human rights data are used to proof and impact-assess your policies and practices
- Provide evidence-based information on your human rights and equality initiatives and achievements in your annual report



What can the Irish Human Rights and Equality Commission do?

The Irish Human Rights and Equality Commission has been given specific functions in relation to the Public Sector Duty.

Support: IHREC may give guidance and encourage public bodies in developing specific assessment tools, policies and human rights and equality proofing. IHREC will profile good practice and effective operational standards in relation to human rights and equality.

Pilot projects

IHREC has decided to initiate a number of pilot projects to inform future guidance and codes of practice. Pilot sites will consider both top-down and bottom-up approaches in implementing the Public Sector Duty.

Monitoring: If there is evidence of serious human rights issues and/or discrimination, IHREC may invite a public body to carry out a review in relation to human rights and/or equality, and to prepare and implement an action plan in relation to human rights and/or equality or both. These reviews can be general or related to specific aspects of equality and human rights.

Further information

The Irish Human Rights and Equality Commission will develop good practice guides and toolkits for dissemination among public bodies in the context of the Public Sector Duty implementation. If you would like further information or support, please contact the Public Sector Duty team.

- An e-learning tool focussing on “Equality in Service Delivery” is currently available for individual use and organisational download on the IHREC website.
- IHREC website includes a number of information booklets, toolkits and resources, which can be usefully adapted for the rolling out of the public sector duty.
- IHREC page on the Public Sector Duty provides links to tools from other countries in relation to equality impact assessments and/or human rights and equality impact assessments; human rights and equality indicators and data collection; human rights and equality proofing and screening.
- IHREC staff in the Public Sector Duty team may provide guidance on standards for human rights and equality training that a public body may need to procure.
- For further information, please contact the Public Sector Duty team.

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