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Heads of Irish Human Rights and Equality Commission Bill 2012

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Working Group report

In October 2011 the Minister for Justice and Equality set up a Working Group to advise him on the establishment of a new and enhanced Irish Human Rights and Equality Commission (IHREC). This followed from a Government decision in principle to merge the existing Human Rights Commission and the Equality Authority.

The Group presented its report to the Minister on 19 April 2012 and references in these Heads to the Working Group and recommendations are references to this Group and the recommendations set out in its Report and numbered 1 to 42.

Additional provisions

The final Bill may contain additional technical provisions.

The opportunity of the Bill will also be taken to make amendments that are required to other Acts, including the Equality Acts and the European Convention on Human Rights Act 2003, but which are not related to the establishment of the Irish Human Rights and Equality Commission.

Head 1 Short title and collective citations**Provide that**

This Act may be cited as the Irish Human Rights and Equality Commission Act .

This Act and the Employment Equality Acts 1998 to 2011 may be cited together as the Employment Equality Acts 1998 to 2012.

This Act and the Equal Status Acts 2000 to 2011 may be cited together as the Equal Status Acts 2000 to 2012.

Explanatory note

This is a standard provision.

Head 2 Interpretation

Provide for such definitions as may be required, including

'Minister'	means the Minister for Justice and Equality;
'Commission'	means the Irish Human Rights and Equality Commission established by Head 8 ;
"establishment day"	means the day appointed under Head 4 ;
'Paris Principles'	means the principles relating to the status of national human rights institutions adopted in United Nations General Assembly Resolution 48/134, UN Doc A/RES/48/134 (1993);
'human rights'	Has (other than in Heads 30, 31, 33, 34, 35 and 36) the meaning assigned to it by Head 3.

Explanatory note

These are self-explanatory. Further definitions in the existing legislation may also require to be carried forward in consultation with the Parliamentary Counsel.

Head 3 Definition of “human rights”

In this Act (other than in Heads 30, 31, 33, 34, 35 and 36 [i.e. the sections dealing with enforcement/compliance powers and with human rights and equality duty of public bodies]) “human rights” means—

- (a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution; and
- (b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the state is a party or in any agreement, treaty or instruments binding on the state by virtue of membership of the European Union;
- (c) the rights, liberties or freedoms that may reasonably be inferred as being inherent in persons in contemporary society and necessary to enable them to live their lives with dignity and develop their personal potential in political, social, cultural and economic life to the fullest possible extent.

“equality” means that all persons are equal in dignity, rights and responsibilities without regard to gender, civil status, family status, sexual orientation, religion or ultimate beliefs, age, disability, race (including colour, nationality, ethnic or national origin or membership of the Traveller community).

‘dignity’ means that each person has

- (i) equal intrinsic value and a fundamental interest in living a worthwhile life; and
- (ii) a special entitlement to realise a life that is worthwhile and authentic consistent with others having a similar entitlement.

Explanatory note

The provisions at a) and b) above derive from the existing legislation, with additional text to cover relevant EU instruments (such as the European Charter of Fundamental Rights)

c) is new and is recommended by the Working Group to clarify that the IHREC is in a position to take account of new and emerging issues as well as issues that are not limited to specific rights which have been incorporated in the law of the state or are contained in instruments to which the state is a party. In line with the Paris Principles, the IHREC must be free to set its own tasks. The Group also recommends that consideration given to the additional definition of ‘dignity’ above to animate the work of the IHREC.

Head 4 Establishment day**Provide that**

The Minister may by Order appoint a day to be the establishment day for the purposes of this Act.

Explanatory note

It is proposed that the Act will come into operation – thereby establishing the new Irish Human Rights and Equality Commission and dissolving the existing Human Rights Commission and the Equality Authority – on a day to be appointed by Order.

Head 5 Regulations

[for further consideration in consultation with Parliamentary Counsel]

Explanatory note

It may be necessary to provide power to make regulations in relation to any thing that is stated in the Bill as to be prescribed, or where any thing is stated as to be done by regulations.

Head 6 Expenses**Provide that**

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Explanatory note

This is a standard provision.

Head 7 Repeals and consequential amendments

Provide for

- the repeal of the Acts set out in Schedule 1; and
- the consequential amendments to other Acts set out in Schedule 2

Explanatory note

For the purpose of these Heads, it is useful to see the existing legislation as being in three parts:

- The substantive law on equal status and human rights;
- The legislation on resolution of complaints and the operations of the Equality Tribunal; and
- The legislation relating to the establishment, corporate governance, management and operation and the powers and functions of the Equality Authority and the IHRC.

The Acts concerned are primarily the Employment Equality Acts, the Equal Status Acts and the IHRC Acts.

A comprehensive review and restatement of all substantive equal status legislation is not feasible at this time. Such a project could be undertaken later, for example, if and when a new EU Directive in the equality area requires to be transposed.

Likewise, it is sensible to leave the legislative provisions relating to the Equality Tribunal for consideration later in the context of the establishment of an integrated employment protection structure.

Accordingly, the Heads have been prepared to cover the establishment, corporate governance, management and operation and the powers and functions of the new Body (the 'Establishment provisions'). The proposed new Act will replace the provisions of the following existing Acts (as amended):

- Employment Equality Act 1998 (PART V (sections 38 to 67) , Equality Authority (*General, Inquiries by Authority*), PART VI (sections 68 to 73) (*Equality Reviews and Action Plans and Review of Legislation*))
- Equal Status Act 2000 PART IV (section 39) (*Equality Authority*)
- Human Rights Commission Act 2000 and 2001

Technical amendments to other existing Acts (e.g. replacement of references to either of the existing bodies) will be gathered together in a second Schedule.

Other provisions that can be replaced within the proposed new Act may be identified during the drafting process.

Head 8 Establishment of Irish Human Rights and Equality Commission

Provide that

.—(1) There shall stand established, on the establishment day, a body which shall be known as An Coimisiún um Chomhionannais agus um Chearta an Duine in Éirinn or, in the English language, the Irish Human Rights and Equality Commission (in this Act referred to as “the Commission”) to perform the functions conferred on it by this Act.

(2) The Commission shall, subject to the provisions of this Act, be independent in the performance of its functions.

(3) The Commission is established in compliance with the Paris Principles and shall be guided in the exercise of its functions by those principles.

(4) The Commission shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(5) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

(6) The Equality Authority (continued and renamed by section 38 of the Employment Equality Act 1998) and the Human Rights Commission (established by section 4 of the Human Rights Commission Act 2000) are dissolved.

Explanatory note

Taken with modifications from section 4 of the HRC Act 2000. The independence of the body needs to be stated in the Act to ensure compliance with the ‘Paris Principles’ (see copy below under **Head 11 Functions**).

New: It is proposed to state explicitly that the Commission is established in compliance with the Paris Principles and shall be guided in the exercise of its functions by those principles.

Head 9 Purpose of Commission**Provide that**

the purpose of the Commission is to protect and promote human rights and equality, to encourage the development of a culture of respect for human rights, equality and intercultural understanding in Ireland, to work towards the elimination of human rights abuses and discrimination and other prohibited conduct, while respecting diversity and the freedom and dignity of the individual and, in that regard, to provide practical assistance to persons to help them vindicate their rights.

Explanatory note

Recommendation 1 of the Working Group is that the purpose of the Commission should be set out in the Bill as above.

Head 10 Principles to guide the Commission in the exercise of its functions

The Commission shall exercise its functions under this Act and under the Employment Equality and Equal Status Acts so as to promote the development of a society in which the following principles have the greatest possible effect:

- (a) that human rights are indivisible and universal;
- (b) that every person is free and equal in dignity, rights and responsibilities;
- (c) that a person's ability to achieve his or her potential and conception of a worthwhile life must not be limited by prejudice, contempt, discrimination or neglect and a person has the right to be free from prohibited conduct;
- (d) that each person's human rights must be respected and protected;
- (e) that each person should have a fair and equal opportunity to participate in the economic, political, social and cultural life of society; and
- (f) that mutual respect between and within groups, based on intercultural understanding and engagement, on the valuing of diversity within an inclusive and just society, on shared respect for equality and human rights, promotes the overall well-being of society socially, economically and culturally.

Explanatory note

It is appropriate to set out in the Bill principles to guide the work of the Commission, as has been done, for example, in the Legal Services Bill and the Property Services Regulation Bill, which set out not only objectives and functions, but also principles. The Working Group has recommended (recommendation No. 6) the above statement of principles for this purpose.

Head 11 Functions of Commission

Provide that

The functions of the Commission shall be -

A. General functions

i. Promotion and communication

To promote understanding and awareness of the importance of human rights and equality and, for those purposes, to promote public debate and discussion of human rights and equality issues. To this end the Commission may undertake public consultations.

To provide or assist in the provision of education and training on human rights and equality issues.

To promote awareness and understanding of and respect for the multicultural character of Irish society and the diverse heritages of the island of Ireland.

To foster a society in which all individuals can participate and contribute to the cultural, social, economic and political life of Ireland.

To assist public bodies to take due note of equality and human rights in carrying out their functions and, where the Commission considers it appropriate in that regard, to recommend changes to (a) any area of relevant legislation, or (b) the policies or practices of a public body in the state.

To provide advice and resource materials on good practice and to develop sector-specific toolkits to tackle areas of particular challenge for equality and human rights in any or all of the private, not-for-profit, or public sectors.

The Commission may undertake or sponsor such research¹ and educational or informational activities² as it considers necessary and as appear appropriate and useful for the purpose of performing any of its functions.

ii. Publication

To prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or

¹ See s. 57 of Employment Equality Act 1998.

² See s 8(e) of the Human Rights Commission Act 2000.

assisted by it or in relation to enquiries or equality reviews it has conducted.³

To publish information in written and other forms on human rights and equality.

The Commission may make charges for any services provided by it under this subsection.

For the purpose of assisting it in the performance of its functions under this section the Commission may employ any person or persons having qualifications which in the opinion of the Commission relate to those functions.⁴

iii. Programme and Project work

To promote and co-ordinate programmes and project work in relation to any of its functions, and to foster and assist, including by financial or material aid, such programmes and projects;

‘financial aid’ here includes management of EU funding.

‘programmes and project work’ includes publicly-funded programmes on behalf of or in partnership with a Department of State, or programmes for which IHREC has received philanthropic funding. Such funding may be subject to Service Level Agreements in relation to delivery of agreed objectives, subject to these arrangements not compromising the independence of IHREC.

iv. Policy and legislation

Either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights and equality in the state.⁵

To keep under review the adequacy and effectiveness of law and practice in the state relating to the protection of human rights and equality.⁶

³ See s 8(g) of the Human Rights Commission Act 2000 and see also s 68 – 73 of the Employment Equality Act 1998

⁴ This is taken with a modification (deletion of the requirement to obtain the Minister’s consent) from the Equality Acts. It is not clear that it is necessary and is for further consideration in consultation with the Parliamentary Counsel.

⁵ See s 8(d) of the Human Rights Commission Act 2000.

⁶ See s 8(a) of the Human Rights Commission Act 2000.

To examine, of its own volition, or if requested by a Minister of the Government, any legislative proposal, including a proposal to sign any international instrument, and report its views on any implications of such proposal for equality or for human rights.⁷

To provide advice and assistance on human rights and equality issues to a [i.e. any] committee of the Oireachtas as may be requested by such committee and as the Commission may be in a position to provide and as may be useful and appropriate in assisting such Committee in its work.

B. Specific equality functions derived from EU law

To work towards the elimination of discrimination in relation to the areas covered by the Employment Equality Acts 1998 to 2011 and the Equal Status Acts 2000 to 2011.⁸

To promote equality of opportunity in relation to employment and vocational training and in relation to the provision of goods and services, accommodation and education.⁹

To keep under review the workings of legislation specified in **Head 29** and to make recommendations for necessary change to the relevant Minister.¹⁰

C. Specific ‘social cohesion’ functions

To promote the integration of migrants and other minorities in Irish society, to encourage good practice in intercultural relations and to promote tolerance, acceptance of diversity, and an inclusive society with positive relations between members of different groups.

D. Northern Ireland

To take part in the Joint Committee with the Northern Ireland Human Rights Commission which is provided for in the Belfast/Good Friday Agreement and continue the work already done by that body, and to work closely with the Equality Commission for Northern Ireland.¹¹

⁷ See s 8((b) of the Human Rights Commission Act 2000.

⁸ See s 39(a) of the Employment Equality Act 1998; s 39 (a) of the Equal Status Act 2000.

⁹ See s 39(b) of the Employment Act 1998; s 39(b) of the Equal Status Act 2000.

¹⁰ See s39(bb), (c) and (d), s 39(f) & s 73 of the Employment Equality Act 1998; and s 39(c) of the Equal Status Act 2000.

¹¹ See s. 8(i) of the Human Rights Commission Act 2000.

E. International

To consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights and in the field of equality as it sees fit,¹² including the provision of advice and commentaries on the situation with regard to human rights and equality in Ireland.

And without prejudice to the generality of the foregoing, to liaise and consult and engage in joint work in particular with equality bodies (within meaning of relevant EU Directives) of member states of the European Union, with other accredited National Human Rights Institutions, with the EU's Fundamental Rights Agency, with the Council of Europe and with relevant UN bodies.

F. Supporting public bodies in having due regard to human rights and equality issues

As provided for in **Head 36**, assisting an individual public body, or public bodies generally, covered by that Head in having due regard to the need to eliminate prohibited discrimination, promote equality of opportunity and treatment and protect the human rights of staff and persons to whom it provides services in the exercise of its/their functions.

Explanatory note

This Head, Head 30 and Heads 31 to 36 should be read together. The Working Group approached the powers and functions of the Commission on the basis of distinguishing between (a) general functions and (b) enforcement/compliance functions. The distinction is not a neat one, with inevitable overlap. In addition, some of the individual enforcement functions are more easily presented as stand-alone sections and are so presented in these Heads.

The proposed functions above are as recommended in the Working Group report, recommendation 12, with technical amendments to make them suitable for Heads of a Bill, including avoidance of duplication as between this Head and other Heads.

The Equality Authority also has specific other functions under the Equal Status and Employment Equality Acts. As it is not proposed to repeal and restate these provisions in this Bill, the intention is that these will instead be transferred to the new body by way of amendments to the definition of 'Authority' in those Acts (see **Head 7**), but with a suitable cross-reference in this section.

The following are set out below, by way of background:

¹² See s 8(c) of the Human Rights Commission Act 2000.

- a) the existing general functions of the
 Equality Authority; and
 the Human Rights Commission
- b) the functions of Equality bodies required under the relevant EU Directives, together with a note in relation to possible infringement proceedings raised by the European Commission in 2007; and
- c) the 'Paris Principles' which set out requirements for the status of National Human Rights Institutions. While these principles do not have legal effect, compliance is necessary to secure international accreditation at 'A' level. The existing Commission has such accreditation and it is desirable to ensure that this status can be secured for the new Body as quickly as possible.

Existing functions of the Equality Authority

Employment Equality Act 1998, as amended

39.—The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or of any other Act, the following general functions:

- (a) to work towards the elimination of discrimination in relation to employment;
- (b) to promote equality of opportunity in relation to the matters to which this Act applies;
- (bb) to provide information to the public on the working of the Parental Leave Act 1998,*
- (c) to provide information to the public on and to keep under review the working of this Act, the Maternity Protection Act 1994, and the Adoptive Leave Act 1995, and, whenever it thinks necessary, to make proposals to the Minister for amending any of those Acts; and
- (d) to keep under review the working of the Pensions Act 1990, as regards the principle of equal treatment and, whenever it thinks necessary, to make proposals to the Minister for Social, Community and Family Affairs for amending that Act.

57.—(1) The Authority may undertake or sponsor such research and undertake or sponsor such activities relating to the dissemination of information as it considers necessary and as appear expedient for the purpose of performing any of its functions.

(2) The Authority may make charges for any services provided by it under *subsection (1)*.

(3) For the purpose of assisting it in the performance of its functions under this section the Authority may, with the approval of the Minister, employ any person or persons having qualifications which in the opinion of the Authority relate to those functions.

Equal Status Act 2000 as amended

39.—The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or by any other Act, the following general functions:

- (a) to work towards the elimination of prohibited conduct;
- (b) to promote equality of opportunity in relation to the matters to which this Act applies; and
- (c) to provide information to the public on and to keep under review the working of this Act and, whenever the Authority thinks it necessary, to make proposals to the Minister for its amendment;

and accordingly the [Employment Equality Act, 1998](#) , shall apply and have effect with the amendments specified in the *Schedule* to this Act.

Existing functions of the Human Rights Commission

Section 8 of the Human Rights Commission Act 2000

8.—The functions of the Commission shall be—

- (a) to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights,
- (b) if requested by a Minister of the Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights,
- (c) to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit,
- (d) either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the State,
- (e) to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to

undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities,

(f) to conduct enquiries under and in accordance with [section 9](#),

(g) to prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored, commissioned or assisted by it under *paragraph (e)* or in relation to enquiries referred to in *paragraph (f)*,

(h) to apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as *amicus curiae* in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an *amicus curiae* on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion),

(i) to take whatever action is necessary to establish and participate in the joint committee of representatives referred to in paragraph 10 of the section entitled “Rights, Safe-guards and Equality of Opportunity” of the Agreement Reached in the Multi-Party Talks,

(j) to provide assistance of the kind referred to in [section 10](#) to persons under and in accordance with that section,

(k) to institute proceedings under and in accordance with [section 11](#).

Functions provisions in EU Directives

The relevant EU Directives are:

Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

Council Directive 2004/113/EC of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

(Functions (taken from 2000/43/EC), except d), which is an additional point in 2006/54/EC.)

Functions

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

— without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,

— conducting independent surveys concerning discrimination,

— publishing independent reports and making recommendations on any issue relating to such discrimination.

(d) at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality.

The Paris Principles

Principles relating to the Status of National Institutions (The Paris Principles)

Adopted by UN General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty

obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices,

especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Head 12 Strategic Plans

Provide that

.—(1) As soon as practicable after the establishment day and thereafter within 6 months before each third anniversary of such coming into operation, the Commission shall prepare and publish a strategic plan for the ensuing 3 year period.

(2) The Commission shall consult in the preparation of a strategic plan with such bodies and groups as it sees fit, including but not limited to educational institutions, representatives of civil society and Government Departments and agencies.

(3) A strategic plan shall—

(a) comprise the key objectives, outputs and related strategies, including use of resources to be made available from the Exchequer in the period covered by the plan, of the Commission, and

(b) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Commission.

(4) The Commission shall, as soon as practicable after the strategic plan has been approved, cause a copy of the strategic plan to be laid before each House of the Oireachtas.

Explanatory note

There is provision for the Equality Authority to produce a periodic Strategic Plan, but not for the Human Rights Commission to do so. The Ombudsman and Information Commissioner produce a Strategic Plan and on balance it seems useful that the new Commission would do so also.

While it is desirable in corporate governance terms for all state agencies to produce a strategic plan, the legislative provisions that apply to the Equality Authority (section 40 of the 1998 Act) would need to be amended to remove the reference to approval of the draft plan by the Minister, so as to protect the independence of the new Commission and the draft Head has been adjusted to do so.

Instead the draft Head proposes that the new Commission should consult with bodies that it considers appropriate, including educational institutions, civil society and Government Departments and agencies in the preparation of the Plan.

The draft Head proposes that the Plan, once finalised and formally approved by the Commission, be laid directly by the Commission before the Oireachtas, again to reinforce the independence of the Commission. See recommendation No. 38 of the Working Group report.

Head 13 Membership of Commission

Provide for a Commission with 12 members, to include the Chief Commissioner, as follows:

*This Head is based on section 5 of the Human Rights Commission Act 2000 and the equivalent provision in the Equality Acts, with new provisions/amendments in **bold**.*

.—(1) The Commission shall consist of a Chief Commissioner and **eleven** other members.

(2) Of the members of the Commission, not less than **6** of them shall be men and not less than **6** of them shall be women.

(3) Where a vacancy or vacancy arises on the Commission,

(a) the Government shall appoint a Selection Panel of five persons who are knowledgeable in the field of human rights and equality to invite applications from persons interested in serving as a Commissioner, including as Chief Commissioner, and to make a single recommendation to the Government as to the person or persons to be appointed to fill such vacancy or vacancy;

(b) the vacancy or vacancies shall be advertised publicly;

(c) details of the selection criteria for filling the vacancy or vacancies and the process to be used by the Selection Panel shall be published at the same time as applications are invited.

(4) The members of the Commission shall be made appointed by the **President on the advice of** the Government following a resolution passed by Dáil Éireann and by Seanad Éireann recommending their appointment.

(5) A person shall not be **recommended for appointment** by the President to be a member of the Commission unless it appears to **the Selection Panel and the Government agrees** that the person is suitably qualified for such appointment by reason of his or her possessing such relevant experience, qualifications, training or expertise as, in the opinion of **the Selection Panel and with the agreement** of the Government, is or are appropriate, having regard, in particular, to the functions conferred on the Commission by this Act.

(6) The Government shall accept the recommendation of the Selection Panel. However, where for substantial and stated reasons in exceptional circumstances, the Government is unable to accept the nomination of a particular person, it shall communicate those reasons to the Selection Panel and to the person and shall invite the Selection Panel to make a new nomination to fill that vacancy. The Selection Panel shall consider the Government's reasons and unless it disagrees and wishes to make representations to the Government to have the

matter reconsidered, the Selection panel shall amend its single recommendation by substituting a new nominee in place of the individual concerned.

(7) The term of office of a member of the Commission shall be such period, not exceeding five years, as the President on the advice of the Government may determine when appointing him or her.

(8) Each member of the Commission shall hold his or her office on such terms and conditions as are determined by the Government at the time of his or her appointment, and shall be eligible for reappointment for a further term not exceeding five years. **The office of Commissioner, including the office of Chief Commissioner, shall be part-time, but the Government may determine that the office of Chief Commissioner shall be full-time for such period commencing on the establishment day and ending not later than three years after that date as it may specify.**

(9) The Commission may act notwithstanding any vacancy or vacancies among its members (including one or more vacancies that result in *subsection (2)* not being complied with).

(10) The Selection Panel and the Government, in **recommending** any appointments under this section, shall have regard to the need to ensure that the members of the Commission broadly reflect the nature of Irish society, including the recommendation of persons as appear to the Selection Panel to be persons who have knowledge of, or experience in, issues relating to the experience and circumstances of groups who are disadvantaged by reference to gender, civil status, family status, sexual orientation, religion, age, disability, race (including colour, nationality, ethnic or national origin [*these extra subcategories of race are found in the text in the 1998 Act*]), or membership of the Traveller community.

(11) Of the persons who, on the establishment day, are to comprise the members of the Commission, 6 shall be appointed for a term of three years and 6 including the Chief Commissioner for a term of five years. The Selection Panel shall make a recommendation in this regard.

(12) One or more terms of office as a member of the board of the Equality Authority or as member of the Human Rights Commission shall be reckoned for the purposes of subsection (8) as one term.

(13) The limitation on reappointment in subsection (8) shall cease to apply to a person where a period of five years has elapsed since the expiry of the most recent previous term of office of that person as a member of the Commission or of the Equality Authority or of the Human Rights Commission as the case may be.

Explanatory note

The Head is based on the existing provisions and the recommendation 24 of the Working Group. It is proposed that a Selection Panel of five eminent

persons be set up whenever there is a vacancy or vacancy on the Commission (including when the new Commission falls to be appointed after enactment of the Bill) to make recommendations to Government. Appointment would be by the President following the passing of resolutions in both Houses of the Oireachtas.

The Selection Panel shall make a single recommendation whenever a vacancy or vacancies arise to be filled. In other words, the Selection Panel shall make a recommendation as to the candidate or a slate of candidates to fill a vacancy, or the vacancies, that exist, rather than recommending a list of suitable candidates from which Government can pick.

The Equality Authority board (section 44 of 1998 Act) is constructed on a representative basis (nominees of employers, employees, persons having knowledge or experience in consumer, social affairs, equality issues (including issues related to the grounds under which equality legislation prohibits discrimination), goods and services and other matters considered relevant). It is not proposed to replicate this approach in the Bill, but it is proposed to adjust subsection (10) to include (text in bold) a specific reference to the nine grounds: *text taken from section 44 (1)(c)(1)*.

Likewise, the equality legislation makes provision for board members to be appointed on such terms and conditions as determined by the Minister and makes separate provision for remuneration. On the other hand, the Human Rights Commission Act makes provision for appointment of Commissioners on such terms and conditions as maybe determined by Government, but does not refer separately to remuneration. The latter approach is the neater one – terms and conditions clearly encompass remuneration.

Appointments shall be part-time, but the Chief Commissioner may be appointed on a full-time basis for a transitional period as provided for in subsection (8) in line with the recommendation of the Working Group (No. 25) that a considerably greater time commitment will be required from the Chief Commissioner over a period of 18 months to two years.

The provisions in subsections 11 to 13 are designed ensure that

- the term of office of the Commissioners do not all expire on the same day, thus ensuring a continuity of experience on the new body;
- terms of appointment with the Equality Authority or the Human Rights Commission will reckon towards the limitation of two consecutive terms as a member of the new Commission, but as only one term, even if the person has served two or more terms on one of the existing bodies; and
- the limitation on reappointment is to two consecutive terms as a Commissioner; a person will not be precluded thereafter for all his or her life from serving again and after a 'gap' of five years, a person becomes eligible for a further reappointment.

Head 14 Power of dismissal in certain cases

Provide that

.—(1) A person who is a member of the Commission shall be disqualified from holding and shall cease to hold office if that person is adjudged bankrupt or makes a composition or arrangement with creditors or, on conviction on indictment by a court of competent jurisdiction, is sentenced to imprisonment.

(2) A person appointed to be a member of the Commission —

(a) may at his or her own request be relieved of office by the President

(b) may be removed from office by the President but shall not be removed from office except

(i) he or she has without reasonable excuse failed to discharge his or her function for a continuous period of three months beginning not earlier than six months before the day of dismissal, or

(ii) he or she has been convicted of a criminal offence, or

(iii) he or she is unable or unfit to carry out his or her function, or

(iv) for any other stated reason he or she should be dismissed.

and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his or her removal.

(3) Where a person who is a member of the Commission is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy,

the person shall thereupon cease to be a member of the Commission.

(4) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while so entitled or such a member, be disqualified from becoming a member of the Commission.

Explanatory note

This been adapted from the HRC Act 2000, section 7, with the addition of provisions relating to disqualification whenever a person is elected to public office. The HRC Act does not provide for this, whereas the corresponding provisions in the equality legislation do. The references to the President follow from the appointment procedure set out in the previous Head.

The existing legislation in relation to the Equality Authority also provides that a member ceases to hold office if her or she ceases to be ordinarily resident in the State. This rule does not apply to the HRC and it is also not proposed to apply it to the new Commission.

Head 15 Meetings and business

Provide that

..—(1) The Commission shall hold such and so many meetings as may be necessary for the performance of its functions but in each year shall hold not less than one meeting in each period of 3 months.

(2) The quorum for a meeting of the Commission shall be 5 or such other number, not being less than 5, as the Commission may determine.

(3) At a meeting of the Commission—

(a) the Chief Commissioner shall, if present, be the chairperson of the meeting, and

(b) if and so long as the Chief Commissioner is not present or if the office of Chief Commissioner is vacant, the members of the Commission who are present shall choose one of their number to act as the chairperson of the meeting.

(4) Each member of the Commission (including the Chief Commissioner) present at a meeting of the Commission shall have a vote.

(7) At a meeting of the Commission, a question on which a vote is required shall be determined by a majority of the votes of the members of the Commission present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a casting vote.

(7) Subject to this Act, the Commission may regulate its own procedure.

Explanatory note

The HRC Act 2000 does not make provision for rules in relation to the conduct of business at meetings. The 1998 EEA Act does and the text above is based on this approach.

Head 16 Advisory Committees**Provide that**

.—(1) The Commission may from time to time appoint such and so many advisory committees as it thinks fit to advise it on matters relating to its functions, for such period and subject to such terms of reference as it thinks appropriate.

(2) Where the Commission has appointed an advisory committee, it shall appoint one of the members of the committee as the presiding member and another as a vice presiding member who shall act in the absence of the presiding member.

(3) The presiding member of an advisory committee shall be paid out of moneys at the disposal of the Commission such fee for attendance at meetings of the committee as the Minister, with the consent of the Minister for Public Expenditure and Reform, may sanction.

(4) Each member of an advisory committee shall be paid out of moneys at the disposal of the Commission such allowance for expenses incurred by the member as the Minister, with the consent of the Minister for Public Expenditure and Reform, may sanction.

Explanatory note

The EEA Act (section 48) makes provision on these lines. See recommendation 20 of the Working Group.

Head 17 Director**Provide that**

—(1) There shall be a Director of the Commission who shall be appointed by the Commission (and such an officer shall be known, and is referred to in this Act, as “the Director”).

(2) The Director shall hold office under a written contract of service (which contract **at the discretion of the Commission** may be renewed) for such period as is specified in the contract, and subject to such terms and conditions (including terms and conditions relating to remuneration and to suspension and termination of employment) as are so specified, being terms and conditions which are determined by the Commission and approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

(3) In *subsection (2)* “remuneration” includes allowances for expenses, benefits in kind and superannuation.

(4) The Public Service Management (Recruitment and Appointments) Act 2004, shall not apply to the appointment of a person as the Director.

(5) The first Director of the Commission shall be the person who on the day prior to the establishment day is the Chief Executive of the Equality Authority and her contract with the Authority and the period specified in that contract shall be deemed to be a contract and a period for the purposes of subsection (2).

Explanatory note

Sections 49 EEA Act 1998 (in part) and 12 HRC Act 2000 refer. The above is adapted from the 2000 Act. The exemption in subsection (4) is to ensure that the Commission recruits its own staff, rather than being obliged to avail of the services of the Public Appointments Service.

Head 18 Functions of Director**Provide that**

.—(1) The Director shall manage and control generally the staff, administration and business of the Commission, and shall perform such other functions as may be conferred on him or her by or under this Act or by the Commission.

(2) The Director shall be responsible to the Commission for the performance of his or her functions and the implementation of the Commission's policies.

(3) The Director shall provide to the Commission such information in relation to the performance of his or her functions (including information with respect to the performance of those functions in so far as they relate to the financial affairs of the Commission) as the Commission may, from time to time, require.

(4) The Director may, from time to time, with the consent of the Commission, authorise one or more members of staff of the Commission to perform a specified function of the Director and such a member or members who is or are so authorised may perform that function accordingly.

(5) The functions of the Director may be performed during his or her absence or when the position of Director is vacant by such member of the staff of the Commission as may, from time to time, be designated for that purpose by the Commission.

Explanatory note

Sections 49 EEA Act 1998 (in part) and 12 HRC Act 2000 refer. The above is adapted from the 2000 Act.

The Property Services (Regulation Bill) 2009 approaches the subject matter of this Head in way that deals more comprehensively with issues and circumstances that may arise. The relevant section is set out below for ease of reference.

20.—(1) There shall be a chief executive officer of the Authority (in this Act referred to as “the Chief Executive”).

(2) The Chief Executive shall, subject to *subsection (3)*, be appointed by the Minister on the recommendation of the Chief Executive of the Public Appointments Service.

(3) The appointment shall either—

(a) be on such terms (including terms as to remuneration and allowances for expenses) as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine and be subject to the Public Service Management (Recruitment and Appointments) Act 2004, or

(b) be on such other terms (including terms as to remuneration and allowances for expenses) as may be determined by the Authority and approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

(4) The Chief Executive shall

(a) implement the policies and decisions of the Authority,

(b) manage and control generally the Authority's staff, administration and business, and

(c) perform such other functions as may be required or as may be duly authorised by the Authority under this Act.

(5) The Chief Executive shall be responsible to the Authority for the performance of the Chief Executive's functions.

(6) The Chief Executive shall not be a member of the Authority or an advisory committee, but may, in accordance with procedures established by the Authority or an advisory committee, as the case may be, attend meetings of the Authority or the committee, as the case may be, and shall be entitled to speak at and give advice at such meetings.

(7) The Chief Executive shall provide the Authority with such information, including financial information, in respect of the performance of the Chief Executive's functions as the Authority may require.

(8) The Chief Executive shall not hold any office or occupy any other position in respect of which remuneration is payable, or carry on any business, without the consent of the Authority and the approval of the Minister.

(9) Such of the functions of the Chief Executive as the Chief Executive may specify may, with the consent of the Authority, be performed by such member or members of the staff of the Authority as the Chief Executive may authorise for that purpose.

(10) The functions of the Chief Executive may be performed during the Chief Executive's absence or when the post of Chief Executive

is vacant by such member or members of the staff of the Authority as it may authorise for that purpose.

**Head 19 Accountability of Director to Public
Accounts Committee**

Provide that

.—(1) The Director shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by this Act to prepare,

(b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under [section 11](#) (2) of the [Comptroller and Auditor General \(Amendment\) Act 1993](#), or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of his or her duties under this section, the Director shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Explanatory note

Taken from section 14 of the 2000 HRC Act. See also section 50 of the EEA Act 2000.

Note that the restriction on expressing an opinion applies to this Head – and the PAC – only and not to the following Head.

**Head 20 Accountability of Director to other
Oireachtas Committees**

Provide that

.—(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in [section 14](#) or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the Director shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.

(3) The Director shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the Director is of the opinion that a matter in respect of which the Director is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Director is before it, the information shall be so conveyed in writing.

(5) Where the Director has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

(a) the Director may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(b) the Chairperson of the Committee may on behalf of the Committee, make such an application,

and the High Court may determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the Director shall not attend before the Committee to give account for the matter the subject of the application.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not

apply, the Director shall attend before the Committee to give account for the matter.

Explanatory note

Taken from section 15 of the 2000 HRC Act. See also section 50 of the EEA Act 2000.

These provisions do not present difficulty in the context of the Minister's commitment to a strengthened reporting mechanism from the Commission to the Houses of the Oireachtas, as the safeguard provisions relate to potential court cases etc. and should be retained on that basis.

Head 21 Staff of Commission

Provide that

A. Existing staff of the Human Rights Commission and the Equality Authority to become staff of the Commission as from the establishment day on the same terms and conditions under which they serve prior to that day.

B. The following provisions to apply to new recruitment:

—(1) The Commission shall appoint, with the consent of the Minister and the Minister for Public Expenditure and Reform, such and so many persons to be members of the staff of the Commission as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Commission and the grade at which he or she serves shall be such as may be determined from time to time by the Commission with the consent of the Minister and the Minister for Public Expenditure and Reform.

(3) There shall be paid by the Commission to the members of its staff such remuneration and allowances as it, with the consent of the Minister and the Minister for Public Expenditure and Reform, from time to time determines.

(4) The Public Service Management (Recruitment and Appointments) Act 2004 shall not apply to the appointment of the staff of the Commission.

C. common staff pool with Department for certain purposes

The Commission may enter into an agreement with the Department of Justice and Equality for the Commission to offer employment to civil service clerical and administrative staff of that Department and for the Department to release such persons as may be so selected by the Commission to serve with the Commission; during such period of leave of absence, the Commission shall be the employer of any person so released and such persons shall be civil servants of the State.

Explanatory note

See section 17 of the HRC Act 2000 and section 51 of the EEA Act 1998.

The intention is to provide for a long-term relationship for staff at junior levels within the Commission with the wider staff pool of the Department of Justice and Equality. See recommendation 29 of the Working Group. This is subject

to compliance with the Paris Principles in relation to the Commission selecting the staff and it being the employer.

Head 22 Remuneration of staff of Commission**Provide that**

The Commission, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Commission shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Commission with the consent of the Minister for Public Expenditure and Reform.

Explanatory note

Taken from section 18 of the HRC Act 2000

**Head 23 Performance of functions of Commission by members
of staff**

Provide that

The Commission may perform any of its functions through or by any member of the staff of the Commission duly authorised in that behalf by the Commission.

Explanatory note

Taken from section 19 of the HRC Act 2000.

Head 24 Superannuation**Provide that**

(1) The Commission may, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, make a scheme or schemes for the granting of superannuation benefits to or in respect of the Director and the members of the staff of the Commission.

(2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Commission may, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, make a scheme amending a scheme under this section including a scheme under this subsection.

(4) A scheme under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the Commission in accordance with its terms.

(5) A scheme under this section shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.

(6) No superannuation benefits shall be granted by the Commission to or in respect of a person on ceasing to be the Director or a member of the staff of the Commission otherwise than—

(a) in accordance with a scheme or schemes under this section, or

(b) with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform.

(7) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) *Subsection (7)* shall, with all necessary modifications, apply to an amendment to a scheme under this section as it applies to a scheme under this section.

(9) In this section—

“amending”, in relation to a scheme under this section, includes revoking the scheme;

“superannuation benefit” means any pension, gratuity or other allowance payable to or in respect of a person ceasing to be the Chief Executive or a member of the staff of the Commission.

Explanatory note

Section 20 of the HRC Act 2000 provides for a Superannuation scheme. None has been made to date. There is no equivalent provision in the EEA Act, as the staff are covered by the civil service scheme. The above text is taken with modifications from the Property Services (Regulation) Bill 2009 as representing the most up-to-date text available on this issue.

Head 25 Seal of Commission**Provide that**

—(1) The Commission shall, as soon as practicable after its establishment, provide itself with a seal which shall be authenticated by the signatures of the Chief Commissioner, or some other member of the Commission authorised by it to act on its behalf, and of an officer of the Commission authorised by it to act in that behalf.

(2) Judicial notice shall be taken of the seal of the Commission and any document purporting to be an instrument made by the Commission and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (1)*) of the Commission shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

Explanatory note

This is a standard provision. See section 52 of the EEA Act 1998 and section 21 of the HRC Act 2000.

Head 26 Accounts and audit**Provide that**

—(1) The Director, with the agreement of the Commission, shall—

(a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be specified by the Minister, and

(b) provide to the Minister any information which the Minister may require regarding those estimates and also regarding the proposals and plans of the Commission in respect of a period specified by the Minister.

(2) The Director, under the direction of the Commission, shall keep, in such form and in respect of such accounting periods as may be approved of by the Minister with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of moneys received and spent by the Commission, including an income and expenditure account and a balance sheet.

(3) (a) The Commission, the Director and any relevant member of the staff shall, whenever so required by the Minister, permit any person appointed by the Minister to examine the accounts of the Commission in respect of any financial year or other period and shall facilitate any such examination, and the Commission shall pay to the Minister such fee for the examination as may be fixed by the Minister.

(b) In this subsection, “relevant member of the staff” means a member of the staff of the Commission to whom duties relating to those accounts have been duly assigned.

(4) (a) The accounts of the Commission shall be approved by it as soon as is practicable (but not later than 3 months after the end of the accounting period to which they relate) and submitted by it to the Comptroller and Auditor General for audit.

(b) A copy of the accounts and the report of the Comptroller and Auditor General on them shall be presented to the members of the Commission and the Minister as soon as is practicable, and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.

Explanatory note

This is a standard provision. See section 53 of the EEA Act 1998 and section 16 of the HRC Act 2000.

However, the text of the Head has been adapted from the more modern approach set out in section 23 of the Property Services (Regulation) Bill 2009, rather than either of the two Acts mentioned above.

Head 27 Annual report**Provide that**

(1) The Commission shall not later than the 31st day of March in each year prepare and submit to each House of the Oireachtas a report on its activities in the immediately preceding year.

(2) A report under *subsection (1)* shall include information on the performance of the functions of the Commission during the period to which the report relates and, without prejudice to the generality of the foregoing, shall include in the report—

(a) an account of any equality review made **or inquiry conducted** in that period,

(b) such information as the Commission considers appropriate concerning the implementation of equality action plans in that period, and

(c) such other information in such form as the Commission thinks fit or the Minister may request.

(3) In *subsection (2)* “equality review” and “equality action plan” have the same meanings as in **Head 29** [Part VI of the Employment Equality Act 1998 (No. 21 of 1998)].

Explanatory note

While a standard provision (See section 54 of the EEA Act 1998 and section 23 of the HRC Act 2000), it is proposed that the annual report be presented by the Commission directly to the Oireachtas. Subsection (2) and subsection (3) are taken from the EEA Act.

Head 28 Grants to Commission**Provide that**

(1) The Minister may, in each financial year of the Commission, pay to the Commission, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Public Expenditure and Reform, determines towards the expenses of the Commission in the performance of its functions.

(2) The Commission shall be provided with sufficient resources to ensure that it can carry out each of its functions effectively.

Explanatory note

See section 55 of the EEA Act 1998 and section 22 of the HRC Act 2000.

It is not proposed to continue the borrowing powers of the Equality Authority set out in subsection (2) of section 55. These are no longer appropriate.

(2) relates to the Working Group's recommendation (No. 23) that the IHREC should be properly funded to perform its functions and exercise its powers. The Group noted that the HRC and the EA both claim that their funding has been inadequate. The Northern Ireland Human Rights Commission argued for a new statutory provision in its legislation on the issue of funding. The proposed statutory provision read: '*The Commission shall be provided with sufficient resources to ensure that it can carry out each of its functions effectively.*'.'

Head 29 Review of legislation

Provide for

A. re-enactment with amendments of section 39 (part) of the EEA Act 1998 and section 39(c) of the Equal Status Act 2000.

(a) to provide information to the public on and to keep under review the working of the Employment Equality Acts 1998 to 2011 and the Equal Status Acts 2000 to 2011 and, whenever it thinks necessary, to make proposals to the Minister for amending any of those Acts;

(b) to keep under review the working of the Maternity Protection Acts 1994 and 2004, the Parental Leave Acts 1998 and 2006 and the Adoptive Leave Acts 1995 and 2005 and, whenever it thinks necessary, to make proposals to the Minister for amending any of those Acts; and

(c) to keep under review the working of the Pensions Act 1990, as regards the principle of equal treatment and, whenever it thinks necessary, to make proposals to the Minister for Social Protection for amending that Act.

B. re-enactment of 73 of the EEA 1998:

.—(1) Where, in the opinion of the Commission, the working or effect of any of the enactments for the time being specified in *subsections (1) to (4) of section 17 [of the Employment Equality Act 1998]*, or of any provision contained in or made under any such enactment, is likely to affect or impede the elimination of discrimination in relation to employment or the promotion of equality of opportunity in relation to employment—

(a) between men and women, or

(b) between persons who differ in terms of any of the other discriminatory grounds,

the Commission may, if it thinks fit, and shall if so required by the Minister, carry out a review of that enactment or provision or of its working or effect.

(2) For the purpose of assisting it in making a review under this section, the Commission shall consult such organisations of trade unions and of employers as it considers appropriate.

(3) Where the Commission makes a review under this section, it may make to the Minister a report of the review, and shall do so where the review was required by the Minister.

(4) A report under *subsection (3)* may contain recommendations for amending any enactment or provision reviewed.

Explanatory note

In addition to the generic function which needs to be retained of keeping law under review and commenting on new legislative proposals, the Equality Authority has specific functions of keeping stated legislation under review. As recommended by the Equality Authority, it is not proposed to continue the function of providing information to members of the public on individual family leave Acts, as this function will fit better with the Workplace Relations Commission and the Citizens Advice Bureaus.

The function in section 73 EEA Act 1998 relates to keeping exemptions/savers for the specific enactments listed in section 17 of that Act under review. The exemptions allow provisions of these enactments to continue to operate notwithstanding the general rule of non-discrimination.

The Acts involved are

Civil status (Maternity Protection Act 1994, Adoptive Leave Act 1995);

Nationality (Employment Permits Act 2003);

Age or disability (Air Navigation and Transport Act 1946, Merchant Shipping Act 1947, Transport (Miscellaneous Provisions) Act 1971, Merchant Shipping (Certification of Seamen) Act 1979, Irish Aviation Authority Act 1993); and

Age (Protection of Young Persons (Employment Act 1996, National Minimum Wage Act 2000).

Head 30 Powers and functions in relation to enforcement and compliance

Provide

A. A definition of ‘human rights’ for the purposes of these provisions (Heads 30, 31, 33, 34, 35 and 36) as follows :

In this section—

“human rights” means—

(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution;

(b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party and which has been given the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such force; and

(c) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Convention provisions within the meaning of the *European Convention on Human Rights Act 2003*; [amendment inserted by *ECHR Act 2003*]

“statute” has the same meaning as it has in the *Interpretation Act 2005*.

B. A range of possible interventions open to the Commission where it believes there may be an infringement of human rights or equality legislation as follows:

i. To provide information and assistance to persons on equality and human rights issues, including advice to persons who consider that their human rights or rights to equal treatment have been infringed.

ii. To prepare, in consultation with relevant stakeholders, guidelines for promotion of best practice in human rights and equality for specific businesses, groups, sectors or geographical areas.

iii. The Commission may, or if requested to do so by the Minister, shall, prepare for submission to the Minister draft codes of practice in furtherance of one or more of the following aims:

(a) the elimination of discrimination;

(b) the promotion of equality of opportunity in employment and in relation to the matters to which the Equal Status Act 2000 applies, and;

(c) the protection of human rights;

Where the Minister by Order declares that the draft is an approved code of practice for the purposes of this Act, it shall be admissible in evidence and, if any provision of the code appears to be relevant to any question arising in any criminal or other proceedings, it shall be taken into account in determining that question;

iv. As provided for in **Head 32** to request a business to carry out an equality review and prepare and implement an equality action plan or, where appropriate and where the business does not have fewer than fifty employees, to carry out such a review and prepare such an action plan on its own initiative.

v. To provide assistance at its discretion, including legal assistance or representation, to

as provided for in **Head 33**, a person who has instituted or wishes to institute legal proceedings that involve human rights law or practice; or

as provided for in sections 85 and 85A of the Employment Equality Act 1998 and section 23 of the Equal Status Act 2000, to a person who considers that he or she has been discriminated against (within the meaning of the Employment Equality Acts or the Equal Status Acts), including to refer cases of discrimination to the Director of the Equality Tribunal [being replaced with the Workplace Relations Commission], and to seek an injunction in the Circuit or High Court to prevent continuing discrimination.

in either case if there is an important point of principle involved or if it is unreasonable to expect the person to represent him or herself.

vi. To conduct an examination into any act or practice that may be inconsistent with or contrary to any human rights or equality legislation, and, where the Commission considers it appropriate to do so, to endeavour, by mediation or conciliation, to effect a settlement of the matters that gave rise to the examination.

To issue a reasoned opinion following such an examination and require the body to whom the opinion is addressed to respond in writing.

vii. (1) The Commission may institute proceedings in any Court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons.

(2) The declaratory relief the Commission may seek to obtain in such proceedings includes relief by way of a declaration that a statute or a

provision thereof is invalid having regard to the provisions of the Constitution or was not continued in force by Article 50 of the Constitution.

(3) For the purpose of instituting proceedings under this section, it shall not be necessary for the Commission to name or identify the class of persons individually and a class of persons shall be constituted by more than one person in relation to whom the same relief is sought.

viii. To apply to the High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as amicus curiae in proceedings before that court that involve the human rights including equality rights of any person and to appear as such an amicus curiae on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion), or to accept an invitation from either such Court to so appear;

ix. As provided for in **Head 34** to conduct inquiries of its own volition, if it considers it necessary or appropriate to do so for the purpose of the performance of any of its functions; or if it considers it appropriate, at the request of any person who claims that a breach of human rights or equality legislation may have occurred, including where a conciliated or mediated settlement following an examination of any act or practice under **[subsection vi]** above has not proved possible.

x. To serve and enforce non-discrimination notices in situation where the Commission is satisfied following an inquiry that a person has been or is discriminating.¹³

C. A general obligation on the Commission to view these options above as being on a 'sliding scale' and to choose the intervention that is most commensurate with the scale or nature of the complaint or perceived problem and, within that, a specific obligation on the Commission to consider whether an issue can be resolved by mediation before taking a decision to institute legal proceedings under subsection vii of this Head.

Explanatory note

This Head, **Head 11** and **Heads 30 to 35** should be read together. The Working Group approached the powers and functions of the Commission on the basis of distinguishing between (a) general functions and (b) enforcement/compliance functions. The distinction is not a neat one, with inevitable overlap. In addition, some of the individual enforcement functions

¹³ See sections 62 to 67 of the Employment Equality Act 1998. This refers to issuing and subsequent enforcement of non-discrimination notices following an inquiry. As the inquiry power has not been used, these provisions have not been operable, but could be of value in the context of a revised inquiry power of the Commission of Investigations Act type for IHREC.

are more easily presented as stand-alone sections and are so presented in these Heads.

The definition of 'human rights' is taken and adapted from section 11 of the HRC Act 2000. This definition is narrower than the definition to be used for the Commission's promotion work, as it is appropriate that human rights for the purposes of compliance and enforcement be only those rights that have force of law in the State.

Classes of persons

The Human Rights Commission has indicated that they have had particular concern about instituting proceedings where a respondent might challenge on locus standi/ ius tertii grounds the group or class of persons the Commission were claiming to be instituting proceedings for. The proposed amendment is to make it clear that a 'class of persons' for the purposes of vii above is a group the Commission views as a group. The HRC is of the view that such a provision would resolve problems with procedural challenges at the start of litigation and should consequently reduce the cost of the litigation.

Head 31 Codes of Practice

Provide that

.—(1) The Commission may, or if requested to do so by the Minister shall, prepare for submission to the Minister draft codes of practice in furtherance of **one or more** of the following aims:

- (a) the elimination of discrimination;
- (b) the promotion of equality of opportunity in employment and in relation to the matters to which the *Equal Status Act 2000*, applies, and;
- (c) the [protection of human rights].

(2) Before submitting a draft code of practice under *subsection (1)* to the Minister, the Commission shall consult such other Minister of the Government or other person or body as the Commission considers appropriate or as the Minister may direct.

(3) After a draft code of practice has been submitted under *subsection (1)*, the Minister may by order declare that the draft—

- (a) is an approved code of practice for the purposes of this Act, or
- (b) as amended by the Minister after consultation with the Commission, is an approved code of practice for the purposes of this Act, and an order under this subsection shall set out the text of the approved code of practice to which it relates.

(4) An approved code of practice shall be admissible in evidence and, if any provision of the code appears to be relevant to any question arising in any criminal or other proceedings, it shall be taken into account in determining that question; and for this purpose “proceedings” includes, in addition to proceedings before a court and under *Part VII* of the Employment Equality Act 1998 or under *Part III of the Equal Status Act 2000*], proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Director and a rights commissioner [Workplace Relations Commission].

(5) The Minister may, by order, after consultation with the Commission, revoke or amend an approved code of practice.

(6) Every order made under *subsection (3)* or *(5)* shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory note

Based on section 56 of the EEA Act 1998

Head 32 Equality reviews and action plans

Provide for the re-enactment of sections 68 to 72 inclusive of the EEA Act 1998:

See restated text on following pages.

Explanatory note

This is a re-enactment of existing provisions of the EEA Act 1998. These provisions are required to meet the terms of the relevant EU Directives. As core functions of the Equality Authority, it is proposed to re-enact them in this Bill.

A restatement of the text, as prepared by the Law Reform Commission, is set out overleaf. References to the Authority in this text have been amended to refer to the Commission.

Restatement of

PART VI

EQUALITY REVIEWS AND ACTION PLANS AND REVIEW OF
LEGISLATION

Definition (*Part VI*).

68.—In this Part “substantive notice” means a notice under *subsection (1) or (2) of section 70* or such a notice as confirmed (with or without amendment) by the Labour Court F70[, or the District Court, under section 71].

Annotations**Amendments:**

F70 Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (m), S.I. No. 351 of 2000.

Equality reviews and action plans.

69.—(1) For the purposes of this Part, an equality review is—

(a) an audit of the level of equality of opportunity which exists F71[...] in a particular business, group of businesses or the businesses making up a particular industry or sector thereof, and

(b) an examination of the practices, procedures and other relevant factors (including the working environment) of, in and material F72[**to that business or those businesses**] to determine whether those practices, procedures or other factors are conducive to the promotion of equality of opportunity in that employment.

(2) For the purposes of this Part, an equality action plan is a programme of actions to be undertaken F73[...] in a business or businesses to further the promotion of equality of opportunity F72[**therein**].

F74[(2A) An equality review or an equality action plan which relates to matters governed both by this Act and by the *Equal Status Act 2000*, shall deal separately with those matters, and the separate portions of the review or plan shall be treated, for the purposes of this Part, as an equality review or an equality action plan.]

(3) The Commission may invite a particular business, group of businesses or the businesses making up a particular industry or sector thereof to do either or both of the following:

(a) carry out an equality review in relation to their business or businesses;

(b) prepare and implement an equality action plan in respect of that business or those businesses.

(4) The Commission may, if it thinks it appropriate, itself carry out an equality review and prepare an equality action plan in relation to a particular business, group of businesses or the businesses making up a particular industry or sector thereof; and, for the purpose of assisting in the conduct of such an audit or examination as is referred to in *subsection (1)*, the Commission may, with the approval of the Minister, employ one or more persons having qualifications which, in the opinion of the Commission, relate to that examination.

(5) The powers conferred by *subsection (4)* do not apply in relation to any business which has less than 50 employees (and, accordingly, references to a group of businesses or the businesses making up a particular industry or sector thereof do not include such a business).

(6) An equality review and an action plan may be directed at the generality of equality of opportunity or at a particular aspect of discrimination F71[...].

F72[(7) For the purposes of this section:

(a) 'business' includes—

(i) an activity giving rise to employment, whether or not in the industrial or commercial field and whether or not with a view to profit, and

(ii) subject to clause (II) of this subparagraph, the provision of services by the provider of a service (within the meaning of *section 4(6)* of the *Equal Status Act, 2000*), and accordingly this section shall apply in relation to the provision of such services with the modifications that—

(I) the reference in *subsection (1)(a)* to a particular business shall be construed as including a reference to the provision of particular services, and

(II) the references in *subsections (4)* and *(5)* to a business shall be construed as including references to a provider of a service (within the meaning of the said *section 4(6)*), other than *paragraph (f)* thereof), and any other necessary modifications;

b) a 'group of businesses' may be defined by reference to geographical location instead of (or as well as) by reference to control or any other factor.]

Annotations
Amendments:

F71 Deleted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(i) and (v), S.I. No. 351 of 2000.

F72 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(ii), (iii) and (vi), S.I. No. 351 of 2000.

F73 Deleted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(iii), S.I. No. 351 of 2000.

F74 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(iv), S.I. No. 351 of 2000.

Enforcement powers in respect of equality reviews and action plans.

70.—(1) Subject to *subsections* (3) and (4), if it appears to the Commission appropriate to do so for the purpose of an equality review or the preparation of an equality action plan, the Commission may do either or both of the following:

- (a) require any person, by notice served personally or by registered post, to supply to the Commission such information as it specifies in the notice and F75[is] required for the purpose;
- (b) require any person, by notice so served, to produce to the Commission or send to it such document as it specifies in the notice and is in that person's power or control,

but nothing in this subsection shall entitle the Commission to require the supply of information, or the production or sending of a document, relating to a business which has less than 50 employees.

(2) Subject to *subsections* (3) and (4), if it appears to the Commission that there is a failure in any business or businesses to implement any provision of an equality action plan, the Commission may require any person, by notice served personally or by registered post, to take such action as—

- (a) is specified in the notice,
- (b) is reasonably required for the implementation of the plan, and
- (c) it is within that person's power to take.

(3) Before serving a substantive notice on any person, the Commission shall give that person notice in writing (in *subsection* (4) referred to as an “advance notice”) of the proposal to serve the substantive notice and of the proposed contents of that notice.

(4) Where—

- (a) the Commission has given an advance notice to any person, and
- (b) within 28 days from the date of receipt of the advance notice, that person makes representations to the Commission about the proposed

substantive notice, the Commission shall have regard to those representations before deciding whether or not to proceed with service of the proposed substantive notice and, if so, as to its contents.

Annotations

Amendments:

F75 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (o), S.I. No. 351 of 2000.

Appeal against substantive notice.

71.—F76[(1) Subject to subsection (6), a person on whom a substantive notice has been served may appeal to the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.]

(2) Where an appeal under *subsection (1)* is not made, a substantive notice shall come into operation on the expiry of the 42 day period referred to in that subsection.

(3) Where the Labour Court has heard an appeal under *subsection (1)*, it may either confirm the notice in whole or in part (with or without an amendment of the notice) or allow the appeal.

(4) Where the Labour Court confirms a substantive notice, the notice (as so confirmed in whole or in part) shall come into operation on such date as it shall fix.

(5) Where the Labour Court allows an appeal under *subsection (1)*, the substantive notice appealed against shall cease to have effect.

F77[(6) Where a substantive notice concerns an equality review or equality action plan, or a proposed such review or plan, which relates to matters governed by the *Equal Status Act 2000*, the person on whom the notice has been served may appeal to the District Court against the notice, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the substantive notice was served ordinarily resides or carries on any profession, business or occupation.]

Annotations

Amendments:

F76 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (p)(i), S.I. No. 351 of 2000.

F77 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (p)(ii), S.I. No. 351 of 2000.

Enforcement of substantive notices.

72.—(1) If, on an application made by the Commission, the High Court or, as the case may be, the Circuit Court is satisfied that a person on whom a substantive notice has been served has failed to comply with the notice, the court may make an order directing that person to comply with the notice.

(2) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person on whom the substantive notice was served ordinarily resides or carries on any profession, business or occupation.

**Head 33 Provision of legal and other assistance by
Commission**

Provide for the re-enactment of section 10 of the HRC Act 2000

.—(1) This section applies to—

(a) legal proceedings involving law or practice relating to the protection of human rights which a person has instituted or wishes to institute, and

(b) legal proceedings in the course of which a person relies or wishes to rely on such law or practice.

(2) A person (in this section referred to as “the applicant”) may apply under *subsection (3)* to the Commission for assistance of the kind referred to in *subsection (5)* in relation to legal proceedings to which this section applies.

(3) If an application is made under *subsection (2)* to the Commission, then, unless in the opinion of the Commission—

(a) the assistance sought could be obtained by the applicant—

(i) under the [Civil Legal Aid Act 1995](#) ,

(ii) under the [Criminal Justice \(Legal Aid\) Act 1962](#) , or

(iii) by any other means, whether or not provided for by or under any enactment,

or

(b) powers to award redress or grant relief in relation to the matter to which the proceedings relate stand vested in any tribunal or other person and the matter could, in the opinion of the Commission, be more effectively or conveniently dealt with by that tribunal or other person,

the Commission may decide to grant to the applicant such assistance of the kind referred to in *subsection (5)* as is appropriate on any of the grounds referred to in *subsection (4)*.

(4) Each of the following is a ground referred to in *subsection (3)*, namely—

(a) the matter to which the legal proceedings concerned relate (“the matter concerned”) raises a question of principle,

(b) it would be unreasonable to expect the person to deal with the matter concerned without assistance of the kind referred to in *subsection (5)* because of its complexity or for any other reason,

(c) there are other special circumstances which make it appropriate for the Commission to grant such assistance.

(5) The assistance referred to in the preceding provisions of this section is—

(a) the provision, or the arranging for the provision of, legal advice to the applicant,

(b) the provision, or the arranging for the provision of, legal representation to the applicant,

(c) the provision of such other assistance to the applicant as the Commission deems appropriate in the circumstances.

(6) Any arrangements made by the Commission under this section for the provision of legal advice or representation to the applicant may include provision for the recovery of expenses incurred by or on behalf of the Commission in that behalf from the applicant in specified circumstances.

Explanatory note

Section 10 of the HRC Act 2000 refers. The comparable powers of the Equality Authority are in sections 85 and 85A EEA 1998 and section 23 of the Equal Status Act 2000. It is not proposed to restate these in this Bill, but they are cross-referenced in **Head 30** and will continue as powers of the new Commission.

Head 34 Inquiries by Commission

Provide for a power of inquiry along the lines of that set out in the Commissions of Investigation Act 2004 for IHREC. The key features of this mechanism can be summarised as follows:

- In conducting an investigation, the Commission shall, to the greatest possible extent consistent with its duties under this Act seek the voluntary co-operation of persons whose evidence is desired and shall facilitate such co-operation.
- Investigations shall be conducted in private, unless (a) a witness requests that all or part of his or her evidence be heard in public and the commission grants the request, or (b) the Commission is satisfied that it is desirable in the interests of both the inquiry and fair procedures to hear all or part of the evidence of a witness in public.
- Where evidence is heard in private, the Commission may decide who else may be present and a witness may only be cross examined if the Commission so directs.
- Evidence given or any document produced by a witness may not be published (save where directed by a Court or required in the interests of fair procedure). This provision shall not operate to prohibit publication of a report of facts established by the Commission following an inquiry.
- The Commission shall disclose to a person giving evidence, or against whom evidence is given, the substance of any evidence it has in its possession that may be relevant to that person in his or her giving evidence.
- Evidence may be given in different ways (orally in person, video link, affidavit, etc.) as the Commission may see fit.
- The Commission shall have power to compel witnesses to attend and give evidence, produce or disclose documents, and to seek a court order to compel a person to comply with such directions. Provide for offence on the lines of the 2004 Act and allow the Commission to direct payment of his or her legal costs to a person. Where a person incurs additional costs by reason of the refusal of another person to co-operate with an inquiry by the Commission, the Commission may recommend to a court that the first person's costs be met by the second.
- A person may be legally represented and the Commission shall have a duty to inform a relevant person of its powers and of that person's rights. A witness or a person who produces documents as

directed by the Commission has the same immunities and privileges as a witness in a Court.

- For the purposes of an inquiry, the Commission shall have powers to enter into and/or secure premises, inspect, copy or remove documents and direct that any person on a relevant premises co-operate with it. In the case of a private dwelling, the power may only be exercised on foot of a court warrant.
- On the conclusion of its investigation, the Commission shall prepare a written report, based on the evidence received by it, setting out the facts it established in relation to the matters referred to it for investigation.
- A draft report (or relevant extracts) is to be provided by the Commission to any relevant person and such person has the right to object (by written statement) on the basis that fair procedures have not been observed.
- The Commission must consider such statement and may make amendments to its report, seek guidance from a court, or submit its report without amendments. Where amendments are made, the person concerned has a right to be informed of them.
- There is a similar right to make a submission to the Commission where a person considers that material in a draft report is not relevant, or is commercially sensitive.
- In general, a report of an inquiry shall be published by the Commission (but with a saver for pending criminal proceedings).
- A report of an Inquiry enjoys absolute privilege.

Explanatory note

Sections 58 to 67 inclusive of the EEA Act 1998 and section 9 of the HRC Act 2000 contain powers in relation to inquiries.

The Equality Authority has never used these powers. While the Human Rights Commission has conducted inquiries, it has done so in a less formal way than envisaged in the legislation and with the co-operation of the parties. The HRC is of the view that the power of inquiry in the legislation as it stands would be problematic in circumstances where the parties were not co-operative.

It is considered that a power of inquiry along the lines created in the Commissions of Investigation Act 2004 would be more appropriate to the IHREC and the text above is based on recommendation 11 of the Working Group. As with the other powers and functions proposed, the IHREC will be independent in the exercise of these powers and will not require consent to initiate an inquiry.

Head 35 Non-discrimination notices**Provide for**

the re-enactment of sections 62 to 67 of the Employment Equality Act 1998 as amended and their expansion to apply to human rights as well as equality issues.

Explanatory note

This is a re-enactment with amendments of sections 62 to 67 of the Employment Equality Act as amended insofar as they apply to equality legislation. It is proposed that the provisions will also apply to human rights aspect of the IHREC's work.

These provisions currently allow the Authority to issue and enforce non-discrimination notices, following the carrying out of an inquiry by it. As the Equality Authority never in fact carried out an inquiry, these provisions have not been used.

However, the creation of an effective inquiry power which can be used by the new Commission may allow these non-discrimination notice powers to be used effectively.

A restatement of the text, as prepared by the Law Reform Commission, is set out overleaf. References in this text to the Authority have been amended to refer to the Commission.

Restatement of

Sections 62 to 67

Non-discrimination notices

Non-discrimination notices.

62.—(1) Where, in the course of the conduct of an inquiry or after such an inquiry has been conducted, the Commission is satisfied that any person—

(a) has discriminated or is discriminating,

F65[(b) has contravened or is contravening section 8(4) or 10(1) or section 12(1) of the *Equal Status Act 2000*, or]

(c) has failed or is failing to comply with an equality clause or an equal remuneration term,

the Commission may serve a non-discrimination notice on that person, either by personal delivery or by registered post.

(2) Where the Commission proposes to serve a non-discrimination notice on any person, it shall, before the notice is served, notify the person in writing of its proposal to do so.

(3) Notification under *subsection (2)* of a proposal to serve a non-discrimination notice shall—

(a) specify the act or omission constituting the discrimination, contravention or failure referred to in *subsection (1)* to which the notification relates, and

(b) inform the person concerned of the right to make representations to the Commission in accordance with *subsection (4)*.

(4) A person who has received a notification under *subsection (2)* may, within 28 days of the receipt, make representations to the Commission regarding the proposal, and where any such representations are made, the Commission shall consider them before serving a non-discrimination notice on the person.

(5) A non-discrimination notice shall—

(a) specify the act or omission constituting the discrimination, contravention or failure referred to in *subsection (1)* to which the non-discrimination notice relates,

(b) require the person on whom it is served not to commit the act or omission constituting the discrimination or contravention or, where appropriate, to comply with the equality clause or equal remuneration term,

(c) specify, in the case of a discrimination, what steps the Commission requires to be taken by the person on whom it is served in order not to commit the discrimination,

(d) require the person on whom it is served, within a period specified in the non-discrimination notice, to inform the Commission and any other persons so specified of the steps taken in order to comply with the notice, and

(e) require the person on whom it is served, within a period specified in the non-discrimination notice, to supply the Commission with any additional information so specified.

Annotations

Amendments:

F65 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (j), S.I. No. 351 of 2000.

Appeal against non-discrimination notice.

63.—F66[(1) Subject to subsection (6), a person on whom a non-discrimination notice has been served may appeal to the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.]

(2) Where an appeal under *subsection (1)* is not made, a non-discrimination notice shall come into operation on the expiry of the 42 day period referred to in that subsection.

(3) Where the Labour Court has heard an appeal under *subsection (1)*, it may either confirm the notice in whole or in part, with or without an amendment of the notice, or allow the appeal.

(4) Where the Labour Court confirms a non-discrimination notice, the notice, as so confirmed in whole or in part, shall come into operation on such date as it shall fix.

(5) Where the Labour Court allows an appeal under *subsection (1)*, the non-discrimination notice appealed against shall cease to have effect.

F67[(6) Where a non-discrimination notice relates to prohibited conduct within the meaning of the *Equal Status Act 2000*, or to a contravention of *section 12(1)* of that Act, the person on whom the notice has been served may appeal to the District Court, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the non-discrimination notice has been served ordinarily resides or carries on any profession, business or occupation.]

Annotations

Amendments:

F66 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (k)(i), S.I. No. 351 of 2000.

F67 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (k)(ii), S.I. No. 351 of 2000.

Register of non-discrimination notices.

64.—The Commission shall keep and maintain a register of every non-discrimination notice which has come into operation and the register shall be open to inspection by any person at all reasonable times.

Injunctions for failure to comply with non-discrimination notice.

65.—(1) Subject to *subsection (2)*, the High Court or the Circuit Court may, on the motion of the Commission, grant an injunction to prevent discrimination by a person specified in the order of the court concerned of a type so specified.

(2) *Subsection (1)* applies to a case where, in the period of 5 years beginning on the date on which a non-discrimination notice came into operation, the Commission satisfies the High Court or the Circuit Court, as the case may be, that there is a likelihood of a further discrimination, contravention or failure referred to in *section 62 (1)* by the person on whom the notice was served.

(3) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person on whom the non-discrimination notice was served ordinarily resides or carries on any profession, business or occupation.

Offence relating to failure to comply with non-discrimination notice.

66.—A person on whom a non-discrimination notice is served who, at any time within the period of 5 years beginning on the date on which the notice comes into operation, does not comply with the notice, shall be guilty of an offence.

Assistance by Commission in connection with certain references.

67.—F68[(1) A person who considers—

(a) that discrimination has been directed against the person by another person,

(b) that he or she has been adversely affected by the failure or refusal by another person—

(i) to comply with an equality clause or an equal remuneration term,

(ii) to implement a decision, order or determination under this Part or under *Part III* of the *Equal Status Act 2000*, or

(iii) to implement a mediated settlement under section 78 or under *section 24* of that Act, or

(c) that a club referred to in *section 8* of that Act is a discriminating club within the meaning of that section,

may make a request to the Commission for assistance in taking proceedings in respect of which redress is provided for under this Act or that Act or, as the case may be, in making an application to the District Court under *section 8(3)* of that Act.]

(2) Where, having considered a request under *subsection (1)*, the Commission is satisfied that the case to which the request relates raises an important matter of principle, or it appears to the Commission that it is not reasonable to expect the person making the request adequately to present the case without assistance, the Commission may at its discretion, and at any stage, provide assistance to the person—

(a) in making the reference or application, and

(b) in any proceedings resulting from or arising out of the reference or application.

(3) Assistance under this section shall be in such form as the Commission at its discretion thinks fit.

(4) Any function of the Commission under this section may be exercised by an officer of the Commission to whom the function is delegated and any such delegation may specify criteria or other guidelines by reference to which the Commission considers that the delegated function should be exercised.

F69[(5) The relationship between a solicitor employed by the Commission or any barrister retained by him or her and a person requesting assistance under this section shall be the same as the relationship between a solicitor or barrister and a client who is not such a person.

(6) Subsection (5) is without prejudice to the rights and responsibilities of the Commission and the obligations arising out of the relationship between the Commission and the solicitors employed by it.

(7) For the avoidance of doubt, it is declared that sections 59 (prohibition of solicitor acting as agent for unqualified person) and 64 (bodies corporate) of the Solicitors Act 1954 do not apply in relation to the provision by a solicitor employed by the Commission of assistance under this section.

(8) In this section—

‘person requesting assistance’ includes a person to whom assistance is being, or has been, provided under this section;

'relationship' includes rights and privileges arising from the relationship.]

Annotations

Amendments:

F68 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (I), S.I. No. 351 of 2000.

F69 Inserted (18.07.2004) *Equality Act 2004* (24/20004), s. 28, commenced on enactment.

Head 36 Human rights and equality duty of public bodies**Provide that**

A. A public body shall in the exercise of its functions have due regard to the need to eliminate prohibited discrimination, promote equality of opportunity and treatment and protect the human rights of its staff and the persons to whom it provides services. Due regard for the purposes of this section shall mean giving consideration to these matters in the planning and execution of the body's policies and actions, and in its Strategic Plan, and reporting annually on its implementation of this obligation in its annual report or otherwise. This obligation shall not create a cause of action for any individual or legal person.

In determining the extent of this obligation in relation to a particular public body consideration shall be given to the size and resources of the body and the nature of the services it provides.

B. In supporting public bodies to meet their obligations under this section, the Commission may

give guidance to, and promote good practice in public authorities in relation to human rights and equality;

develop performance measures and operational standards for the purposes of assisting public bodies in the auditing of their policies, practices and processes;

encourage public authorities to develop, in consultation with their employees and their service users, written preventive strategies aimed at reducing discrimination in the public sector workplace and in the provision of goods and services to the general public; and

prepare codes of practice setting out operational standards and performance measurement tools for public authorities to help them to integrate human rights and equality into their policies, practices and process, promote a diverse and respectful workplace internally and enhance frontline delivery of services.

C. in this section, 'public body' means

- (a) a Department of State,
- (b) An Garda Síochána,
- (c) a local authority,
- (d) a university or institute of technology
- (e) the Health Services Executive,

- (f) a vocational education committee,
- (g) a person, body or organisation (other than the Defence Forces) established—
 - (i) by or under any enactment (other than the Companies Acts 1963 to 2009), or
 - (ii) under the Companies Acts 1963 to 2009, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or shares held by or on behalf of a Minister of the Government
- (h) a company (within the meaning of the Companies Act 1963) a majority of the shares in which are held by
 - (i) the Government, a Minister of the Government, or directors appointed by a Minister of the Government, or
 - (ii) a body or a number of bodies referred to in paragraphs (a) to (g) or directors appointed by or on behalf of such a body or bodies,
- (i) any other body, organisation or group appointed by the Government or a Minister of the Government, and
- (j) any other body, organisation or group financed wholly or partly out of moneys provided by the Oireachtas, or exercising functions on behalf of a body referred to in paragraphs (a) to (i), whether under statute or not, that stands prescribed for the time being (being a body, organisation or group that, in the opinion of the Minister, ought in the public interest and having regard to the provisions and spirit of this Act, to be prescribed).

A body referred to in this definition is a public body whether it is established before or after the enactment of this Act.

The powers and functions of and services provided by a body referred to in this definition are subject to this section whether they are undertaken or provided, as the case may be, directly by the body or by another entity under contract or service level agreement.

Explanatory note

This Head is a response to the commitment in the Government's Programme for National Recovery 2011-2016 as follows:

*'We will require all public bodies to take due note of equality and human rights in carrying out their functions.'*¹⁴

Recommendation 17 of the Working Group refers. The Head has been drafted on the basis of obliging a public body to formally consider human rights and equality issues relevant to its work, to set out its consideration of relevant issues in its Strategic Plan and to report on issues and events in its annual report. Essentially what is required is that public bodies would consider the human rights and equality environment in which they operate and take steps on the basis of this analysis to resolve existing problem areas and address potential difficulties before they arise. No new rights and no cause of action are created.

The IHREC's role is one of provision of support and not of external monitoring.

The Working Group report recommends that a formal review be undertaken by Government in consultation with IHREC after a period of three or five years. The review should assess the effectiveness of the public sector duty in securing improved human rights and equality outcomes and in assisting public bodies to pre-empt problems on an evidential basis. The evidence could be gathered by way of an independent evaluation commissioned jointly by IHREC and the Department of Justice and Equality. The review should also assess whether there is a need to modify or develop these recommended arrangements - including whether there is a need to institute a formal review and monitoring mechanism and the question of integration with other regulatory assessment procedures – on the basis of the evidence.

¹⁴ Programme for National Recovery 2011-2016, p 54.

Schedule 1 Repeals

Act	Extent of repeal
Employment Equality Act 1998, No. 21 of 1998.	PART V (sections 38 – 67) and PART IV (sections 68 – 73)
Equal Status Act 2000, No. 8 of 2000	PART IV (section 39)
Human Rights Commission Act 2000, No. 9 of 2000	The whole Act
Human Rights Commission (Amendment) Act 2001, No. 35 of 2001	The whole Act
European Convention on Human Rights Act 2003, No. 20 of 2003	Section 7
Civil Law (Miscellaneous Provisions) Act 2011, No. 23 of 2011	Sections 19 and 29

Schedule 2

Incomplete

Provision		
Employment Equality Act 1998		
Section 2, definition of 'Authority'	'the Authority' means the Equality Authority	'the Authority' means the Irish Human Rights and Equality Commission established by [Head 8] of the Irish Human Rights and Equality Commission Act 2012 Drafting note: there are 106 sections in this Act, with many separate references to the Authority. The approach proposed here is neater than replacing each occurrence of the word 'Authority' with 'Commission'. The definition would have to be amended in any event.
Definition of 'discrimination' in section 2 of Act of 1998, as amended by section 19 of the Civil Law Miscellaneous Provisions Act 2011	'discrimination' includes the issue of an instruction to discriminate and, in Part V and VI, includes prohibited conduct within the meaning of the Equal Status Act 2000 , and cognate words shall be construed accordingly;	Need to replace 'Part V and VI' with in [Part XX??] of the Irish Human Rights and Equality Commission Act and Part VI of the Act of 1998
European Convention	Reference to Human	Substitute reference to

on Human Rights Act 2003	Rights Commission in Section 6(1)	IHREC
Equal Status Act 2000		
Section 2. definition of 'Authority'	"Authority' means the Equality Authority	"the Authority" means the Irish Human Rights and Equality Commission established by [Head 8] of the Irish Human Rights and Equality Commission Act 2012

The following Acts and SI make reference to the Human Rights Commission:

Prisons Act 2007 Section 13

Garda Síochána Act 2005 Section 17

Public Service Management (recruitment and Appointments) Act 2004, schedule 2

Finance Act 2003 Section 10

Official Languages Act 2003 Schedule 1

S.I. No 139/2011 Equality Integration Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2011

S.I. No 418/2011 Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011

S.I. No 707/2011 Ethics in Public Office (Prescribes Public Bodies Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2011

S.I. No 217/2010 Equality Integration disability and Human Rights (Transfer of Departmental Administration and Ministerial Function) Order 2010

S.I. No 407/2010 Community Equality and Gaeltacht Affairs (Delegation of Ministerial Functions) Order 2010

S.I. No 645/2010 Ethics in Public Office (Prescribed Public Bodies Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) (No 3) Regulations 2010

S.I. No 70/2009 Occupational Pension Schemes (Preservation of Benefits)(Amendment) Regulations 2009

S.I. No 295/2008 Occupational Pension Schemes (Funding Standards) (Amendment) Regulation 2008

S.I. No 252/2007 Prison Rules 2007

S.I. No 297/2006 Freedom of Information Act 1997 (Prescribed Bodies) Regulations 2006

S.I. No 211/2004 Rules of the Superior Courts (Rights of Attorney General and Human Rights Commissioner To Notice of Proceedings Involving Declarations of Incompatibility Issue Rules) 2004

Direct references in primary legislation to “the Equality Authority”

EqA may draft codes of practice under the PLAs.

- Parental Leave Act 1998 section 22 A, as inserted by the parental Leave (Amendment) Act 2006, Section 12

EqA must be consulted on codes of ethics for An Garda Síochána.

- Garda Síochána Act 2005, Section 17

EqA must be consulted on guidelines on types of disease or physical/mental impairment that a safety-critical worker must notify to a railway undertaking

- Railway Safety Act 2005, Section 112

Powers & duties of EqA concerning prohibited conduct in licensed premises

- Intoxicating Liquor Act 2003, Section 19 & Section 25

EqA is a public body for the purposes of the Official Languages Act

- Official Languages Act 2003, Schedule 1

EqA is not a public body (i.e. part of D/Justice) subject to investigation by the Ombudsman for Children

- Ombudsman For Children Act 2002, Schedule 1

Members of the Equality Authority are accountable persons for payments in respect of professional services, as set out in Schedule 13 and Chapter 1 of Part 18 of the Taxes Consolidation Act 1997

- Finance Act, 2000, Section 20

SIs – direct references to “the Equality Authority”

A. Where references to Equality Authority will need to be replaced by IHREC.

Miscellaneous

The Equality Authority is a prescribed body for the purposes of Section 67 of the Credit Institutions (Stabilisation) Act 2010

- S.I. No. 40/2011 — General Government Secured Borrowings Order 2011.

Regulations making appointments to the National Health Consultative Forum 2006-2008, including a staff member of the Equality Authority. Now obsolete.

- S.I. No. 479/2006 — Health Act 2004 (National Health Consultative Forum Appointment of Members) Order 2006

Substitution of “Equality Authority” for “Employment Equality Agency” as a prescribed body for the purposes of paragraph 1(5) of the First Schedule to the Freedom of Information Act, 1997.

- S.I. No. 67/2000 — Freedom of Information Act, 1997 (Prescribed Bodies) Regulations, 2000

Substitution of “Equality Authority” for “Employment Equality Agency” in the Schedule to the Prompt Payment of Accounts Act, 1997.

- S.I. No. 383/2000 — Prompt Payment of Accounts Act, 1997 (Amendment of Schedule) Order, 2000.

Orders under Equality legislation

Various rules of courts to give effect to provisions of the Employment Equality and Equal Status legislation

- S.I. No. 263/2006 — District Court (Employment Equality Act 1998) Rules 2006

- S.I. No. 275/2006 — Circuit Court Rules (Employment Equality Acts 1998 and 2004) 2006
- S.I. No. 349/2006 — Circuit Court Rules (Equal Status Acts 2000 to 2004) 2006
- S.I. No. 293/2005 — Rules of the Superior Courts (Proceedings Under The Employment Equality Acts 1998 and 2004) 2005
- S.I. No. 879/2004 — Circuit Court Rules (Equal Status Act, 2000), 2004
- S.I. No. 880/2004 — Circuit Court Rules (Employment Equality Act, 1998), 2004

Statutory effect given to code of practice developed by the EqA (refers people to the Equality Authority for advice)

- S.I. No. 78/2002 — Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002

Orders under Disability legislation

Statutory effect given to codes of practice developed by the NDA (refers people to the Equality Authority for advice).

- S.I. No. 484/2011 — Disability Act 2005 (Code of Practice) (Declaration) Order 2011.
- S.I. No. 163/2006 — Disability Act 2005 (Code of Practice) (Declaration) Order 2006

Ethics in Public Office Orders

Members of the Board & the holders of specified posts on the staff of the Equality Authority are referenced in a series of regulations made by order under the Ethics in Public Office Act 1995. Each amends the previous regulations. Only the most recent SI should require amendment.

- S.I. No. 707/2011 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2011.
- S.I. No. 15/2010 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2010.
- S.I. No. 645/2010 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) (No. 3) Regulations 2010.
- S.I. No. 146/2008 — Ethics in Public office (Prescribed Public Bodies, Designated Directorships of and Positions in Public Bodies) (Amendment) Regulations 2008
- S.I. No. 607/2008 — Ethics in Public office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2008
- S.I. No. 678/2006 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of and Positions in Public Bodies) (Amendment) Regulations 2006
- S.I. No. 672/2005 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of and Positions in Public Bodies) Regulations 2005
- S.I. No. 699/2004 — Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) Regulations 2004

B. Where references to Equality Authority should NOT need amendment.

Orders under Equality legislation

Forms for submission of complaints to the Equality Tribunal - reference to the Equality Authority in the *explanatory note* only. No change is required here.

- S.I. No. 321/1999 — Employment Equality Act, 1998 (Section 76 - Right To Information) Regulations, 1999

Employment Rights/IR Orders

The Labour Relations Commission has consulted the Equality Authority, among other bodies, in preparing codes of practice under s.42 of the Industrial Relations Act 1990. The Equality Authority is not, however, explicitly named in the *primary* legislation. No change should be required as the reference is to historical fact.

- S.I. No. 239/2007 — Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other Peoples Homes) (Declaration) Order 2007
- S.I. No. 17/2002 — Industrial Relations Act 1990 (Code of Practice Detailing Procedures For Addressing Bullying in The Workplace) (Declaration) Order 2002

Employment Regulation Orders

This series of SIs sets down minimum pay rates for particular occupations, arrived at collectively by the social partners. There is a standard disciplinary/grievance provision, which makes reference to the Equality Authority. This appears to be a mistake – should the reference be to the Equality Tribunal?

"An employee may wish to challenge a dismissal to a Rights Commissioner, the Labour Relations Commission, the Labour Court, **the Equality Authority**, the Employment Appeals Tribunal or pursue the matter under common law."

- S.I. No. 213/2011 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) 2011.
- S.I. No. 448/2010 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) 2010.
- S.I. No. 215/2009 — Employment Regulation Order (Law Clerks Joint Labour Committee), 2009
- S.I. No. 217/2009 — Employment Regulation Order [catering Joint Labour Committee (For the Areas Other Than the Areas Known Until 1st January, 1994 As the County Borough of Dublin and the Borough of Dún Laoghaire)], 2009
- S.I. No. 224/2009 — Employment Regulation Order [catering Joint Labour Committee (For the Areas Known Until 1st January, 1994 As the County Borough of Dublin and the Borough of Dún Laoghaire)], 2009
- S.I. No. 359/2009 — Employment Regulation Order (Hotels Joint Labour Committee), 2009
- S.I. No. 374/2009 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) 2009
- S.I. No. 5/2008 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) 2008
- S.I. No. 93/2008 — Employment Regulation Order (Agricultural Workers Joint Labour Committee) 2008
- S.I. No. 142/2008 — Employment Regulation Order Catering Joint Labour Committee (for Areas Other Than the Areas Known, Until 1st January, 1994, As the County Borough of Dublin and the Borough of Dún Laoghaire), 2008
- S.I. No. 144/2008 — Employment Regulation Order (Hairdressing (for the Area Known Until 1st January, 2002 As Cork County Borough and, thereafter, Known As Cork City) Joint Labour Committee) 2008
- S.I. No. 149/2008 — Employment Regulation Order (Hotels Joint Labour Committee), 2008
- S.I. No. 4/2007 — Employment Regulation Order (Hotels Joint Labour Committee), 2007
- S.I. No. 190/2007 — Employment Regulation Order (Agricultural Workers Joint Labour Committee), 2007
- S.I. No. 228/2007 — Employment Regulation Order [Catering Joint Labour Committee (For the Areas Known Until 1st January, 1994 as the County Borough of Dublin and the Borough of Dún Laoghaire)], 2007

- S.I. No. 244/2007 — Employment Regulation Order (Hairdressing (For The Area Known Until 1st January, 2002 As Cork County Borough And, Thereafter, Known As Cork City) Joint Labour Committee) 2007
- S.I. No. 296/2007 — Employment Regulation Order (Catering Joint Labour Committee (For Areas Other Than the Areas Known, Until 1st January, 1994, As the County Borough of Dublin and the Borough of Dún Laoghaire), 2007
- S.I. No. 310/2007 — Employment Regulation Order (Contract Cleaning (excluding the City and County of Dublin) Joint Labour Committee), 2007
- S.I. No. 311/2007 — Employment Regulation Order (Contract Cleaning (City and County of Dublin) Joint Labour Committee), 2007
- S.I. No. 24/2006 — Employment Regulation Order (Agricultural Workers Joint Labour Committee), 2006
- S.I. No. 72/2006 — Employment Regulation Order (Contract Cleaning (City and County of Dublin) Joint Labour Committee), 2006
- S.I. No. 73/2006 — Employment Regulation Order (Contract Cleaning (Excluding the City and County of Dublin) Joint Labour Committee), 2006
- S.I. No. 251/2006 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee), 2006
- S.I. No. 276/2006 — Employment Regulation Order (Hairdressing (for the Area Known Until 1st January, 2002 as Cork County Borough and, Thereafter, Known as Cork City) Joint Labour Committee), 2006
- S.I. No. 458/2006 — Employment Regulation Order (Contract Cleaning (City and County of Dublin) Joint Labour Committee) (No. 2), 2006
- S.I. No. 459/2006 — Employment Regulation Order (Contract Cleaning (Excluding the City and County of Dublin) Joint Labour Committee) (No. 2), 2006
- S.I. No. 559/2006 — Employment Regulation Order (Aerated Waters and Wholesale Bottling Joint Labour Committee) 2006
- S.I. No. 560/2006 — Employment Regulation Order (Provender Milling Joint Labour Committee) 2006
- S.I. No. 591/2006 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) (No 2), 2006
- S.I. No. 194/2005 — Employment Regulation Order (Provender Milling Joint Labour Committee) 2005
- S.I. No. 195/2005 — Employment Regulation Order (Aerated Waters and Wholesale Bottling Joint Labour Committee), 2005
- S.I. No. 377/2005 — Employment Regulation Order (Hairdressing (for the area known until 1st January, 2002 as Cork County Borough and, thereafter, known as Cork City) Joint Labour Committee) 2005
- S.I. No. 523/2005 — Employment Regulation Order (Contract Cleaning (City and County of Dublin) Joint Labour Committee), 2005
- S.I. No. 524/2005 — Employment Regulation Order (Contract Cleaning (Excluding the City and County of Dublin) Joint Labour Committee) 2005
- S.I. No. 558/2005 — Employment Regulation Order (Hotels Joint Labour Committee), 2005
- S.I. No. 567/2005 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee), 2005
- S.I. No. 723/2005 — Employment Regulation Order [Catering Joint Labour Committee (For The Areas Known Until 1st January, 1994 As The County Borough Of Dublin And The Borough Of Dún Laoghaire)], 2005
- S.I. No. 15/2004 — Employment Regulation Order (Hotels Joint Labour Committee), 2004
- S.I. No. 88/2004 — Employment Regulation Order (Retail Grocery and Allied Trades Joint Labour Committee) 2004
- S.I. No. 144/2004 — Employment Regulation Order (Catering Joint Labour Committee (For Areas Other Than The Areas Known, Until 1st January, 1994, As The County Borough of Dublin and The Borough of Dún Laoghaire) 2004
- S.I. No. 519/2004 — Employment Regulation Order (Hairdressing (Cork County Borough) Joint Labour Committee) (No. 2) 2004

- S.I. No. 552/2004 — Employment Regulation Order (Aerated Waters and Wholesale Bottling) Joint Labour Committee 2004
- S.I. No. 702/2004 — Employment Regulation Order [Catering Joint Labour Committee (For The Areas Known Until 1St January, 1994 As The County Borough of Dublin and The Borough of Dún Laoghaire) 2004
- S.I. No. 457/2003 — Employment Regulation Order (Catering Joint Labour Committee (For The Areas Known Until 1St January, 1994 As The County Borough of Dublin and The Borough of Dún Laoghaire) 2003