

Scoping Exercise on Better Integration of Equality, Human Rights and Social Inclusion Policy Formulation and Implementation

Department of Community, Equality and
Gaeltacht Affairs

Final report submitted to the Project Steering
Group

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Foreword

To be drafted for the Minister

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1 Context for the Scoping Exercise

As the equality and human rights bodies in Ireland enter their second decade, they face unprecedented challenges. This is an appropriate juncture to ask how their independence and effectiveness may be enhanced in the light of these challenges. This Scoping Exercise is the first step in a wider review of equality and human rights infrastructure. In this section we set out the purpose and approach to the Scoping Exercise, the key features of equality and human rights bodies, the concept of independence and effectiveness, and the challenges equality and human rights bodies face in Ireland.

1.1 Purpose and approach to the Scoping Exercise

The Minister of State for Equality, Integration and Human Rights is planning a review of existing legislation, structures and arrangements in order to enhance equality in an effective way. The Minister engaged PA Consulting Group to undertake a Scoping Exercise to inform the planned review.

The Minister identified three sets of issues for the Scoping Exercise to address:

1. Issues relating to the independence and effectiveness of equality and human rights bodies.
2. Issues in relation to good international practice in the structure and activities of equality and human rights bodies.
3. Issues in bringing coherence between equality policy, policies to tackle poverty, and policies in relation to social exclusion.

The three core equality and human rights bodies in Ireland - the Equality Authority, the Irish Human Rights Commission and the Equality Tribunal - were the main focus of the Scoping Exercise. The Scoping was an unusual exercise in that it was not an evaluation of the independence and effectiveness of equality and human rights bodies. Equally it was not an academic piece of research on their operation as it had a very practical, solution-based focus. It is also not advancing or developing the case for change in the current infrastructure. The Scoping Exercise simply identifies the key issues and options for addressing them taking into account international experience. This report therefore outlines options and ideas for future action rather than recommendations. The Minister intends to undertake a review process which will lead to recommendations on the way forward.

Approach to the Scoping Exercise

This was a short, intensive assignment over a nine week period and involved review of existing documentation and consultation with stakeholders. The scoping was informed by:

- A detailed assessment framework for each of the three questions to guide and inform the Scoping Exercise – both the desk research and stakeholder consultations (Appendix A)
- Extensive desk research (Appendix C)
- Consultation (Appendix B).

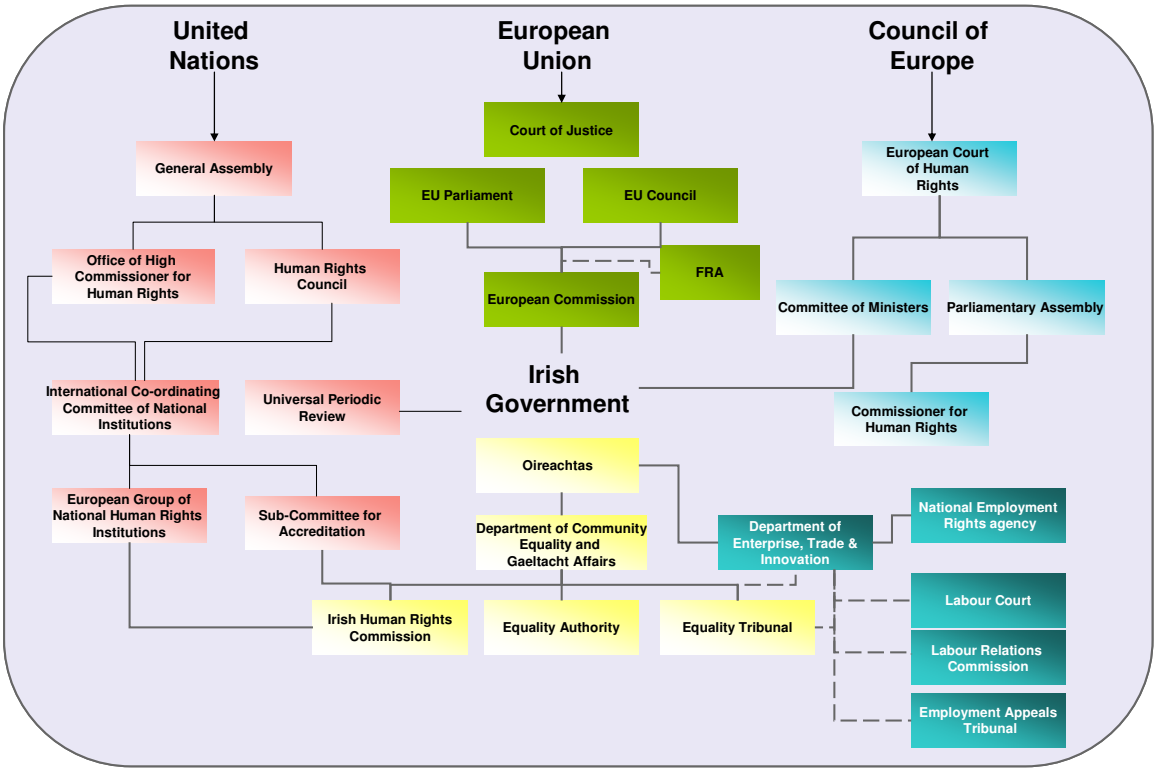
The Scoping Exercise was also asked to consider **international models of good practice** that could be helpful in the Irish context. We consulted with a number of international equality and human rights bodies, reviewed documentation, and identified interesting examples of practice that may be helpful in enhancing the Irish infrastructure. Our assessment framework and identified vulnerabilities informed

this review of international practice. This helped to focus our international practice review on the critical points of interest to the Irish situation. However, we need to be cautious in applying these models without careful consideration. One of the striking features of other models of equality and human rights infrastructure is how diverse they are reflecting different political, constitutional, social, legislative contexts. There is no exact 'fit' therefore between the Irish model and other models.

1.2 Overview of the equality and human rights bodies in Ireland

Equality and human rights bodies exist in their current form in Ireland for the past 10 years. They have been widely regarded internationally as a model of good practice, routinely cited by other national and international institutions. Figure 1.1 gives an overview of the current structure and key linkages with the UN, the EU and the Council of Europe - the principal international fora with competence on equality and human rights.

Figure 1.1 Overview of equality and human rights bodies in Irish and international context



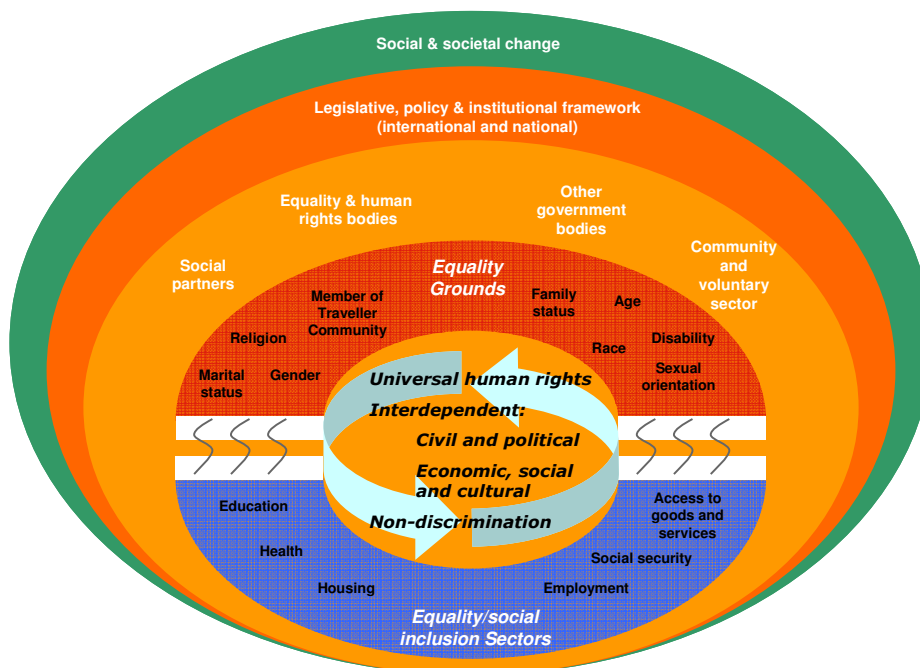
The key features of the equality and human rights bodies in Ireland are:

- The creation of separate bodies through the Irish Human Rights Commission (IHRC) and the Equality Authority to protect and prevent discrimination and human rights abuses. There is a separate body, the Equality Tribunal, for adjudicating cases of discrimination under the Equal Employment and Equal Status Acts. This is an unusual model in the European context as decisions of the Tribunal are legally binding.
- They are underpinned by strong legislative foundation and in the case of the IHRC by an international agreement (the Good Friday Agreement). There are some distinctions between IHRC and the Equality Authority in terms of their accountability, the appointments process, staffing but their overall model is broadly similar.

- Both the Equality Authority and the IHRC have a comprehensive range of statutory functions in relation to legal assistance and promotion/education consistent with international practice. They also develop Strategic Plans to set out their priorities in interpreting their statutory mandates.

Figure 1.2 illustrates the complex connections between human rights and equality bodies with different sectors and organisations including social inclusion. It also illustrates the central formative role of legislation and policy together with the need for equality and human rights bodies to anticipate and respond to emerging trends.

Figure 1.2 Overview of the equality and human rights architecture



1.3 Issues of independence and effectiveness

Independence and effectiveness are two defining hallmarks of equality and human rights bodies. The effectiveness of National Human Rights Institutions (NHRIs) is itself seen by the UN as a critical benchmark of how well States are applying the Conventions.¹ Equality and human rights bodies occupy an unusual space as they are publicly funded and yet their work in essence 'challenges' what government organisations do. A review of the Equality Authority's annual report, for example, shows that 71% of the cases it processed under the Employment Equality Act related to government departments or other publicly-funded bodies while the corresponding figure under the Equal Status Act was 54%.² Similarly the work of the IHRC relates substantially to statutory bodies. Human rights cases to the European Court of Human Rights against the 27 EU Member States averaged 16,000 a year over the past decade.³ This underlines the need for independent, viable institutions that can protect and advance human rights and equality without fear of being undermined by those national institutions. If independence is too weak, equality and human rights bodies risk being 'micro-managed

¹ OHCHR (Office of the High Commissioner for Human Rights) Annual report 2009, p. 169

² Equality Authority, *Annual Report, 2009*

³ Fundamental Rights Agency, *National Human Rights Institutions in the EU Member States - Strengthening the fundamental rights architecture in the EU, 2010.*

or ideologically misused by politicians and their parties'.⁴ However, the requirement for independence and effectiveness also needs to be counter-balanced by the requirement for accountability.

The Paris Principles are internationally recognised as the most definitive benchmark defining independence in relation to NHRIs.⁵ Although originally developed for National Human Rights Institutions (NHRIs), there are growing calls from equality bodies that the principles should also be the benchmark for equality bodies. EU Directives require Member States to designate bodies to implement equality directives but they are not very prescriptive in terms of defining independence. The EU Directives also stipulate that *'these bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals rights, or the implementation of the principle of equal treatment'* (see Appendix D for EU Directives) .

The Paris Principles were adopted by the UN General Assembly in 1993 (Resolution 488/134) and set out the main competences and principles guiding the operation of NHRIs (see Appendix E for an overview of the Principles):

- Competences and responsibilities
- Composition and independence
- Methods of operation
- Other.

NHRIs are accredited by the International Coordinating Committee based on their compliance with the Paris Principles. The accreditation covers 3 categories (A, B and C status). The IHRC has been accredited A status since 2004. A similar accreditation process does not apply to equality bodies unless they are merged with human rights bodies and are accredited through the ICC.

Compliance with the Paris Principles does not automatically mean that accredited NHRIs operate independently and effectively.⁶ They are a necessary but insufficient test of independence and effectiveness. This raises the question of what constitutes independence and effectiveness, which is a complex area. Several studies have focused on the effectiveness of equality and human rights bodies and have developed indicators of independence and effectiveness.⁷ Their findings are broadly similar and conclude that:

- Independence is multi-dimensional involving different dimensions of organisational activity. These dimensions include managerial independence, policy independence, structural independence, financial independence, legal independence, interventional.
- There is an important distinction between formal independence and real independence.
- Independence is dynamic and changes over time either in response to legal changes or emerging trends in the organisation's environment.

In essence, independence is about having the freedom to operate without interference to fulfil an organisation's statutory and strategic remit while being accountable for overall performance. It is

⁴ Equinet, *Between Impartiality and Responsiveness - Equality Bodies and Practices of Independence*, 2008

⁵ See also Council of Europe, *ECRI general policy recommendation Nr.2 - specialised bodies to combat racism, xenophobia, antisemitism and intolerance at the national level*, European Commission against Racism and Intolerance, 1997

⁶ Fundamental Rights Agency, *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU*, 2010.

⁷ Equinet report (op.cit) and International Council of Human Rights, *Assessing the Effectiveness of National Human Rights Institutions*, 2005

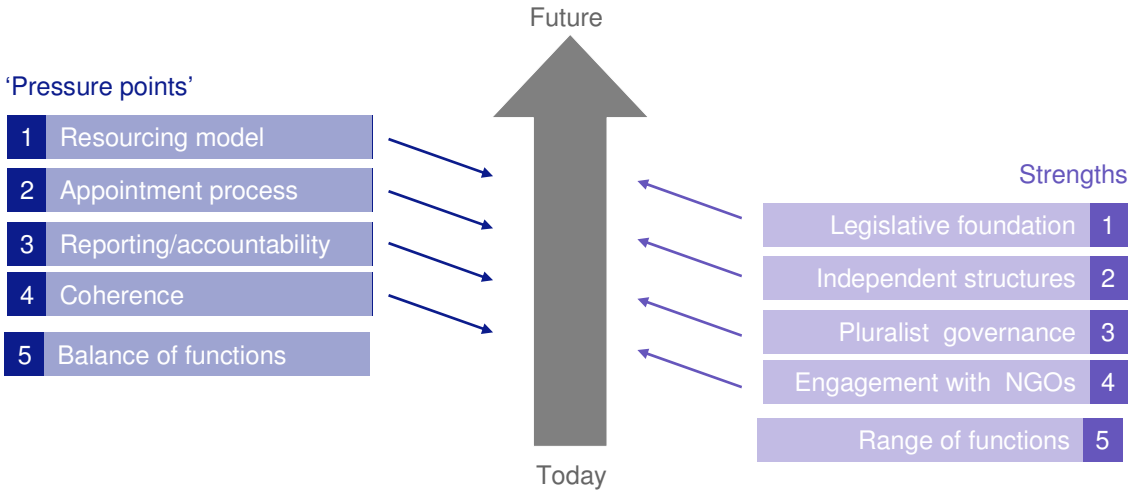
clearly not about 'runaway' agencies where there is no real accountability. There are many levers and dimensions of independence all of which contribute to their independence and effectiveness.

1.4 Balance between strengths and 'pressure points'

The independence and effectiveness of equality and human rights bodies hinge on a careful balance between strengths and 'pressure points' underpinning the system. Figure 1.4 gives an overview of the key strengths and pressure points of the equality and human rights infrastructure based on the findings from the Scoping Exercise. The Scoping Exercise focused on the identified 'pressure points' and vulnerabilities in the system, proposing options and ideas to build on the strengths of the current system. The legislative foundation of both the equality and human rights systems are acknowledged in Ireland, the EU and internationally, as a cornerstone of the equality and human rights infrastructure. The Irish model has been routinely cited as a model of good practice, mainly because of its legislative foundations. This 'hardwiring' of equality and human rights has been a real strength of the system over the past decade.

While this scoping was not an evaluation process, it was clear from consultation with stakeholders that the identified pressure points risk compromising both the independence and effectiveness of the equality and human rights bodies. The question is whether the equality and human rights bodies are currently at a crucial 'tipping point' whereby their current and future impact may be compromised if they fail to take action to strengthen their independence and effectiveness. The legislative foundation has been a real strength but the concern is that the weaknesses in the legislation may also contain future risks.

Figure 1.3 Overview of strengths and 'pressure points'



1.5 Challenges facing equality and human rights

A key capability for any organisation is to evolve in the context of a dynamic, changing environment. It needs to be able to anticipate and respond to trends that may either enhance or diminish its capability to exercise its core mandate. The equality and human rights bodies in Ireland now face a number of critical challenges:

- The public sector economic climate means that equality and human rights bodies have experienced significant resourcing cutbacks which have presented them with new organisational choices and challenges. There is also a greater requirement on publicly-funded organisations to

demonstrate cost effectiveness and impact. This is unlikely to change and Ireland is not unique in this respect.

- At the same time, the socio-economic climate means that more people are likely to experience discrimination in accessing goods and services and protecting their rights. This is likely to lead to increase in demand for information and access to equality and human rights services.
- The EU is developing its competence in relation to human rights arising from the Lisbon Treaty. The EU has been a key driver of equality legislation in Ireland. The Charter of Fundamental Rights and the EU's accession to the European Convention on Human Rights are both significant developments. However, the practical implications of these developments for EU competence on human rights are at this point unclear.

In addition, the EU Agency for Fundamental Rights has identified a number of challenges that NHRI's face at national level. These include a 'lack of political support, a high level of government influence in the appointment processes, in the NHRI's activities, or its resource allocation, as well as a weak protection mandate resulting in weakened credibility'.⁸ Equality and human rights bodies now face unprecedented challenges internationally and Ireland is not unique in this respect.

Format of the report

In shaping this report, we have been mindful that it needs to facilitate and inform the planned review process that will lead to recommendations about the future structure of the equality and human rights bodies:

- To facilitate the work of the review group we have organised the report around key themes. In reality these are interdependent, connected themes - focusing on one theme to the exclusion of others could have unanticipated impacts. There is an important dynamic therefore between different themes. The review group will therefore have to consider them in their totality as well as considering the merits and risks associated with the options put forward for each theme.
- Under each theme, we present a range of options outlining minimal to transformational change. We also outline some of the key benefits and risks associated with each option. As already indicated, the task of the scoping exercise was not to develop recommendations and we have therefore steered away from this.
- The findings from our review of international models are woven through individual chapters rather than presenting them in a single chapter. This makes it easier to make sense of the key examples from international practice as they apply to identified pressure points.

The structure of the report reflects the key 'pressure points' in the system rather than full description of each dimension of independence outlined in the assessment framework. The structure is as follows:

1. Context for the review
2. Theme 1: Appointment and composition
3. Theme 2: Resourcing
4. Theme 3: Balance of functions
5. Theme 4: Accountability, reporting and measurement frameworks
6. Theme 5: Collaboration and overarching perspective
7. Linking equality, poverty and social inclusion.
8. The Equality Tribunal.

⁸ EU Agency for Fundamental Rights report on national institutions, *op.cit.*

As the Equality Tribunal has an investigation/adjudication role, with the distinct features that go with that role, we have allocated a separate chapter to its role. The whole adjudication and investigation structure is also currently being reviewed by the Department of Enterprise Trade and Innovation. This review is due to report at the end of 2010/early 2011 and will have potentially important ramifications for the future operation of the Equality Tribunal.

2 Appointment and composition

One of the key recognised 'tests' of independence is the manner in which Boards and staff are appointed to equality and human rights bodies. Independence and pluralism are key elements underpinning the Paris Principles.

What the Paris Principles say on *Composition and guarantees of independence and pluralism*

Composition and appointment should guarantee pluralist representation to enable effective cooperation with representative of NGOs, trends in religious or philosophical thought, universities, qualified experts, parliament, government departments;

Stable mandate for members through appointment by official act establishing duration.

2.1 Current features in Ireland

The appointment and tenure of members of equality and human rights bodies is a central tenet of independence and effectiveness. It is also one of the most significant concerns raised by stakeholders during this Scoping Exercise. The key distinguishing feature of the appointment process for the IHRC and the Equality Authority is that they are appointed by the Government but there are important distinctions between them. The legislation establishing the IHRC stipulates that the *Government* appoints the Commission⁹ while the *Minister* appoints the Equality Authority.¹⁰ In reality, the Minister has a critical role in both appointment processes.

Both Boards are reasonably large. Both bodies operate a sub-committee structure that is a more effective 'deliberative' process allowing members/Commissioners the opportunity to engage with their respective agendas.

Appointment and composition of Commission

The IHRC currently has a 14 person Commission headed by a fulltime President who has the status of a High Court judge. The original legislation envisaged a Commission of 7 Commissioners plus the President but this was subsequently expanded to 14. The Government appoints the Commission from suitably qualified people and the legislation stipulates that it should have 'regard to the need to ensure that the members of the Commission broadly reflect the nature of Irish society.' (section 5(12)). The Government also has the power to dismiss a member from office. The Government has instituted a selection process whereby a small appointments committee of leading public figures invites applications to the Commission and selects a short-list of suitable candidates. A short-list is then presented to Government from which it appoints members. All of the appointments will have been pre-qualified by the selection committee. This selection process is an informal process agreed with the Government and is not formally constituted. Commissioners are paid an annual stipend.

⁹ Section 5, Human Rights Commission Act, 2000 and Human Rights Commission (Amendment) Act 2001.

¹⁰ Section 41, Employment Equality Acts 1998 to 2008

The current profile of the Commission is outlined in Figure 2.1 and shows a high proportion of academics and lawyers. As such, the current composition could not be construed as 'reflecting the nature of Irish society'.

Figure 2.1: Profile of IHRC Commission

Professor of Politics (UCD)	Barrister - specialising in judicial review and human rights law	Community and voluntary sector - advocate for women's rights
Professor of Law (TCD)	Senior lecturer in International and Human Rights Law (TCD) - visiting professor Human Rights Programme, Harvard Law School	Professor of Psychiatry - specialising in the medical aspects of human rights.
Lecturer in International and European Human Rights law (UCD)	Solicitor (FLAC) and former civil rights activist	Community activist - founder of Trust
Barrister and consultant in legislation and public affairs.	Corporate governance specialist	Professor Emeritus - Centre for development Studies UCD.
Professor of Law (UCG) - specialising in economic, social and cultural rights, rights of persons with disabilities.	Practicing Barrister - specialising in criminal law.	Director of Centre for Progressive Change - services to build new social order in Ireland.

Appointment and composition of the Equality Authority

The Equality Authority has a Board of between 12 and 16 who are appointed by the Minister (now the Minister for Community, Equality and Gaeltacht Affairs) for a four-year period. The Minister also appoints the Chairperson and Vice-Chairperson. The legislation provides for the role to be on a fulltime or part-time basis but the practice to date has been for it to be on a part-time basis. The legislation¹¹ also stipulates the broad composition of the Authority in terms of gender balance (not more than a difference of two between males and females appointed), two employee nominees, two employer nominees and the remainder with a balance of experience in consumer, social affairs or equality issues (including groups disadvantaged according to the grounds), issues relating to the provision of goods or services, or other areas identified by the Minister to be of relevance. The Minister has the power to remove from office the Chairperson or any member and also to reappoint them for a second term. The Department of Finance had sanctioned the payment of a stipend to Board members in 2005 and since 2008 they have received an annual stipend.

Members of the Equality Authority are appointed in a personal capacity. In addition to employee and employer representatives, the Board includes a number of people who are prominent in organisations relevant to the work of the Authority across a number of grounds. It is not possible to profile the members in the same way as the IHRC as neither the Authority's website nor annual report include a profile of members.

¹¹ Employment Equality Acts 1998 to 2008 - Restatement.

2.2 Implications for independence and effectiveness

The appointment process and composition of Boards are a hallmark of the independence of equality and human rights bodies but also a determinant of their effectiveness. A key concern articulated throughout the Scoping Exercise is that the role of the Minister and Government may compromise the independence of both bodies. Whether this has in fact been the case or not is only part of the issue. An equally important question is the perception of the current appointment process as being politically driven. Irrespective of people's perspectives, it is clear that the current system is not open and transparent to people who are not directly involved in the process.

The principal issues identified during the Scoping Exercise to address in the review process are:

- How to ensure greater transparency and openness in the appointment of Commissioners and Board members?
- How to ensure that the composition of the Commission and/or Authority is genuinely pluralist, while reflecting the key capabilities required for the role?
- How to ensure that the size of both bodies is an appropriate balance between being representative and effective. Is the optimum number 14 or would a smaller number increase effectiveness of both bodies?

2.3 Potential Options

Other Models

Figure 2.2 below outlines the size and appointment process for selected bodies in other jurisdictions.

Figure 2.2 Overview of appointment process and size of selected equality and human rights bodies

	CHRC	SHRC	NIHRC	EHRC	HRC (NZ)	ECNI
Size	5 - 8 Currently 6 members	4	10 currently	16	8	16
Fulltime (FT) and part-time (PT)	2 Fulltime 4 Part-time	1 FT - Chief Commissioner 3 PT	1 FT - Chief Commissioner	1 PT (3 days) - Chair	3 FT 5 PT	1 FT 15 PT
Total staff	200	10	27	440	63	141
Process	Transparent, open process Government nominated	Public application process Appointed by Parliament	Process managed by Public Appointments Commission	Selection criteria Government appointed	Appointed by governor General on recommendation of the Minister for Justice	Open recruitment Appointed by Secretary of State

The key features of the appointment process in other jurisdictions are:

- The Scottish model is the only one reviewed where Parliament appoints the Commission. All others are appointed by the Government. It should be noted that the SHRC is one of the youngest

bodies reviewed (set up in 2006) and that its functions are mainly strategic. It does not for example have the legal redress remedies that characterise human rights bodies in other jurisdictions.

- There are open and transparent processes in most jurisdictions to appoint Board members/Commissioners. In some cases, there is a full public appointment process. In the case of the Canadian Human Rights Commission for example:
 - vacancies are advertised on the internet as well as official publication. Notice includes selection criteria and it is open to everybody who is interested to apply.
 - Director of Appointments in the Prime Minister's Office vets the applications to ensure that they reflect Canada's diversity (although there is no legal requirement to ensure diverse representation)
 - Commissioners are appointed by official act by the Governor General on the advice of the Queen's Privy Council, represented by Cabinet, based on recommendations of the Minister for Justice. Parliament does not have to be consulted on the appointment of the Chief Commissioner.
- The size of Commissions varies considerably and there is a mix of fulltime and part-time roles.

Figure 2.2 also includes staff numbers as an indicator of the respective size and responsibility of the bodies referred to.

Options for strengthening the appointment process

Figure 2.3 summarises a range of options from minimum to substantial change to strengthen the appointment and composition of the Commission and Board. A self-evident option is to do nothing and leave the appointment process as it stands. We have not included this as the presumption of the Scoping Exercise is that leaving things as they are is not a viable option for the future.

Figure 2.3 Options for enhancing the current appointment process

2. A	<p>Strengthen the current IHRC appointment process through:</p> <ul style="list-style-type: none"> • Specifying and agreeing capability requirements for the role of Commissioner. This could include expanding the current capability to make it more diverse (and therefore representative), and to reflect emerging needs. • Formalising the current appointment process through a protocol or memorandum of understanding (MoU). This would involve: <ul style="list-style-type: none"> – Developing a capability profile so that Commission will meet requirements (as above) – Agreeing a selection process to include: <ul style="list-style-type: none"> . Open invitation for applications . Selection committee to 'vet' and pre-qualify applications. This could be ex-officio members of organisations prescribed in an agreed protocol of MoU . Submit applications to Government for final approval. • Alternatively the selection process could be managed through the Public Appointments Commission.
	<p><i>Comment: There is no guarantee at present that the Government wouldn't bypass the current selection process. This 'formalisation' option would help to protect the IHRC's informal appointment process while improving transparency and openness. There are no evident downsides to the option. It should also help to improve the 'pluralist' and representative nature of the Commission to more broadly reflect Irish society. One potential risk is that a selection committee comprising ex-officio members taken from the judicial system could perpetuate the current legal dominance.</i></p>
2.B.	<p>Strengthen the appointment process for the Equality Authority by applying a similar process as that outlined in A above. There are two possibilities:</p> <ul style="list-style-type: none"> • Apply this process within the current legislative framework i.e. the Minister continues to appoint the

	<p>Board.</p> <ul style="list-style-type: none"> • Change the legislation so that Government appoints the Board rather than the Minister.
	<p><i>Comment: This would strengthen the appointment process and bring transparency and openness. It would be easy to implement with no obvious risks.</i></p>
2.C	<p>Increase the effectiveness of the Commission and Board through:</p> <ul style="list-style-type: none"> • Reducing the number of Commissioners and Authority members to a maximum of 10. • Appointing a President of the IHRC on a part-time rather than full-time basis.
	<p><i>Comment: This option is motivated by an ambition to improve effectiveness rather than to reduce cost. It is well recognised that large Boards/Commissions have great strength if there is a spread of capability and interests. However, the size of effective Boards is generally between 7 and 10.</i></p>
2.D	<p>Allocating responsibility to the Oireachtas for appointing members of both the Commission and the Authority. A similar process to that outlined in option 2.A would apply but the formal ratification would be by the Oireachtas.</p>
	<p><i>This model is one of the preferred models internationally to secure independence. It enhances the democratic nature of the appointment process.</i></p>

Options A and B would not require legislative change to take effect and are the minimum required to improve transparency and openness associated with the appointment process and composition. A further variation on these options would be to underpin the selection process through legislative change. However, the legislation would need to be sufficiently flexible to ensure that the capability profile of Commissioners could change to reflect emerging needs and trends. The other options would require legislative change.

3 Resourcing

'Adequate' resourcing is one of the hallmarks of effective and independent equality and human rights bodies. In this section we outline current features of the current resourcing system and potential options for the future.

3.1 Current features

The Paris Principles indicate that NHRI's should have *'infrastructure suited to smooth conduct of activities in particular adequate funding.....the purpose of that funding is to have own staff and premises to facilitate independence.'* Resourcing is therefore at the heart of independence and effectiveness. However, the Paris Principles are not specific on what constitutes 'adequate funding', an understandably complex question given the diversity of equality and human rights structures and contexts internationally.

Resourcing for the equality and human rights bodies in Ireland was one of the central concerns raised by stakeholders during the Scoping Exercise. There are three inter-related dimensions to the resourcing question:

- The overall level of resources and whether they are 'adequate' to facilitate independence and effectiveness.
- The resource allocation model used to provide staffing and other resources to equality and human rights bodies.
- The organisational capability of equality and human rights bodies i.e. do they have appropriate staffing required to fulfil their statutory and strategic remits. This question relates not just to the number of staff but also whether they have the appropriate competences including the appropriate mix of management, specialist and administrative skills. The debate on resourcing tends to focus on staff numbers but capability is a wider question involving skills mix, and the appropriate combination of management, professional and administrative staff. By definition the capability required for the effective working of any organisation needs to be flexible to meet emerging needs. The capabilities required to get new organisations off the ground are often quite different to those required for more mature organisations and this also has to be factored into the capability question.

Resources for equality and human rights bodies

Figures 3.1 and 3.2 illustrate expenditure trends in the IHRC and Equality Authority from 2005 to 2009. There was a reduction of 34% in the Equality Authority's overall expenditure between 2008 and 2009. The IHRC expenditure decreased by 27% between 2008 and 2009 compared to year on year increases since 2005. The effect of the IHRC budget reduction is that the pay becomes a more significant component of total budget with discretionary spend reduced from 26 to 12%. Figure 3.4 highlights the growing importance of pay and reduced level of discretionary spend. Discretionary spend is generally allocated to developmental/education activities rather than the 'regulatory' functions of the IHRC and the Equality Authority. Reduced expenditure is therefore having a significant effect on the capability of both organisations and has required adjustments to their operating model.

Figure 3.5 outlines trends in expenditure for the Equality Tribunal. It shows an 8% drop in expenditure between 2008 and 2009. It is also worth noting that most of the Tribunal's budget is allocated for pay - 83% of total budget in 2009. This compares to 64% for the IHRC in 2009. A reduction in discretionary spend has also been a consequence of the reduced resourcing for the Equality Authority. Given the

nature of its functions, the Tribunal does not require programme and discretionary spend to the same extent as the Equality Authority and the IHRC. Non-pay spend in the Equality Authority accounted for 20% of expenditure in 2009 compared to a figure of 40% in 2005.

Figure 3.1 IHRC Expenditure 05 - 09

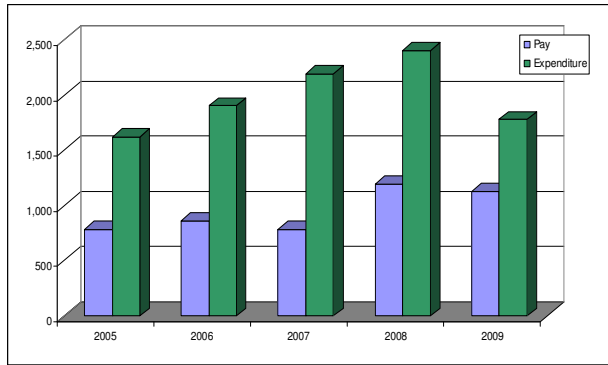


Figure 3.2 Equality Authority Expenditure 05 - 09

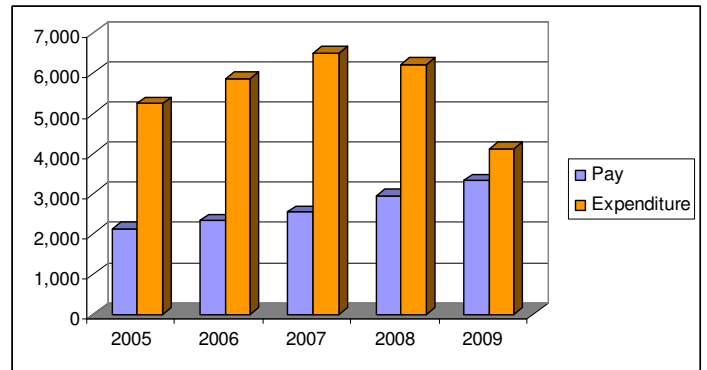


Figure 3.3 IHRC staff trends

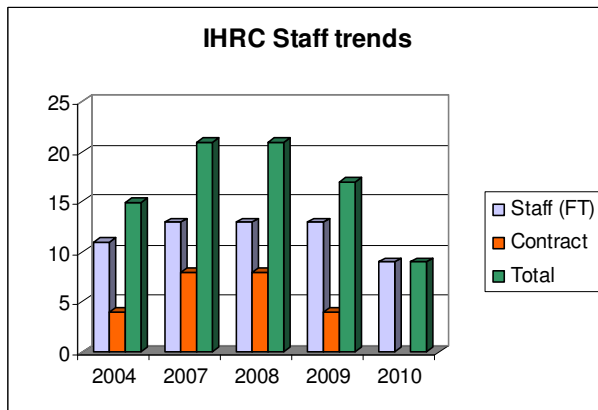


Figure 3.4 IHRC budget breakdown for 2009

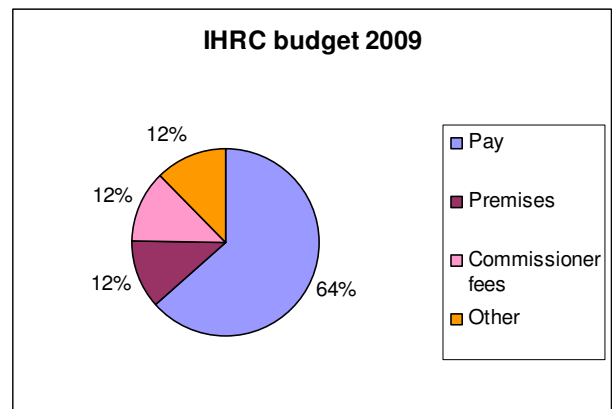
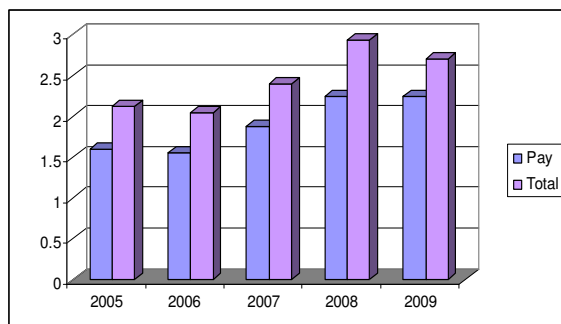


Figure 3.5 Equality Tribunal expenditure



Resource allocation model

A related and critical issue to the overall level of financial resources is how budgets are allocated to equality and human rights bodies. The model is similar for both the IHRC and the Equality Authority. The Minister, with the consent of the Minister for Finance, provides a grant-in-aid each year out of

moneys provided by the Oireachtas.¹² Up to 2010 the grant-in-aid was provided through the vote of the Minister for Justice Equality and Law Affairs. This resource model is consistent with many other publicly funded bodies, but some, including the Office of the Ombudsman, have a separate Vote in the Book of Estimates. One of the key differences is that the Secretary General is the Accounting Officer for the Equality Authority and the IHRC in contrast with the Office of the Ombudsman where the Director General is the Accounting Officer. It should be noted that the Chief Executives of the Equality Authority and the IHRC may both be called before the Public Accounts Committee although they are not legally the Accounting Officer.

The current resourcing model for equality and human rights bodies raises the potential perception that any resource adjustments are related not only to overall budgetary parameters but also to actions undertaken by these bodies in exercising their statutory duties. Equality and human rights bodies are unusual in the sense that they are publicly funded but routinely have to challenge actions of the State. This inevitably means that if equality and human rights bodies are fully exercising their duties they may be in conflict with the State and therefore vulnerable to any actions that may constrain their capability to act. Decisions to significantly cut budgets in equality and human rights can therefore prompt questions about the motivation for any significant resourcing adjustments. A central tenet of independence is that equality and human rights bodies should not only have adequate resources but also some certainty in relation to their resourcing.

Staffing and capability

The equality and human rights bodies are subject to the public sector embargo which applies to all publicly funded bodies. This is a significant constraint and with reduced staff numbers across all bodies but it has particularly affected the IHRC as it had a greater dependence on contract staff (see Figure 3.3). The effect on the Equality Authority has not been as pronounced with current staffing of 34.5 (FTE). There are also a number of other dimensions that are relevant to staffing and capability:

- Within the overall staff complement approved by the Minister, both the IHRC and the Equality Tribunal can recruit staff directly with the competence profile needed for the role. Equality Authority staff are recruited mainly through government departments with just a small number of posts recruited directly mainly lawyers and development specialists. While this does not automatically mean that people allocated to the Equality Authority do not have the requisite competences, it means that the Authority does not have the discretion to recruit staff with the competences it requires to fulfil its statutory and strategic remit.
- The decentralisation programme has also been a factor affecting the capability of the Equality Authority. It has experienced a high staff turnover in addition to the initial logistical challenges of operating from dual locations. The Equality Tribunal also has a decentralised office.
- Equality Authority and the Equality Tribunal staff are technically civil servants (the 1956 Act does not apply to IHRC staff). This status is perceived by some stakeholders consulted as problematic. The concern expressed is that it *could* affect decision-making on individual cases before the Tribunal where the complaint of discrimination can often be against a public body. It is important to emphasise that our clear understanding is that this has not been the experience in the past.

3.2 Implications

The current public sector financial situation inevitably means that there will be significant resourcing pressures on all publicly-funded bodies, including equality and human rights bodies. It should be

¹² Sections 22 of the Human Rights Commission Act 2000 and section 55 of the Employment Equality Act (consolidated)

emphasised that the Irish bodies are not unique in this respect and most bodies consulted and reviewed are experiencing resourcing constraints. Developments over the past two years in resourcing equality and human rights bodies in Ireland have led to serious questions and concerns by stakeholders consulted for this Scoping Exercise about their viability and independence and the motivation for the expenditure cuts compared to what other organisations have experienced. In response to these resourcing adjustments, all have had to adjust their operational models by reducing activity, refocusing activity and priorities, relying on interns and pro-bono work. In the case of the IHRC, they have also received ring-fenced funding from the Atlantic Philanthropies to support specific educational projects, and also the UPR (Universal Periodic Review) process which is currently underway. This is a significant departure for the Commission and one which we understand it did not undertake lightly.¹³ As an independent body it needs to safeguard not only its actual independence but also the optics of receiving funding from third parties, irrespective of the probity and rigour with which such funders apply to their grant-giving processes. In addition to funding the IHRC to support the UPR process, the Atlantic Philanthropies is also funding the Irish Council for Civil Liberties and Amnesty International.

3.3 Potential options

To enhance the resourcing of equality and human rights bodies the key requirements are:

- Equality and human rights bodies, like all publicly funded bodies, now operate under increasing resource constraints. They therefore need to consider how best to optimise their use of resources.
- At the heart of the resourcing question is the allocation model. A key question is whether there is scope to bring more certainty on a multiannual basis to the overall level of resources. A number of jurisdictions have budget allocation mechanisms that are channelled through Parliament such as the Scottish Human Rights Commission. Many also receive their funding through government departments (e.g. Canadian Human Rights Commission, the EHRC). Most jurisdictions are also experiencing significant resourcing pressures. In this context, the question is how to bring some measure of predictability to funding even if the overall level is reduced. In the UK for example, the Spending Review has outlined the broad budget parameters up to 2014. Within these parameters, all publicly-funded bodies, including equality and human rights, have to determine how they will adjust their operating model. The key advantage of the Spending Review process is that it brings an element of predictability on a multi-annual basis.
- The effectiveness of equality and human rights bodies depends on the quality of their staff. For organisations to be successful and meet their statutory and strategic objectives, they therefore need the right level of resources and also the appropriate capability mix. They also need flexibility in resourcing over time so that as they mature and their functions change they can adapt their resourcing and capability accordingly. Many equality bodies for example concentrate initially on developing their 'regulatory' function. As they evolve, they have the option to become more strategic in their approach both in their regulatory and development/education/research function. This means that they need the capability to adapt to these changing strategic requirements. Most jurisdictions give equality and human rights bodies discretion to recruit appropriately qualified staff within an overall agreed complement.

Figure 3.6 outlines a range of options for addressing the central resourcing questions. Some require legislative change while others require changes in practice within the relevant bodies and government departments.

¹³ NIHRC has also negotiated funding from the Atlantic Philanthropies for specific projects but this was not accepted by the UK government.

Figure 3.6 Options for enhancing the current resourcing model

<p>3. A</p>	<p>Optimise use of resources within equality and human rights bodies:</p> <ul style="list-style-type: none"> • In relation to demand-led services, drive out efficiencies and develop a more strategic approach to service levels - the biggest scope for efficiencies are the legal service and information service of the Equality Authority • Secure alternative sources of funding e.g. through philanthropic funders • Outsource services e.g. mediation services (Equality Tribunal), research (IHRC and EA) • Greater use of interns and work experience drawing on pool of graduates currently without employment • Expand the range of shared services for IT, HR, finance.
	<p><i>Comment: While these will address the short-term resourcing issues, there are risks associated with all of these options. In relation to the first, the risk is that the services are scaled back to the extent that they are not viable. The second option also potentially creates issues in relation to independence and is also not a long-term solution. There is some scope for outsourcing but the criteria need to be clearly agreed e.g. volume and nature of cases. While the use of interns is not ideal, and inevitably means higher turnover than would normally be expected, it offers an attractive option given the market for graduates at present. Our understanding is that since 2008, equality and human rights bodies have already agreed shared services arrangements and the scope for any further sharing is limited.</i></p>
<p>3.B.</p>	<p>Change the current funding model so that:</p> <ul style="list-style-type: none"> • Funds are now approved through the Oireachtas - this would require the establishment of an Oireachtas Committee • Budgets are allocated on a multiannual basis within an agreed funding framework.
	<p><i>Comment: the first option would require legislative change and would only work in the context of an overall agreed framework. It is also questionable whether it is workable under the Constitution as all moneys voted by the Oireachtas have to be initiated by Government. The second option could be implemented although there is no tradition of this approach in Ireland.</i></p>
<p>3.C</p>	<p>Develop staff capability:</p> <ul style="list-style-type: none"> • Remove the public sector embargo from the three bodies. This would allow them to recruit within overall staff complement agreed by the Minister or the Oireachtas • Give the Equality Authority discretion to hire its own staff within the overall staff complement agreed by the Minister or the Oireachtas. The staff profile should be a mix of fulltime, contract, part-time and interns. • Allocate additional resources to the Equality Tribunal on a short-term basis to address the current waiting time
	<p><i>Comment: The first two of these options are particularly difficult in the current environment. A key risk with the second option is that the Authority would have a static staff profile without an appropriate level of turnover essential to renewing and refreshing its capability. This could be overcome by having a certain proportion of contract staff for specified periods of time. This could in itself be a potential risk as contracts may not be renewed leading to further decrease in numbers. An alternative option is to have a rotation system for legal professionals across the civil service. This raises wider questions that go beyond the brief of this Scoping Exercise.</i></p>

4 Balance of functions

The human rights and equality legislation confer extensive statutory functions on the Equality Authority and IHRC. In this section we consider how these functions may be enhanced.

4.1 Features and implications

Both the Equality Authority and the IHRC have extensive statutory powers to fulfil their mandate as summarised in Figure 4.1. The Equality Authority covers discrimination under 9 grounds - gender, marital status, family status, age, sexual orientation, religion, race, disability, traveller community. Within their statutory functional mix, the two organisations have important discretion to decide where they will allocate their resources i.e. what aspects of their statutory functions to prioritise. Each body prioritises its work through a three year Strategic Plan.

The key features of the functional portfolio of the Equality Authority and IHRC are as follows:

- The 'regulatory' function of the Equality Authority has been a critical element of its work to date. The Authority's power to provide assistance at its discretion to individuals who believe they have been discriminated against has been an important lever in tackling discrimination. It is not unusual for equality bodies to prioritise its regulatory function in the first instance. In many ways this demonstrates that it has genuine authority and power to protect individuals who have been discriminated against.
- The work of the IHRC has also had a strong legal focus and a key part of its work is to provide observations on draft legislation. It is essentially a 'watchdog' whose effectiveness depends on the quality of its advice. While it also has power to provide assistance to people whose rights have been infringed, this is not as extensively used as by the Equality Authority. It has not been a 'demand-led' organisation in the way that the Equality Authority has been in relation to its legal cases.
- Both organisations also have critical, strategic powers that are up to now under-developed e.g. conduct of inquiries, development of codes of conduct.¹⁴
- Both organisations have a development, education and research role - three critical roles in developing equality and human rights. The research role builds evidence of the scale and nature of discrimination and rights while the development function is central to preventing discrimination and human rights abuses.¹⁵ Public sector education is a specific project of the IHRC.
- The Equality Authority also has an important information role in relation to equality and other legislation.
- Both the IHRC and the Equality Authority have strong joint working relationships with their equivalent bodies in Northern Ireland. There is a Joint Committee of the IHRC and the NIHRC. The Authority and the ECNI also meet routinely with joint Board meetings and other forms of interaction.

¹⁴ The Equality Authority has developed one Code of Practice on Sexual Harassment and Harassment at Work.

¹⁵ Equinet has recognised that 'the promotion of equality is as essential to anti-discrimination strategies as the processing of complaints'. See Equinet report, *Promoting Equality: Overview of positive measure used by national equality bodies*, October 2008

The critical question for all equality and human rights bodies is the appropriate balance between their 'regulatory' and other development functions (including promotion, education, communication and research). This is a decision for each organisation. A further question is the extent to which lessons from legal cases contribute to development priorities and focus. Legal remedies provide important form of redress for individuals but a more profound question is how they are changing behaviour and thereby contributing to the elimination of discrimination. Equality and human rights proofing are key levers but they do not have statutory basis.

4.1 Summary of statutory functions of the Equality Authority and the IHRC

Body	Functions
IHRC	<ul style="list-style-type: none"> • To keep adequacy and effectiveness of law/practice under review; • To examine legislative proposal (if requested) • Consult with national and international bodies • Make recommendations to strengthen, protect and uphold human rights (own or government initiative) • Promote understanding/awareness of human rights - research and education • Conduct enquiries • Publish reports on research/enquiries • Apply to be Amicus curiae in proceedings • Participate in Joint Committee with NIHRC • Provide assistance to people in legal proceedings • Institute legal proceedings to vindicate rights of individual or classes of individual
Equality Authority	<ul style="list-style-type: none"> • To provide assistance to people who have been discriminated against • To work towards the elimination of discrimination in relation to employment • To promote equality of opportunity • To provide information to the public • To keep relevant legislation under review • Prepare Codes of Practice to eliminate discrimination and promote equality • Undertake research and information • Conduct an inquiry on its own initiative or on the initiative of the Minister • Conduct equality reviews and develop equality action plans • Review legislation relating to equality

Understanding the impact of legal cases beyond the impact at individual level would provide an important evidence base for deciding on future development priorities of equality and human rights bodies.

4.2 Options

Other models

A number of key gaps were consistently highlighted by stakeholders during the Scoping Exercise:

- The first was a call for a public duty similar to that which applies in Northern Ireland (section 75 of the Northern Ireland Act), the UK and Sweden. The Equality Commission (NI), the Equality and Human Rights Commission, and the Swedish Ombudsman all have binding powers to ensure that positive duties imposed on public and private sectors are complied with.

- The second was a call to include socio-economic status as an additional ground under the equality legislation. Apart from Belgium and Denmark whose legislation includes social origin as a discrimination ground, the main other examples are in the newer EU Member States notably Romania, Lithuania, Latvia, Slovakia, Estonia, Czech Republic. However, there is virtually no relevant case-law as yet in any of these countries to indicate how this ground is being implemented in practice. In addition, equality bodies are still comparatively young in the newer member states and still evolving. It is therefore too early to gauge the impact of including socio-economic status as a ground. The UK government had included a socio-economic equalities duty in Part 1 of the Equality Act 2010. This provision was scrapped in November but will not affect the new public sector Equality Duty contained in section 149 to 157 of the Act. The complex connection between socio-economic rights, institutions, policies and standards was highlighted and discussed in the NESC 2002 Strategy Report.¹⁶
- Further issues raised mainly related to exemptions under the current legislation.

Public Duty

One of the most frequently referred-to models of public duty during the Scoping Exercise was section 75 of the Northern Ireland Act 1998. Section 75 requires public authorities to have 'due regard to the need to promote equal opportunity and community relations, and to develop an equality scheme to show how they propose to meet their duties under section 75. The intention behind the public duty provision was to 'radically overhaul the process of policy-making and to create profound change in the administration of government and of public authorities.....Its intention was, and remains that every policy action by designated public authorities would, in its development, take account of its impact on equality of opportunity and good relations.'¹⁷ As such, section 75 was designed as a central instrument in changing the behaviour of public bodies (270 designated public authorities). The Equality Commission in Northern Ireland is required by statute to review the effectiveness of the duties imposed. The provision was evaluated by the Commission in 2007 and the evaluation found that:

- Section 75 has been effective in bringing about more informed, evidence-based policies
- It has also been effective in promoting a more inclusive policymaking process through better consultation.

However, the review found less evidence of the impact of legislation on individuals and recommended a move away from an essentially process-driven approach to a more outcome-based approach. The Commission included a range of recommendations to strengthen section 75 but did not recommend changes to the legislation which it felt were sufficient at that point. From the perspective of the Equality Commission therefore, section 75 has been an important instrument in influencing policy and decision-making by public services which has potential to have more impact. It should be noted that the review of section 75 focused only on the benefits and did not include the costs to public authorities of implementing the provision.

Other jurisdictions are also developing some innovative approaches that could be considered. These include:

- Extensive use of Alternative Dispute Resolution (mediation) by the Canadian Human Rights Commission has had a significant impact (60% of all complaints now resolved through ADR) and time for complaints has decreased from an average of 2 years to 8 months. The Canadian Human Rights Commission is trying to re-balance its resources to prioritise strategic rather than demand-led, regulatory activities (currently approximately 30:70% in terms of annual budget).

¹⁶ NESC , *An Investment in Quality: Services, Inclusion and Enterprise*, 2002.

¹⁷ Equality Commission for Northern Ireland, *Section 75 - Keeping it Effective*, May 2007

- Development and piloting of a human-rights based approach to policy in Canada through its Human Rights Maturity Model. Other jurisdictions (such as the UK) are also reviewing how human rights concepts, language and tools are being used by equality bodies in their work.¹⁸
- Strengthening mandate of NHRIs to include human rights and business.¹⁹ This is a focus of the ICC and a number of NHRIs e.g. Danish Institute of Human Rights, Scottish Human Rights Commission.
- Extensive research and education programme (Denmark).
- Initiatives to engage with the public through social media and multimedia.
- Joint campaigns across countries to highlight specific problems e.g. Nordic campaign 'Keep them Safe' in relation to rights of refugees.

Potential options

Figure 4.2 outlines potential options for strengthening the impact of equality and human rights bodies through their statutory functions. The first two options do not require legislative change.

Figure 4.2 Potential options to enhance functions of equality and human rights bodies

4.1	<p>Develop a more strategic approach to the 'regulatory' function of the Equality authority and the IHRC through:</p> <ul style="list-style-type: none"> • Assessing the impacts of legal cases and disseminating information on the key impacts to inform policy at all levels - government, partners, private sector and NGO sector. • Developing codes of practice to assist employers and providers of goods and services in designing their services. • Prioritise strategic, innovative approaches to promoting equality and human rights
	<p><i>Comment: The 'regulatory' function of the Equality Authority has been more extensive than the IHRC. There has been little research however on what the key lessons learned are - what have we learned from case law in Ireland to inform strategic priorities elsewhere?</i></p>
4.2	<p>Introduce a requirement for government to provide commentary/explanation in cases where it rejects observations of the IHRC²⁰ or Equality Authority on legislation/policy.</p>
	<p><i>Comment: This would improve transparency on the effectiveness of equality and human rights bodies</i></p>
4.3	<p>Expand legislative functions in relation to equality by:</p> <ul style="list-style-type: none"> • Introducing a statutory public duty function similar to that which exists in NI and the UK. • Expand existing grounds by introducing a new ground of socio-economic status
	<p><i>Comment: Evidence from other countries suggests that the public duty is having an impact on policy and decision-makers. The key risk is that it would be a resource-intensive and therefore costly process relative to perceived benefits, particularly in the context of a shrinking public service where resources will be more constrained. The cost to public authorities of implementing section 75 was not included in evaluation conducted by the Equality Commission. In relation to the second option, a number of countries have included a variation of socio-economic status as a ground but there is little caselaw to date to demonstrate its impact and potential benefits. The main benefit of including this ground is that it would help the linkages with social inclusion.</i></p>

¹⁸ British Institute for Human Rights and the Equality and Diversity Forum, *Human Rights and Equality in the Voluntary Sector*, 2010

¹⁹ ICC, *Edinburgh Declaration on Business and Human Rights*, October 2010

²⁰ OHCHR Annual report 2009 calls for more effective government follow-up to recommendations from NHRIs.

5 Reporting, accountability and measurement frameworks

Accountability is an integral requirement for all public bodies. The central question for equality and human rights bodies is to ensure that accountability frameworks enhance independence and effectiveness. In this section we outline current features of the accountability framework, its implications and potential options to enhance the framework.

5.1 Current features in Ireland

A defining feature of equality and human rights bodies is to hold other organisations accountable for their actions in relation to equality and human rights. There is also an obligation on equality and human rights bodies to be accountable for their actions and to be open and transparent in how they conduct their business.

Accountability and reporting

Both the Commission and the Authority are accountable to the Government through their 'sponsoring' Minister. The Commission and the Authority submit an annual report to the Minister which the Minister in turn lays before the Houses of the Oireachtas. In addition, the Commission and the Authority submit financial accounts directly to the Comptroller and Auditor General. The Chief Executives of both the Commission and the Authority are also accountable to the Public Accounts Committee, and the Commission may also be requested by other Committees (either Dail or Joint Committees) to give an account of the Commission's work.²¹

The legislation relating to the Equality Authority allows for a fuller role by the Minister in requiring information and the format that information should be provided.

Measurement frameworks

There are two dimensions to consider in relation to measuring effectiveness:

- **How each body assesses and demonstrates performance according to their statutory remit and implementing their strategic plan.** As publicly funded bodies, the IHRC and the Equality Authority report on activities throughout the year in their annual report. The IHRC is mainly focused on compliance with international treaty obligations in terms of assessing performance. The Equality Authority has been actively developing impact indicators through its Strategic Plan. There are inherent difficulties in measuring impact for organisations like the Commission and the Authority whose remit covers critical and intricate areas of public policy. Nevertheless, there is an increasing requirement on publicly funded bodies to demonstrate what difference they are making in terms of achieving their legislative remit and wider government policy. In addition, equality and human rights bodies engage with a wide range of organisations to deliver their strategic priorities.
- **How to measure progress in relation to equality and human rights in Ireland.** This is a larger and arguably more critical question. One of the key gaps up to now both in Ireland and internationally has been the lack of quality data relating to equality and human rights to facilitate the

²¹ Section 14 of Human Rights Commission Act 2000 and section 50 of Equality Employment Act. Note: the legislation includes exemptions whereby Chief Executive may not be required to give an account of their activities.

development of a measurement framework. Important steps have been taken by the Equality Authority, the CSO and the ESRI to bridge these gaps through inclusion of:

- An equality module in the Quarterly National Household Survey and subsequent report which provided the first representative estimates of the experience of discrimination across a range of life domains.
- Equality variables for all equality grounds in the 2006 Census (except sexual orientation). It is expected that these equality variables will also feature in the 2011 Census.
- Equality research framework contracted with the ESRI.

5.2 Implications

Accountability and reporting

The Scoping Exercise identified a number of concerns arising from the current accountability arrangements. The current accountability and reporting arrangements show that, while the primary accountability is to the Government, the legislation also provides for a potential role and involvement by the Oireachtas through the PAC and any other committees. This is an important but underutilised role and the right of initiative rests with the particular committee rather than the Authority or the Commission.

The single most important concern raised throughout the scoping was the perceived vulnerability of bodies to government action. Two dimensions featured routinely in the responses and in the documentation reviewed:

- The potential vulnerability of equality and human rights bodies to government sanction arising from actions taken to protect/advance equality and human rights. The remit and mandate of equality and human rights bodies inevitably mean that they will be 'challenging' /questioning government bodies, actions and policies. At times, this can understandably be problematic for government departments and agencies. Stakeholders consulted for the Scoping Exercise felt that there has been a subtle change arising from the change in reporting relationships from the Department of Justice, Equality and Law Reform, to the Department of Community, Equality and Gaeltacht Affairs. Stakeholders perceive this as a function of their different mandates.
- The opportunity to strengthen the democratic support for equality and human rights bodies by engaging with politicians. There are potential risks associated with being accountable to the Oireachtas as the ideological complexion of Parliament could mean a more 'competitive' rather than collaborative relationship. However, the critical point is that the opportunities at present are limited to the Public Accounts Committee and to informal opportunities for influencing. There is nothing to prevent equality and human rights bodies from working with and influencing Oireachtas members under the current accountability arrangements.

It should be emphasised that while many stakeholders argued that accountability to Parliament would enhance independence and effectiveness this was not a unanimous view. The counter view was that accountability via a government Minister meant that there was an opportunity to influence and work effectively with the Minister and his officials. It could be more difficult to influence in a parliamentary context.

5.3 Potential options

5.3.1 Other Models

Accountability and Reporting

The main alternative accountability model internationally is for equality and human rights bodies to be directly accountable to Parliament. Scotland and Canada both have systems which are defined by accountability to their Parliaments. This allows them not just to be accountable but also to engage with parliamentarians on key equality and human rights issues. Under the Canadian model, the Government Operations Committee overviews plans and priorities and routinely selects public-funded bodies to justify their priorities. On the substantive issues of equality and human rights, the Commission interacts with two justice committees in the Commons and the Senate.

The Scottish SHRC is also accountable through Parliament. This has worked very well with good collaborative working relationships to date and is viewed by many stakeholders as an alternative accountability model.

Equality and human rights measurement

Given the importance of being able to demonstrate impact to all key stakeholders, this is an area that many organisations have been concentrating on. However, as already referred to, it presents some complex questions relating to measurement. The challenge is at two levels:

- How can individual equality and human rights bodies demonstrate that they are having an impact and providing value for money? As publicly-funded organisations, equality and human rights bodies are obliged to report on their performance in a way that goes beyond indicators of efficiency i.e. relating inputs and activities. However, it is notoriously difficult to answer the question how effective equality and human rights bodies have been. Ideally, any evaluation to be rigorous should have baseline information outlining the situation before the institution was established as well as an extended survey of their work. Given the poor quality of baseline data on equality and human rights in Ireland and other jurisdictions, this has not been possible. Nevertheless, it doesn't rule out the potential for evaluations by equality and human rights bodies of particular actions or programmes into the future by establishing baseline data at the time they are set up. An additional complicating factor is, even if such baseline data existed, to what extent could impacts be attributed to equality and human rights organisations and not their partner organisations for example. More progress has been evident in the equality rather than the human rights field in considering these questions. A recent EU Commission Study has proposed a conceptual framework for evaluating progress in equality and anti-discrimination, and the statistical data need to evaluate progress.²²

This framework proposes three evaluation methods:

- Measurement of discrimination indicators.
- Measurement of the progress of anti-discrimination policies indicators
- Measurement of the effect of anti-discrimination policies indicators.

This is an intricate measurement framework but provides a basis for considering indicators and data requirements in Ireland.

- A second and related question is how to monitor social outcomes from an equality and human rights perspective and provide an evidence base to inform policy priorities and identifying

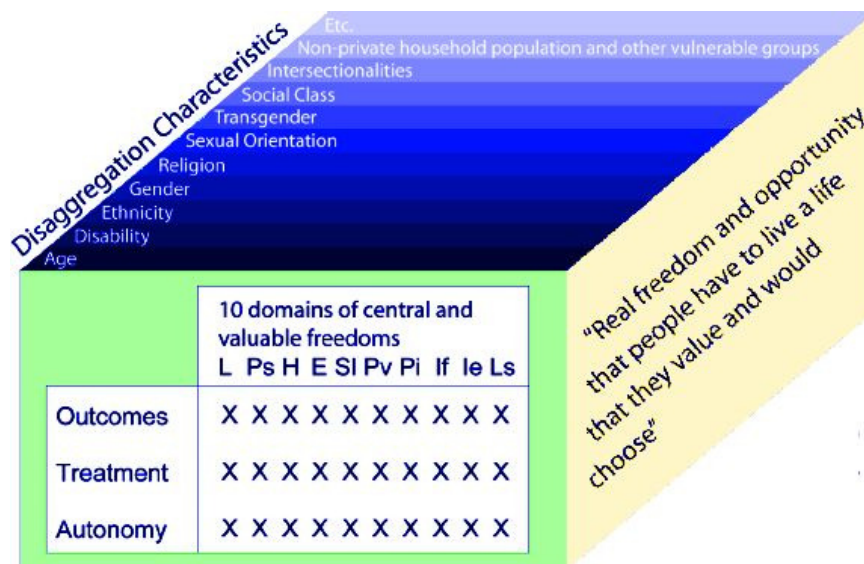
²² European Commission, DG for Employment, Social Affairs and Equal Opportunities, *How to measure progress in combating discrimination and promoting equality?*, Final Report 2008

inequalities and human rights issues. One of the most interesting projects has been the Equality Measurement Framework (EMF) which has been developed for the Equality and Human Rights Commission by the LSE. This is not a performance framework to measure the impact of the EHRC but to assess the level of inequality across the State. Figure 5.1 illustrates the EMF which is essentially a three-dimensional framework. The EMF defines the notion of equality in terms of 'substantive freedom' - the central and valuable things in life that people can actually do and be - which has three aspects:

- Equality of outcomes
- Equality of process (unfair treatment, or being treated with dignity and respect)
- Equality of autonomy (empowerment, or the degree of choice and control).²³

It also identifies 10 domains and a range of equality characteristics. The Framework measures inequality across the domains, in terms of outcomes, process and autonomy by a range of equality characteristics. Crucially it draws on existing data sources in the UK. The recently published Triennial Review of the EHRC is based on the EMF.²⁴

Figure 5.1 Overview of the Equality Measurement Framework



The UK also set up a National Equality Panel in 2008 comprising nine members and a chairman all of whom are academics. Their remit was to consider the evidence in relation to equality and in particular to consider:

- *What does the best available evidence reveal about the relationships between the 'equality strands', other dimensions of equality such as class, tenure and geography, and employment, income and wealth?*
- *What does the evidence reveal about how these have changed over time?*
- *What are the gaps in the evidence relating to these questions and how should they be addressed?*

²³ For further information on the EMF see <http://www.equalityhumanrights.com/key-projects/equality-measurement-framework/>

²⁴ EHRC, *How Fair is Britain: the First Triennial Review*, 2010

The Panel recently published an extensive report addressing these questions which provides a strong evidence base for developing public policy on equality.²⁵ This work underlines the critical importance of a strong evidence base for developing policy.

A number of Irish, EU and international studies have also looked at measurement indicators on poverty and social inclusion. These include the Survey on Income and Living Conditions, which measures poverty and deprivation; the UN Poverty Index which combines measures such as life expectancy, literacy, long-term unemployment and relative income; and the NESC report on national well-being indicators which covers some of the areas covered by the UK Equality Measurement Framework. In addition the Office for Social Inclusion is now developing proposals for performance indicators for each stage of the lifecycle articulated in *Towards 2016*. The Office is developing these performance indicators through the Technical advisory Group (TAG) which supports the *National Action Plan for Social Inclusion 2007-2010* (NAPSI). To ensure coherence between government policies relating to poverty and social inclusion, the work has combined the 23 long-term goals in *Towards 2016* and the 12 high-level goals in the NAPSI. In effect, the 12 NAPSI goals provide targets relating to the 23 goals in *Towards 2016*.

5.3.2 Potential options

Figure 5.2 outlines potential options to enhance accountability and measuring effectiveness.

Figure 5.2 Options to enhance accountability and measuring effectiveness.

5.1	Establish accountability via the Oireachtas rather than through government.
	<i>Comment: This would require legislative change and also the establishment of an appropriate Oireachtas Committee to oversee the substantive work of the equality and human rights bodies.</i>
5.2	Establish Oireachtas Committee on Equality and Human Rights
	<i>Comment: In addition to the important oversight role, the committee would be an important form of engagement with members of the Oireachtas, and equality and human rights bodies. There is currently no structured forum for managing interactions between equality and human rights bodies, and politicians. However, it should also be emphasised that there are no barriers to developing informal consultation and engagement fora.</i>
5.C	Strengthen the current statistical data on equality and human rights
	<ul style="list-style-type: none"> • Expand equality and human rights modules in National Quarterly Household Survey (NQHS) • Explore the scope for introducing human rights module in NQHS • Consider establishing independent Panel to develop evidence base for strengthening equality and human rights in Ireland.
	<i>Comment: Recent initiatives by the CSO have enhanced the data on equality. However, they do not include data on human rights and also need to be expanded in terms of equality. The Independent National Equality Panel is providing strong evidence base to support strategy and policy in the UK.</i>
5.D	Develop equality and human rights measurement framework
	<ul style="list-style-type: none"> • Investigate the possibility of adapting a variation of the EMF in Ireland • Review scope to apply elements of the EU measurement framework in Ireland • Consider establishing independent Panel to develop evidence base for strengthening equality and human rights in Ireland.

²⁵ Government Equalities Office, *An Anatomy of Economic Inequality in the UK: Report of the National Equality Panel*, 2010

Comment: Applying either of these frameworks would be a significant step-change in evaluating progress and the state of inequality and human rights. The challenge would be to develop a simple framework that would still be robust but not as resource intensive as the UK model or the EU conceptual framework.

6 Coherence between human rights and equality

In this section we outline current collaboration between human rights and equality bodies in Ireland and consider options for enhancing collaboration between them.

6.1 Current features

Equality and human rights bodies operate substantially in different domains with different legal bases. A striking feature of the operation of equality and human rights bodies in Ireland is the lack of an overarching perspective on equality and human rights, as well as practical forms of collaboration between the bodies. The main linkages at present between equality and human rights bodies are:

- The Chief Executives of four equality and human rights bodies (IHRC, Equality Authority, the National Disability Authority and the Equality Tribunal) now meet on a regular basis to discuss non-strategic issues of mutual concern.
- The IHRC and the Equality Authority also agreed a Memorandum of Understanding (MoU) when they were first established. Both bodies also 'reported' into the same government department offering opportunities for an overarching perspective. However, this MoU did not lead to any formal coordination initiatives.

Compared to many other countries, collaboration between equality and human rights is significantly under-developed in Ireland. Equality and human rights bodies both have strategic plans but in the past they have not liaised on priorities to ensure that potential overlaps/synergies are managed.

There are many explanations put forward by stakeholders for this under-developed collaboration. The most commonly cited reason is that there is little or no overlap between human rights and equality and therefore no need for collaboration. This is at odds with the view of international advisory bodies who acknowledge the need for an overarching approach.²⁶ Some jurisdictions, most notably the UK, have developed a single structure for equality and human rights underlining the *principle* of taking a more holistic view to equality and human rights. A further explanation could be that equality and human rights bodies see themselves as competitors rather than collaborators. However, there is little hard evidence to support this explanation. There is also a view that discrimination is the single biggest issue in Ireland - and that it is less 'contested' than a rights-based approach. The concern expressed by some stakeholders is that a more overarching approach including human rights could dilute the focus on discrimination. Wherever the explanation lies, the current under-developed linkages appear to be a missed opportunity to:

- Collaborate on substantive issues where there is potential for joined up approaches e.g. mental health, other forms of disability, approaches to education e.g. public sector training
- Collaborate on issues relating to independence and effectiveness of equality and human rights bodies, in particular to develop 'counter-framing' strategies. Equality and human rights bodies are often subject to 'framing' whereby their critics try to associate them with one or two grounds. This 'framing' can have important consequences in terms of the social and political support for equality and human rights bodies and also for their reputation. 'Counterframing' is when the leadership of

²⁶ FRA review, op cit.

equality and human rights bodies develop initiatives 'to draw a public image of themselves that prevents them being put in corners where they do not want to be'.²⁷ It means building a reputation and image for equality and human rights bodies as being crucial to issues across a range of policy issues and grounds, e.g. the role of equality in flexible labour markets, and in progressive, high-performing businesses. It is a proactive strategy that depicts the central importance of equality and human rights. This requires building networks and partnerships across all areas of society and the economy. If these are strong, it will be more difficult for critics of equality and human rights bodies to harm them by associating them with a narrow agenda.

While the equality and human rights bodies have a central 'regulatory' role, their strategic, preventative role fundamentally depends on working successfully with a range of partners. Without this collaboration and partnership working, they will be constrained in their ability to achieve their statutory and strategic remits. Their influence 'sphere' therefore includes a myriad of partners in government (including their 'lead' Department) and civil society including employee representatives, employer representatives, NGOs and civil society, members of the Oireachtas. The size and diversity of this constituency creates real challenges for equality and human rights bodies:

- The size of the **NGO sector** requires meaningful consultation fora. The Equality Authority used to have a consultative forum which is now being reactivated. The IHRC has initiated consultation with NGOs twice yearly and the Tribunal has a users forum which provides valuable feedback on its performance and how to improve. However, many NGOs interact with all bodies and the question is whether this interaction is as effective as it could be. There is also a question about whether equality and human rights bodies are dealing with NGOs that are genuinely representative. For example, the recently-established Ministerial Council on Integration received over 500 valid applications for appointment to the Council, underlining the size and interest of this constituency. The recently established Equality and Rights Alliance is the first initiative to bring all NGOs in the equality and human rights sector together. In addition the Annual social Inclusion Forum, set up under the National Action Plan on social Inclusion, includes topics that also relate to equality and human rights.
- Relationships with the **political system and individual members of the Oireachtas** are under-developed. The only formal contact with the Oireachtas is through the Public Accounts Committee (and this is through the CEO) or in the case of the IHRC they can be called before a relevant Oireachtas Committee. At present, there is no forum within the Oireachtas to consider the equality and human rights agenda. This is considered by most stakeholders as a significant weakness not just in terms of democratic accountability but also in terms of dialogue, and challenge. In addition, our understanding is that informal interactions with the political system are also under-developed and fragmented.
- **Government departments and agencies** are a critical constituency. Their decisions have crucial impacts on individuals. Equality and human rights bodies now 'report' through the Department of Community, Equality and Gaeltacht Affairs and as such the Department has overall responsibility for framing government ambitions and policy in relation to equality and human rights. The changed reporting structure is regarded by most stakeholders consulted during the Scoping Exercise as a more appropriate link to government as it is predominantly a funding and programme Department unlike the Department of Justice, Equality and Law Reform. A key challenge for equality and human rights bodies is how they can influence government departments to bring equality and human-rights proofing to their policy and decision-making.
- The wider **public** and people who experience discrimination and/or whose human rights are infringed. The QNHS Equality Module in 2004 found that 12.5% of respondents reported that they

²⁷ Equinet, *Between Impartiality and Responsiveness - Equality Bodies and Practices of Independence*, 2008

had experienced discrimination - 7% of labour market participants reported experiencing discrimination while 9% of the population reported discrimination in access to services. The EU EuroBarometer Survey of Discrimination in the EU found that 1 in 3 people in Ireland knew their rights if they were a victim of discrimination: almost half didn't know their rights (44%). While these figures relate to discrimination, they underline the need for effective communication and engagement with civil society on the legal forms of redress. They underline the need for equality and human rights bodies to develop innovative and effective approaches to engage with the public so that they are aware of their rights and how to work to prevent discrimination and human rights abuses.

6.2 Implications and options

While recognising the distinct roots of equality and human rights bodies, they operate as discrete and distinct entities and there has been no learned custom of working together. The current situation prompts three key questions:

- Whether there is scope for collaboration and what form it should take? The Fundamental Rights Agency consistently underlines the need for a holistic, overarching approach to equality and human rights.
- A more profound question is whether there is a need for an overarching strategic framework to set out what the equality and human rights bodies need to achieve. **What is it that as a society we want to achieve in terms of human rights and equality?** The current legislation outlines core functions for each of the bodies. It does't however set out an ambition for the bodies which would shape how they operate. There is no single national plan outlining priorities for Ireland as a society in relation to equality and human rights although there are individual plans relevant to some grounds (e.g. National Women's Strategy 2007 - 2016).
- A further dimension is how effectively bodies liaise with NGOs. Both equality and human rights bodies engage with a wide range of NGOs and civil society. Is there a way in which this collaboration may be more streamlined?

The combined annual resources of the three human rights and equality bodies now amount to €7.8m and 80 staff (FTE). This excludes the value of pro-bono work that is particularly evident in the IHRC. A key question is whether there is scope for stronger coordination to ensure that this level of resourcing has maximum impact.

6.3 Options

Other Models

There are different examples of collaboration evident among equality and human rights bodies. The NIHRC and the ECNI, for example, have established a **joint working group** with delegated authority on the Convention on the Rights of Persons with Disabilities (both bodies are jointly designated).

The most radical form of coherence is to **merge human rights and equality bodies**. There are several examples of this model some of whom were established as joint bodies from the beginning e.g. Canada, and others which have been more recent most notably the Equality and Human Rights Commission in the UK (see Figure 6.1). Joint bodies like the Canadian model that were established from the start tend to have an easier path than merged organisations.

Figure 6.1: International Human Rights and Equality Bodies

Country	Human Rights Organisation	Equality Organisation
Australia	Australian Human Rights Commission	
Austria	The Austrian Ombudsman Board	Austrian Ombudsman for Equal Treatment
Belgium	Centre for Equal Opportunities and Opposition to Racism Belgian Institute for Equality between Men and Women	
Canada	Canadian Human Rights Commission	
Denmark	The Danish Institute for Human Rights	Board of Equal Treatment
Finland	Parliamentary Ombudsman of Finland	The Ombudsman for Equality between Men and Women
France	National Consultative Commission of Human Rights	High Commission against Discrimination and for Equality
Germany	The German Institute for Human Rights	German Federal Anti-Discrimination Agency
Ireland	Irish Human Rights Commission	Equality Authority
New Zealand	The Human Rights Commission (NZ)	
Northern Ireland	Northern Ireland Human Rights Commission	Equality Commission for Northern Ireland
Sweden	The Swedish Equality Ombudsman (replacing four previous Ombudsmen)	
Switzerland	Federal Commission against Racism	
UK	Equality and Human Rights Commission	

The most high profile recent merger has been the establishment of the Equality and Human Rights Commission in the UK. It was set up as a merger of three existing equality organisations with an expanded remit to include human rights. The new organisation is large (c.500 staff and a budget of c£55 m sterling). As with any merger of this size, there are significant challenges in achieving anticipated benefits and it can take time to realise the benefits. One of its earliest challenges, for example, was to develop its capability in human rights as it did not 'import' existing capability. The merger is routinely offered by stakeholders in Ireland as a reason for not merging equality and human rights bodies. However, it is important to differentiate between challenges arising from *the merger process itself* (which would apply to any merged organisation) and challenges arising from the *fundamental principle of bringing human rights and equality together*. It is a matter of public record that the EHRC merger process threw up significant *management* challenges. However, organisations such as the Equality and Diversity Forum acknowledge the important principle of the relationship between equality and human rights. The Commission is undertaking some interesting work including the development of the Equality Measurement Framework which is informing its Triennial Review.

A number of bodies have developed or are developing **National Action Plans**. The Vienna Declaration and Programme of Action adopted at the 1993 World conference on Human Rights, recommended that each State would '*consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promoting and protection of human rights.*'

Scotland is currently developing a National Action Plan on Human Rights which will set out a Human Rights Programme for Scotland (rather than the Commission). This is a similar model to the one followed in New Zealand. While these relate to human rights, they present an interesting template for developing an overarching plan that is wider than the competence of the individual bodies.

Some jurisdictions have developed **initiatives to enhance public engagement**. Both France (HALDE) and Denmark (Danish Institute for Human Rights) have set up Advisory Committee of experts and an Equal Treatment Committee respectively to advise on discrimination and human rights. Both countries have also experimented with participatory approaches such as the 'consensus conference model' and 'participatory action research' to facilitate engagement. Organisations are also developing web-based technologies to facilitate engagement. The Australian Human Rights Commission for example has pages in Facebook, MySpace, YouTube, Twitter and have RSS and Podcasting. The EHRC are also applying digital media to inspire their campaigns. The New Zealand Human Rights Commission has interactive fora for their e-newsletter subscribers. It has also undertaken a National Conversation about Work involving 1,100 employers and employees to find out what are the real issues and concerns relating to equality in the workplace.

In the **UK** the **Equality and Diversity Forum** was set up by NGOs in 2002 as a network of organisations to strengthen the contribution of the third sector to public policy, commission research, promote dialogue and share information. As such it provides a space for all organisations working for equality and human rights to develop effective working relations to improve services. It is funded through a number of sources including PROGRESS (the EU Programme for Employment and social solidarity), the Joseph Rowntree Charitable Trust, the Barrow Cadbury Trust, the Trust for London, the Diana Princess of Wales Memorial Fund, the Department of Communities and Local Government, and member donations.

In **Ireland** the Equality and Rights Alliance (ERA) was set up as a network of 145 NGOs and activists to campaign for a stronger equality and human rights infrastructure. The question is whether the Alliance represents the beginning of a similar forum in Ireland or whether its origins mean that it will be more of a campaigning group rather than a consultation forum. The collaboration models developed for social partnership, such as the Community and Voluntary Forum, could potentially offer a model for enhancing collaboration between equality and human rights bodies.

Potential Options

Figure 6.2 outlines options for enhancing collaboration between equality and human rights bodies. The first option identified is the simplest to implement and would not require legislative change. The second option would provide a robust strategic framework which arguably the infrastructure needs at this point to guide its future development. The third option would be strongly contested by the relevant organisations, and would definitely require legislative change. A further consideration is whether it would require change to the Good Friday Agreement - the Scoping Exercise found different perspectives on this question.

Figure 6.2 Options for enhancing collaboration between equality and human rights bodies

6. A	<p>Strengthen collaboration and cooperation between the IHRC and the Equality Authority through:</p> <ul style="list-style-type: none"> • Coordinating development of their respective Strategic Plan and annual priorities (expressed through their business plans). In addition their strategic and annual plans could include a requirement on both organisations to cooperate and collaborate in identified areas to deliver better services more efficiently and effectively. • Develop practical operational working models for specific projects/functions where this is feasible. This could include establishing joint working groups at Board/Commission and/or official level on specific
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	<p>projects.</p> <ul style="list-style-type: none"> • Explore scope for shared administration services. • Develop single information portal for the public to channel all queries for information in relation to equality and human rights.
	<p><i>Comment: The Strategic Plan is a key lever for any organisation to outline and shape their ambitions. By liaising on their development, the equality and human rights bodies would have the opportunity for structured discussion on priorities and coherence. This would in turn facilitate more effective use of existing resources. It should be emphasised that the scope for sharing administration services is low as there have already been initiatives in this area. In relation to the single portal, research consistently shows that people are not fully aware of how to access information on their rights.</i></p>
6.B.	Develop overarching National Action Plan on equality, and human rights
	<p><i>Comment: This could provide a wider strategic framework and blueprint governing the future development of the equality and human rights bodies. It would therefore drive the future shape of the equality and human rights bodies. The key risk is that the process would be cumbersome, involve too many stakeholders, and that government wouldn't have the commitment to undertake it given their significant agenda.</i></p>
6.C	Explore option of merging the IHRC and the Equality Authority to increase their effectiveness and impact.
	<p><i>Comment: The comparatively small scale of the equality and human rights bodies could point to synergies through a merger. However there is also a risk that it could dilute existing resources even further, thereby reducing impact. If cost is the main driver of a merger however, it would contain significant risks for the future effectiveness of the merged organisation. The key potential benefit is would be to strengthen the positioning and impact of both by combining their resources. There is however a significant constraint that would need to be factored into this equation. Both bodies are set up by statute but in addition the existence of the IHRC is underpinned by international law through the Good Friday Agreement. Any merged body would clearly have to be compliant with the Paris Principles.</i></p>
6.D	Establish a Joint Oireachtas Committee on equality and human rights whose functions would include: <ul style="list-style-type: none"> • Hearings on the annual performance of the Equality Authority and IHRC • Developing multi-annual expenditure framework for the equality and human rights bodies • Overseeing national action plan on equality and human rights.
	<p><i>Comment: the importance of engaging with parliamentarians is well-acknowledged. This would provide a forum for engaging in a way that would be more difficult without it.</i></p>
6.E	Strengthen engagement with civil society: <ul style="list-style-type: none"> • Establish a National Forum on equality and human rights • Develop web-based approaches to engaging with the public and civil society • Establish single information service on equality and human rights to facilitate ease of access to information on rights and entitlements
	<p><i>Comment: This chapter outlines a number of international and Irish models that could be adapted to facilitate engagement with civil society. A single forum could considerably enhance how equality and human rights bodies engage with civil society.</i></p>

7 Coherence between equality, poverty, and social inclusion

One of the three questions this Scoping Exercise considered was how to bring coherence between equality policy, policies to tackle poverty, and policies in relation to social exclusion. In this section we outline the distinctive features of the institutional and delivery structure together with potential options for coherence.

7.1 Current features and implications

On the face of it, it seems inherently logical and rational to develop better linkages between these areas. However, there were compelling arguments advanced during the Scoping Exercise both for and against greater coherence. The primary argument advanced *for* greater coherence is that it would recognise the proven correlation between equality and social inclusion. The main argument *against* coherence is that it would lead to integration and that ultimately one agenda would suffer.

There are important 'intersections' between equality and social inclusion and there is evidence to suggest that disadvantage and discrimination often co-exist. The NAPinclusion strategy defines the concept of poverty and social exclusion as...*people are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalised from participating in activities which are considered the norm for other people in society.* The concept of social inclusion and poverty are therefore fundamentally linked. The Malta Declaration identified this interdependence and recognised that *'poverty and social exclusion are factors undermining the enjoyment of human rights'*.²⁸ The concept of equality as articulated in the legislation is one of discrimination. While there are important linkages, there are important distinctions which need to be considered. Equality is essentially population-based - people can experience discrimination without being affected by poverty. Equality is also more legislatively based while social inclusion is more policy-based. Furthermore social inclusion is a more holistic concept than discrimination. These differences in part reflect the different conceptual underpinnings between equality, poverty and social inclusion.

We considered the question of coherence from a number of perspectives:

- The current institutional and delivery structure for social inclusion and equality.
- Key strategies and programmes for delivering social inclusion.

Key Features of the current delivery of social inclusion and equality

There are marked differences between the social inclusion and equality delivery structures:

- The social inclusion delivery structure (strategy development, implementation and funding) is extensive involving organisations at national, regional, and local level. As Figure 7.1 illustrates the delivery structure cuts across various government departments, statutory agencies, not-for-profit organisations and voluntary groups. The delivery structure is also cross-cutting in terms of sectors (health, social protection, local government) and geographic (all counties in Ireland) spread.

²⁸ Access to Social Rights in Europe, M. Daly Council of Europe, Strasbourg (2002). This report was launched and the 'Malta Declaration' was adopted at an international conference in Malta, November 2002.

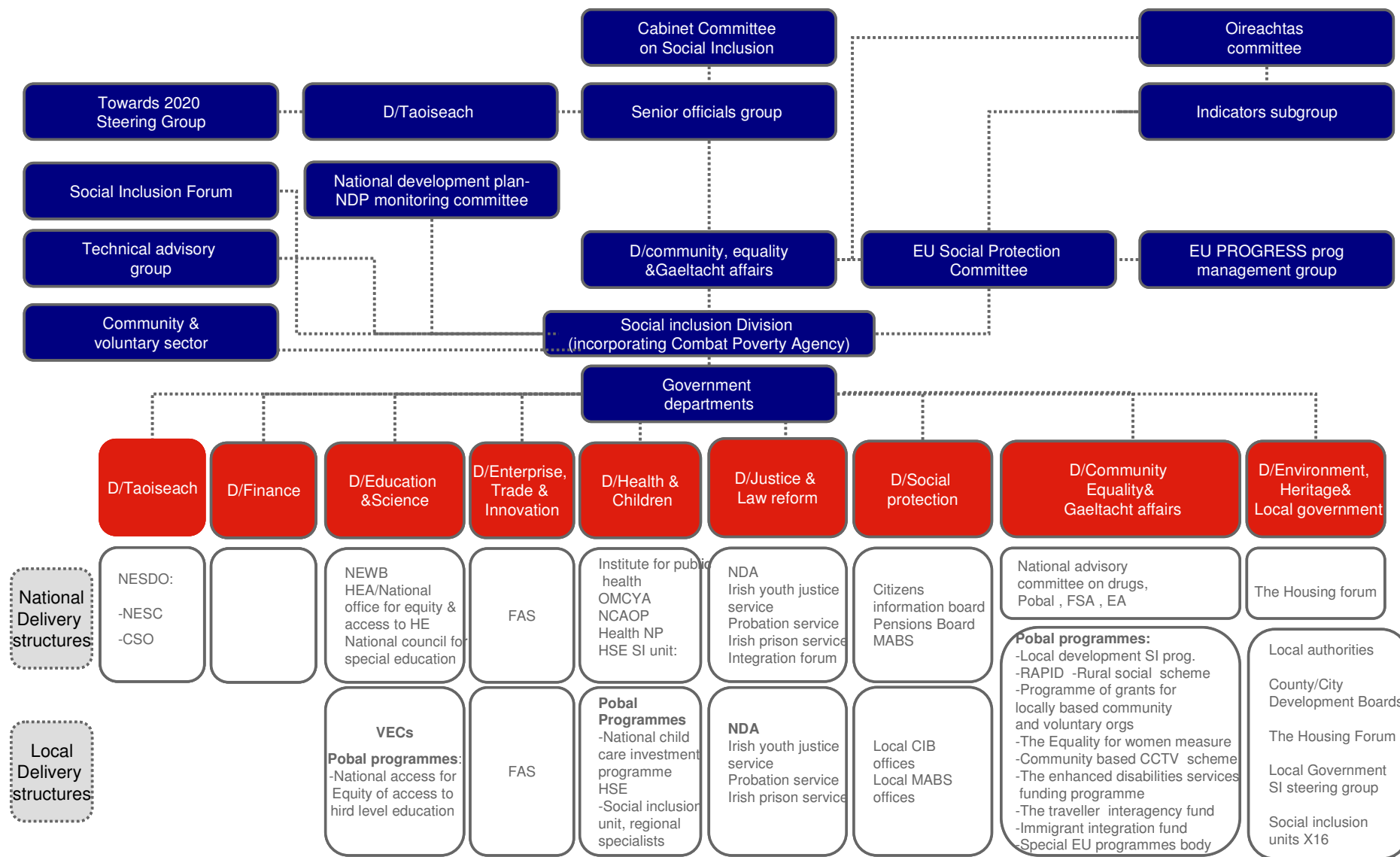
- Equality structures are centralised with limited outreach and local presence (see Figure 7.1). They have some local presence but their wide remit and institutional structure make it more challenging to engage with local structures on the ground such as Pobal and Social Inclusion Units in local authorities.

These differences between institutional delivery structures mean that there have been practical challenges in linking these areas. In reality, equality bodies have to work in partnership and through other delivery bodies. Three additional factors:

- There are already well-established coordination mechanisms for social inclusion at national and local level which could be expanded to include equality. At national level, the Cabinet Committee on Social Inclusion and the Senior Officials Group on Social Inclusion both offer the potential to bring coherence on social inclusion and equality. Our understanding is that there are no real impediments to bringing coherence at this level. The main challenge is ensuring that individual Departments are actively and meaningfully 'proofing' equality and social inclusion.
- Social inclusion structures and programmes link in to a range of government departments and policy areas. These include:
 - National Drugs Strategy and Local/Regional Drugs Task Forces
 - Local structures under Better Local Government such as County and City Development Boards, County and City Strategic Policy Committees, Community Fora.
 - National Traveller Accommodation strategy and Local Traveller Accommodation Consultative Committees
 - National Primary Care Strategy and User Engagement Strategy including Local Primary Care Teams
 - National Homeless Strategy and Local Fora for the Homeless
 - The National Childcare Investment Programme and City/County Childcare Committees
 - The RAPID (Revitalising Areas by Planning, Investment and Development) Programme and Area Implementation Teams (AITs)
 - Office of the Minister for Children and Youth Affairs.
- At local level, Pobal delivers a range of programmes whose purpose is to promote social inclusion and equality offering practical opportunities to deliver both. Pobal recently for example engaged with the Equality Authority and the Irish Human Rights commission on the new local community development programme guidelines and this potentially provides a model for future cooperation. In addition there are 16 Social Inclusion Offices in the local authorities which offer opportunities for local coordination. A recent review of County Development Boards acknowledged the complexity and diversity of social inclusion at local level. It also highlighted the need to renew the mandate of the Social Inclusion Measures (SIM) working Groups and in particular the need for 'real commitment to the working of the SMI groups from agencies at both national and local level'.²⁹
- There is extensive NGO sector engagement with social inclusion and equality bodies at national and local level. However, most of these NGOs tend to specialise more in social aspects of social inclusion and equality rather than the economic aspects.

²⁹ Indecon, *Review of County/City Development Board Strategic Reviews and Proposals for strengthening and Developing the Boards, Prepared for Department of the Environment, Heritage and Local Government, 2008.*

Figure 7.1: Overview of social inclusion structures



More formal links would build awareness of social inclusion and equality across the local delivery structures; facilitate the leveraging of the national expertise on the ground; identify areas requiring research and capture information to inform it; and help to develop new Performance Indicators. They would also help to identify new equality trends and issues; allow local knowledge and learning's to inform new policy.

Recently there has been consolidation across the structures. The most significant development has been the creation of a single Department whose remit explicitly includes equality and social inclusion. The key recent changes include:

- The Office for Social Inclusion which was previously with the Department of Social and Family Affairs (and which incorporated the Combat Poverty Agency in July 2009)
- Family Support Agency (FSA) also transferred into the Department from (the newly named) Department of Social Protection.
- Equality and human rights divisions of the Department of Justice, Equality and Law reform (including Traveller Policy Unit, the Gender Equality Division etc) transferred to the Minister for Community, Equality and Gaeltacht Affairs in June 2010.
- National Council for Partnership and Performance (NCPP) and National Economic and Social forum (NCSF) merged April 2010 into the National Economic and Social Council
- Substantial re-structuring of the area partnerships and area development boards into the local development programmes and delivery structures under Pobal.

Key delivery mechanisms

The National Action Plan for Social Inclusion (2007-2016) is the key strategy relating to social inclusion. It is based both on the *National Development Plan 2007-10* and draws on the lifecycle approach outlined in *Towards 2016*. As already indicated other strategies also relate to social inclusion and equality but these are the critical ones.³⁰ Figure 7.2 gives an overview of the key target groups, goals and initiatives.

³⁰ National Drugs Strategy 2009; The National Womens' Strategy 2007-2016; The Disability Strategy; the National Intercultural Health Strategy 2007-2012

Figure 7.2: Overview of National Action Plan on Social Inclusion

Activation/ Innovation measures	2.6.1 Child participation 2.6.2 Community Training Centres 2.6.3 Youth Justice 2.6.4 Youth at risk from drug misuse 2.6.5 Growing up in Ireland: national longitudinal study on children in Ireland	3.6.1 Lone Parents 3.6.2 Probation service 3.6.3 Equality	4.6.1 Home support packages 4.6.2 Community Intervention teams 4.6.3 Participation and activation	5.7 Measures around -the citizens information bill - the national disability authority	6.4.1: Active citizenship 6.4.2: Fuel Poverty 6.4.3: Broadband 6.4.4: Sport 6.4.5: Arts and culture 6.4.6: e-Inclusion 6.4.7: Dormant accounts Fund 6.4.8: Financial inclusion
Services	2.5.1 Early childhood development and care 2.5.2 Health 2.5.3 Nutrition 2.5.4 Education 2.5.5 Traveller children 2.5.6 Youth homeless 2.5.7 Sport and leisure	3.5.1 Employment and employability 3.5.2 Literacy 3.5.3 Second chance education 3.5.4 Health	4.5.1 Long term Care 4.5.2 Housing and accommodation 4.5.3 Education and employment	5.6.1 Education 5.6.2 Access to Buildings and infrastructure 5.6.3 Access to public transport 5.6.4 Housing and accommodation	6.3.1: Housing 6.3.2: Homelessness 6.3.3: Health 6.3.4: Carers 6.4.5: Travellers 6.4.6 Migrants 6.4.7: Transport 6.4.8: Library services
Income support/	This includes elements of health, education and income support. The main goal is to maintain the level of income support at 33%-35% of the minimum adult social welfare payment over the course of the plan.	This includes elements of : -Family income supplement scheme -The Rural social scheme -Means test for the rent supplement under the supplementary welfare allowance.	This includes looking at -the level of the Qualified Adult Allowance - assessment of rent supplement	To ensure adequate levels of income for people with disabilities the government will work for the continued enhancement and integration of supports in line with overall social welfare commitments and targets	Community based programmes: 6.5.1 Clar Programme 6.5.2 Rural development prog. 6.5.3: Gaeltacht and island com. 6.5.4: Local development social inclusion programme 6.5.5: CDP 6.5.6: RAPID 6.5.7: Joint policing committees 6.5.8. Family support services
High level goals	Goal 1-3: Education Goal 4: Income support/.	Goal 5: Employment and participation Goal 6: Income support	Goal 7: Community Care Goal 8: Income support	Goal 9: Employment and participation	Goal 10: Housing Goal 11: Health Goal 12: The Integration of migrants
	Children	People of working age	Older people	People with disabilities	Communities

As Figure 7.2 illustrates there are important cross-cutting elements between the social inclusion strategy and equality. Equality legislation prohibits discrimination on nine grounds (gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller Community) in relation to employment and access to goods and services. Analysis of the NAPinclusion shows that there is significant overlap with the equality grounds the main gaps being sexual orientation, religion and gender (the focus of a separate Strategy).

Figure 7.2 also outlines the key measures to advance social inclusion. A critical linkage with the equality agenda is through 'proofing' and impact assessment tools. These tools offer potential to bring linkage and coherence to equality and social inclusion. Government departments now operate a number of disparate but related 'proofing and impact assessment tools including poverty assessment, health impact assessment and regulatory impact assessment (RIA). In addition the EU is also developing social impact assessments. These proofing and impact assessment tools are designed to help officials to consider the implications of different policy options prior to making decisions. The Equality Authority and Combat Poverty Agency developed and piloted a joint poverty and equality impact assessment tool but this was not implemented following the pilot.

While proofing tools offer real potential to bring coherence to equality and social inclusion, in reality the diverse range of 'proofing' tools can be difficult and cumbersome to implement. In the context of competing demands for the time of government officials, it is not realistic to expect individuals to apply all of the proofing tools currently available. The RIA tools offer a potential opportunity to sharpen the focus on social inclusion and equality. A RIA impact assessment must be conducted for all new primary legislation and for all memos to government. The new RIA guidelines³¹ include identifying impacts on socially excluded or vulnerable groups and refer to previous guidance on poverty impact assessment as well as impacts on the rights of citizens. As such it is an important initiative as it represents a more holistic approach than has previously been evident.

7.2 Options

The creation of a single Department whose remit includes social inclusion and equality presents an unprecedented opportunity to bring coherence to social inclusion and equality. The options presented below range from minimal enhancements to more radical organisational changes.

Figure 7.3 Options for bringing more coherence to poverty, social inclusion and equality

7.A	<p>Strengthen coherence within the Department of Community, Equality and Gaeltacht Affairs Authority through:</p> <ul style="list-style-type: none"> • Using the Strategic Plan 2011 - 2014 which is currently being developed, as an opportunity to identify linkages and connections. • Using annual business plans to forge linkages and shared priorities. • Strengthening the coordination role of office for social inclusion in coordinating social inclusion and equality • Secure better linkage between Pobal programmes and equality and human rights and support more formal links on the ground. • Developing better linkages through the funding programmes from DJELR that now come within DCEGA umbrella.
<p><i>Comment: This is the first time that social inclusion, equality and human rights come under a single</i></p>	

³¹ Department of the Taoiseach, *Revised RIA Guidelines: How to Conduct a Regulatory Impact Analysis*, June 2009

	<i>government department. There is therefore a real opportunity to bring a coherence that would not have previously been possible.</i>
7.B.	Expand the role of the Senior Officials Group on Social Inclusion and Cabinet Sub-Committee to include equality.
	<i>Comment: These coordinating structures are already in place for social inclusion and should therefore it should be relatively easy to expand their remit.</i>
7.C	Strengthen strategic framework for social inclusion and equality: <ul style="list-style-type: none"> • Re-visit NAPinclusion strategy to ensure that it fully incorporates the equality perspective. • Strengthen the legislative basis for social inclusion by introducing a new ground in the equality legislation to include economic and social status (see also chapter 4 on balance of functions) • Strengthen the role of the Equality Authority to include poverty and social inclusion
	<i>Comment: The first option should be comparatively easy to do provided resources are allocated to it. In relation to the second option, a number of countries have included a variation of socio-economic status as a ground but there is little caselaw to date to demonstrate its impact and potential benefits. The main benefit of including this ground is that it would help develop linkages between social inclusion and equality. The third option would be a significant shift in the remit of the Authority.</i>
7.D	Ensure that the RIA social inclusion module includes poverty and equality proofing: <ul style="list-style-type: none"> • Provide support to government departments in implementing guidelines • Monitor implementation of the guidelines to ensure that social inclusion, equality and human rights modules are being applied robustly.
	<i>Comment: RIA is regarded as one of the more robust impact assessment tools and could drive linkages between social inclusion and equality. Effective 'proofing' (rather than 'mechanistic' proofing) is an important lever in ensuring that policy and service delivery facilitate social inclusion and equality.</i>
7.E	See also options in relation to equality measurement (chapter 5). Good data is essential for addressing both inequality and social inclusion.

8 Equality Tribunal

The Equality Tribunal occupies a distinct space as an investigation/adjudicating body. It also intersects fundamentally with employment equality rights and industrial relations adjudication bodies. In this section we outline some of the specific issues it faces that are not shared by the Equality Authority and the IHRC.

8.1 Key features

The Equality Tribunal was set up under the Employment Equality Act 1998 with responsibility for mediating and investigating complaints of unlawful discrimination under the Employment Equality Acts 1998-2008, the Equal Status Acts 2000 - 2008 and the Pensions Acts 1990 - 2008. In setting up a separate body to investigate complaints of discrimination, the Government was clearly putting an institutional boundary between the advocacy and adjudication roles of the Equality Authority and the Tribunal. The Authority has an important discretion to provide legal assistance to individuals who have experienced discrimination³² but it does not have an adjudicating role. This is the responsibility of the Tribunal (with the exception of equality complaints that relate to licensed premises which have been referred to the District Court since 2003).

The key features of the Equality Tribunal relevant to this Scoping Exercise are:

- One of the central concerns articulated by stakeholders during the scoping is the length of time to adjudicate cases which can take 2 - 3 years. This is unsatisfactory to the Tribunal and its stakeholders. The Tribunal is currently considering ways in which this can be reduced as the delay effectively constitutes a denial of individual rights.
- Mediation is an important element of the Tribunal's services with 25% of cases going to mediation and most reaching agreement. Mediation is increasingly acknowledged by stakeholders as having important benefits for all parties as well as simplifying the investigation process.
- The Tribunal's functions have changed slightly with claims of discrimination in licensed premises transferred to the District Court since 2003. Its jurisdiction has expanded to include first-instance for discriminatory dismissal and increased jurisdiction in relation to pensions.

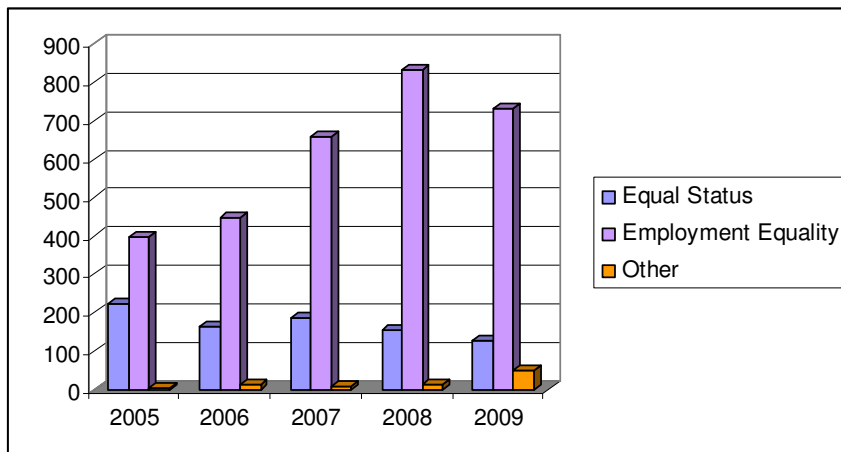
Intersection between Employment Equality and Employment

The role of the Tribunal also intersects substantially with other investigation and adjudicating bodies dealing with employment rights and industrial relations. Figure 8.1 shows that over the past five years an increasing proportion of referrals to the Tribunal relate to employment equality. In 2009, for example, 85% of referrals to the Equality Tribunal related to employment (under the Employment Equality Act) and 15% were referrals under the Equal Status Act.³³

³² Section 67 of the Employment Equality Act 1998

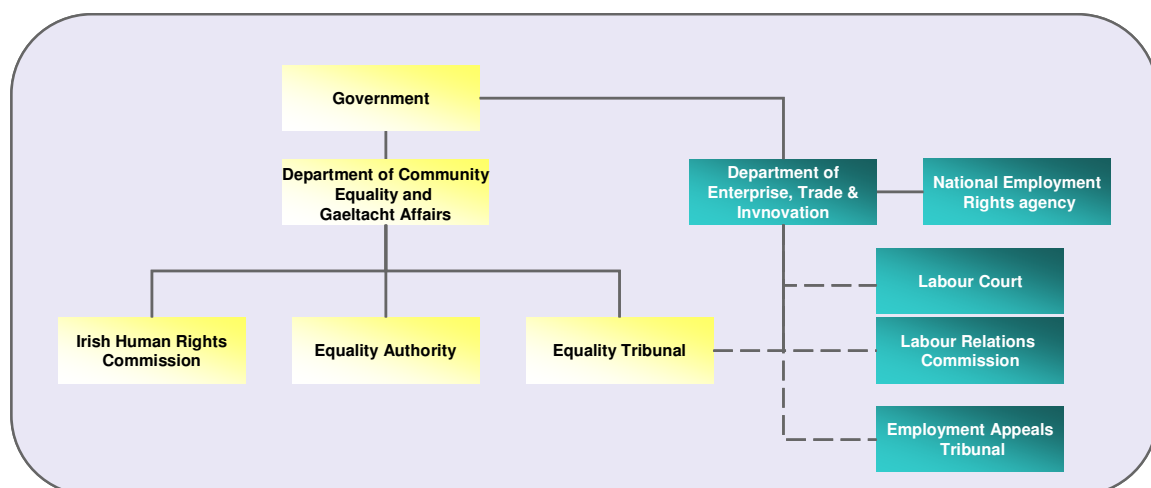
³³ Equality Tribunal, *Annual Report*, 2009.

Figure 8.1 Trends in referrals to the Equality Tribunal



The Equality Tribunal is one of four investigation and adjudication bodies dealing with employment adjudication cases as outlined in Figure 8.2.

Figure 8.2 Overview of equality, employment and industrial relations investigation/adjudication structures



The Minister for Enterprise, Trade and Innovation has set up a working group of the key bodies to identify specific practical administrative and procedural improvements to the employment and industrial relations bodies. The reason for establishing the working group is to rationalise and streamline the current investigation and adjudication process which is widely recognised as unwieldy and unnecessarily complicated and confusing. Our understanding is that this review involves two key strands:

- Developing a streamlined entry point for complaints to the extent that this is possible within existing structures and legislation.
- Consolidating existing legislation on employment and industrial relations law. This would be an extensive piece of work and in the interim our understanding is that there may be an interim measure to resolve routine problems for practitioners, citizens and the institutions themselves.

This review is due to report in early 2011 and clearly its findings may have a critical impact on the Equality Tribunal particularly as it relates to employment equality investigations (85% of its work). The current investigation and adjudication structures are determined by current legislation. Any significant

re-structuring to the employment and industrial relations structures is therefore likely to require consolidation of the legislation which would be a complex process. However, there are likely to be practical changes that will streamline the current work of the Tribunal as it relates to employment law.

That leaves the question of its role in relation to equality cases i.e. under the Equal Status Acts (15% of total cases referred in 2009). The alternative to the Tribunal investigating those cases is that they would be heard through the District Court similar to the situation relating to licensed premises. However, there are important distinctions between the Tribunal and the courts that could ultimately affect access to legal remedies for people who have experienced discrimination:

- The Tribunal has a key investigative role unlike the Courts.
- The Tribunal provides reasoned decisions unlike the Courts.
- The cost of legal fees associated with taking court cases together with the risk of costs being awarded against the complainant. The Tribunal is a cheaper redress route for the individual.

It should be noted that a proportion of complainants and respondents opt to have legal representation in the Tribunal also. The most recent analysis conducted (2002 - 2006) shows that in 2006, 27% of *complainants* had legal representation for cases under the Equal Status Acts (compared to 23% for cases under the Employment Equality legislation). A higher proportion of *respondents* had legal representation (57% for cases under the Equal Status Acts and 46% for cases under the Employment Equality Acts). The % of people with legal representation declined between 2002 and 2006 for all categories except respondents to complaints under the employment equality legislation which increased from 32 to 46%. There are still a large % of cases under both the Equal Status and Employment Equality Acts who do not have any form of representation (ranging from 58% for complainants under the Equal Status Acts to 30% for respondents under the Employment Equality Acts).

There are important distinctions between the Tribunal and the judicial system and the concern expressed during the Scoping Exercise was that any move to hearing discrimination cases through the Courts would be a significant disincentive to bring cases and effectively reduce access to legal remedies. However, if the employment adjudication function is removed from the Tribunal arising from the review of employment and industrial relations, it could be difficult to justify a continuing role for the Tribunal in equality cases that are not employment-related.

8.2 Options

The planned review of the equality and human rights infrastructure will need to consider the findings and recommendations of the Working Group set up by the Minister for Enterprise, Trade and Innovation before taking any firm decisions on the Tribunal. The findings and recommendations of the Working Group have the potential to fundamentally change the employment and industrial relations landscape although, given the significant legislative constraints, this is not likely in the short-term.

Mindful of the Tribunal's role as an investigation and adjudication body, and the imminent review by DETI, the main options to be considered are outline in Figure 8.3:

Figure 8.3 Potential options relating to the Equality Tribunal

8.A	Reduce the current waiting time to hear cases in the Tribunal from the current 2 years to a more acceptable time limit.
	<i>Comment: It was beyond the scope of this exercise to consider in detail the principal measures needed to shorten waiting times. The report does not therefore include detailed options to shorten waiting times.</i>

8.B	Expand the use of mediation services and consider scope for outsourcing mediation services
	<i>Comment: Evidence from other jurisdictions (e.g. Canada) shows that use of mediation can have a significant effect on the average waiting time and successful outcomes.</i>
8.C	Commission research on the Tribunal's case law to determine its impact beyond the impact on individuals and the potential lessons for changing behaviour
	<i>Comment: There has been no systematic research on the body of case-law that has evolved over the past decade in relation to equality in Ireland. This could considerably enhance understanding of the impact of legal cases on social change.</i>

Appendix A: Assessment Framework

The Minister of State for Equality, Integration and Human Rights has commissioned PA Consulting Group to undertake this scoping exercise, which will feed into a planned review of existing legislation, structures and arrangements in order to enhance equality in an effective way. The Minister has identified three sets of issues for the scoping exercise to address:

- 4. Issues relating to the Independence and effectiveness of equality and human rights bodies
- 5. Issues in relation to good international practice in the structure and activities of equality and human rights bodies
- 6. Issues in bringing coherence between equality policy, policies to tackle poverty, and policies in relation to social exclusion.

The Scoping Exercise Steering Group has agreed a detailed assessment framework for each of these questions to guide and inform the scoping exercise – both the desk research and stakeholder consultations. There is some overlap between each of the questions but we have deliberately kept them separate at this point to ensure a direct link with the questions asked under the scoping exercise. The final report will outline options rather than recommendations for future action.

1. Independence and Effectiveness

This paper is to ‘examine issues which arise in various jurisdictions concerning the independent exercise of functions by equality and human rights bodies, and the issues that arise from balancing this requirement with the need for viable structures and coherence across government in equality policy and in human rights policy.....the second section of the paper should identify methods of measuring progress in equality and the protection of human rights (Request for Tender).

Independence	Key questions of interest
Structural independence	<p>What is the institutional set-up for ensuring that the legislative framework (national and international) is implemented:</p> <p>Single body or separate bodies – recent mergers and changes in institutional structures – what is the nature of these changes and evidenced impact;</p> <p>What is the status of these organisations?</p> <p>What is their status in relation to government departments particularly in terms of setting strategy, operational delivery of services (staffing, shared services, shared facilities)?</p> <p>Board and accountability structures; how Boards are appointed, composition of Boards;</p> <p>Overarching accountability structures. Reporting on governance. financial probity and demonstrating impact.</p>
Legal independence	<p>Independence as defined by legislative remit. Scope of legal functions</p> <p>Independence in interpreting international and national legislation</p> <p>How institutions exercise and interpret their legislative remit</p> <p>The most commonly used remedies and powers and why? E.g. institutions often have power of inquiry but they can often be under-utilised – what are the barriers?</p> <p>Balancing a ‘demand-led’ service to provide assistance to people who have been discriminated with a more strategic approach. How do institutions mediate these requirements?</p>

	How is legal remit and mandate changing?
Policy independence	<p>Powers to propose equality and human rights policies and strategies</p> <p>How institutions develop and implement policy:</p> <p>Integration and coherence; how they connect with other government organisations including cross-departmental structures?</p> <p>Connection between the government and non-government sector;</p> <p>Engagement of equality and human rights institutions at EU and international level</p>
Managerial & financial independence	<p>Resourcing organisations: Sources of funding for equality and human rights bodies, how this is channelled and reported;</p> <p>Staffing levels and discretion to recruit staff</p> <p>Balance of specialist and general staff</p> <p>IT resources</p> <p>Extent to which services are shared with other organisations</p> <p>Respective roles of the CEO and chair; Board, and sponsoring department.</p>
Formal v informal independence	What are the critical 'non-formal' factors contributing to the success of equality and human rights organisations?
Effectiveness	<p>How do equality and human rights bodies report on performance to government and non-government sectors?</p> <p>What performance indicators they have developed for capturing and demonstrating inputs, outputs and outcomes?</p> <p>Balance between demonstrating opportunity v impact</p> <p>Measures to improve efficiency and impact on independence.</p> <p>Attributing the impact to the equality/human rights organisation.</p> <p>How effectively are equality and human rights embed in central government coordinating structures?</p> <p>Are there new ways in which equality and human rights can be included in central government coordinating structures to ensure greater effectiveness?</p> <p>How have other jurisdictions addressed questions of effectiveness and impact? How do they measure and demonstrate performance e.g. CHRC Human Rights Maturity Model and its value.</p>

2. International good practice in the structure and activities of equality and human rights bodies

This paper should identify issues to be considered in the review from an examination of best practice in equality and human rights bodies in other European and common-law countries in particular. (Request for Tender)

	Key questions of interest
Structures	<p>Engagement with key stakeholders at national level:</p> <p>Engagement with sponsoring departments</p> <ul style="list-style-type: none"> • Engagement with political parties and political level • Engagement with other government departments and key statutory bodies • Engagement with community and voluntary sector. <p>Engagement with key stakeholders at EU and international level. Role of institutions in</p>

	<p>developing national 'positions' on EU and international fora?</p> <p>Are there dedicated mechanisms? How effective are they? How are they adapting? What works best?</p> <p>Are there national structures only or are these complemented by decentralised structures at regional/local level?</p> <p>Do independent organisations share services with organisations e.g. IT, HR etc.</p> <p>Where organisations have merged or rationalised what factors helped to smooth the process?</p>
Legislative and compliance role	<p>Compliance with national policy:</p> <p>Assessment of legislation and policy framework – strengths and gaps</p> <p>Range of options and remedies available through legislation e.g. cases, public enquiries</p> <p>New approaches to managing discrimination and human rights e.g. modern dispute resolution, mediation</p> <p>The importance attached to legislative role in relation to other roles – in essence their regulatory function. How much of budget/staffing allocated to the legal dimension of their role?</p> <p>Supports available to individual's whose rights have been infringed and/or experienced discrimination</p> <p>How they communicate findings from legal cases – do they build up case law which can be used to communicate with key stakeholders?</p> <p>How do they prioritise cases for selection?</p> <p>Compliance with international obligations</p>
Legislative and policy development	<p>How they provide advice to government and parliament on changes to the legislative and policy framework?</p>
Education and awareness – promoting social change	<p>Prevention, education and awareness initiatives</p> <p>How do they promote diversity, equality and human rights? What has worked best in terms of promoting sustainable change? What has been least effective? Their philosophy underpinning social change?</p> <p>How they balance legislative and developmental role?</p> <p>How do they engage with public and private sector organisations to support the development of equality and human rights skills and competency?</p> <p>How effective is this role in terms of fostering a commitment to equality and human rights in particular sectors?</p> <p>What has worked best?</p>
Communication & communication role	<p>How they connect with stakeholders in the government, community and voluntary sectors? What is the overall approach – is it defined by pragmatism, principle-driven or a combination of the two?</p> <p>How do they connect/engage with members of the public</p>
Research	<p>Do they commission/conduct research? How is this process managed i.e. how specialised is it and what does it involve?</p> <p>How is research used to inform policy?</p>
Service delivery model	<p>International examples e.g. EHRC – (House of Lords Joint Committee on Human Rights report on the EHRC)</p> <p>Experimentation with new service delivery models e.g. Canada – what success they've achieved?</p>

	Knowledge management and sharing
Demonstrating effectiveness	What reporting mechanisms are used? KPIs in relation to equality and human rights?

3. How government can link equality policy and social inclusion

There is evidence that those groups most at risk of experiencing some form of inequality are also those most at risk of economic disadvantage or social exclusion. This paper should identify the issues that arise in trying to bring coherence between equality policy, policies to tackle poverty, and policies in relation to social exclusion, and how they might be addressed. (Request for Tender)

	Key questions of interest
Conceptual distinctions and similarities	What are the key similarities and differences between social inclusion and equality? What impact do these conceptual foundations have on the policy and institutional frameworks underpinning equality and social inclusion?
Structures	Mapping and categorising existing social inclusion and equality structures at national and local level – statutory, Community and voluntary Extent to which existing structures operate in the economic, social, cultural and/or political domains of equality - what is their primary focus? Connection between government and non-government agencies – are there coordination structures? How well do they work? What lessons might apply for structures such as the Senior Officials Group on Social Inclusion and the Cabinet Sub-Committee on Social Inclusion How are people who experience discrimination, poverty or social exclusion engaging with the structures – are there consultation mechanisms and how effective are they?
Overall strategy	Map existing equality and social inclusion strategies What are the cross-cutting elements? Global v targeted approaches (direct and indirect) to equality and social inclusion Sectoral v area-based approaches
Service delivery	Mapping key functional roles – what is their primary focus e.g. policy formation, policy advice, policy implementation, policy coordination; regulatory powers, case support, monitoring powers, consultative roles, promotional roles, evidence gathering/data collection roles, training/capacity building roles, supporting empowerment roles, funding roles, service delivery Mapping of existing instruments to implement equality and social inclusion policies e.g. performance indicators, impact assessments, funding, programmes – identifying gaps and overlaps

Appendix B: Consultation process

Although this was a short, intense assignment, we designed a consultation process to ensure that we could get as wide a range of views as possible within the timeframe. The primary focus was the three core statutory bodies - the Equality Authority, the Irish Human Rights Commission and the Equality Tribunal. We contacted almost 50 organisations in the statutory and non-government sector. The table below outlines those organisations that we were able to consult either through interview, phone discussion or written submission.

Equality and Human Rights Division, Department of Community, Equality and Gaeltacht Affairs	Equality Authority Board sub-committee and Staff	IHRC Board, President & Director	Equality Tribunal Director & senior management team
Department of the Taoiseach - Senior Officials Groups on Social Inclusion	Office of Social Inclusion	Working Group on Review of Employment Rights - Department of Enterprise, Trade and Innovation	Department of Foreign Affairs
Department of Environment, Heritage and Local Government - Local Government Social Inclusion Steering Group	National Disability Authority	IHRC stakeholder group	National Economic and Social Council
Pobail	Citizens Information Board	Irish Business & Employers Confederation	Irish Congress of Trade Unions
Equinet	EU Fundamental rights Agency	Canadian Human Rights Commission	ECNI
Scottish Human Rights Commission	Equality and Human Rights Commission (UK)	Northern Ireland Human Rights Commission	Equality and Diversity Forum, UK
Older and Bolder	Community Platform	Irish Traveller Movement	Data Protection Commissioner
Garda Síochána Ombudsman Commission	Department of Foreign Affairs Human Rights Unit	Amnesty International	Irish Penal Reform Trust
One Family	GLEN (Gay and Lesbian Equality Network)	Marriage Equality	AkiDwa
Immigrant Council of Ireland	Pavee Point	Community Workers Co-operative	Equality & Human Rights Alliance
NUI, Maynooth			

Appendix C: References

A detailed document review was an integral part of the Scoping Exercise. In addition to the references quoted below, we also extensively reviewed documentation and websites of the following equality and human rights bodies:

- Ireland: The Equality Authority, the Irish Human Rights Commission and the Equality Tribunal
- UK: The Northern Ireland Human Rights Commission, the Equality Commission Northern Ireland, the Equality and Human Rights Commission, the Scottish Human Rights Commission
- Denmark: The Danish Institute for Human Rights
- Australia: Australian Human Rights Commission
- Canada: Canadian Human Rights Commission
- New Zealand: Human Rights Commission
- EU and international: the EU Agency for Fundamental Rights, UN websites.

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Appendix D: EU Directives

D.1 EU Equality Directives

The following EU Directives provide for specialised equality bodies:

- Article 13 of the Racial Equality Directive (2000/43/EC)
- Article 7 of Directive 2002/73/WE amending Council directive 76/207/EEC (Gender Equality Directive)
- Article 12 of Directive 2004/113/EC (equal treatment between men and women)
- Article 20 of Directive 2006/54/EC.

The Directives do not specify the status of these specialised bodies. While there are slight variations in wording, they are broadly similar in terms of the functioning and discretion of Member States on their establishment.

D.2 Equal Treatment Directive

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

Article 12

7. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals rights, or the implementation of the principle of equal treatment.
8. Member States shall ensure that the competencies of the bodies referred to in paragraph 1 include:
 - a. Without prejudice to the rights of victims and of associations, organisations or other legal entities referred to in Articles 8(3), providing independent assistance to victims of discrimination pursuing their complaints about discrimination
 - b. Conducting independent surveys concerning discrimination
 - c. Publishing independent reports and making recommendations on any issue relating to such discrimination.

Appendix E: Paris Principles

The Paris Principles were adopted by the UN General Assembly in 1993 (Resolution 488/134) and set out the main competences and principles guiding the operation of National Human Rights Institutions (NHRIs). NHRIs are accredited by the ICC based on their compliance with the Paris Principles. The accreditation covers 3 categories (A, B and C status). The IHRC has been accredited A status since 2004. The Paris Principles are the recognised benchmark for both human rights and equality bodies as they are regarded as surpassing the requirements outlined in the EU directives relating to equality bodies (see Equinet publication on independence which also gives EU core directives relating to equality bodies).

Main areas	Key dimensions
Competence and responsibilities	An NHRI should have competence to promote and protect human rights. It should have as broad a mandate as possible to be set out in constitutional or legislative text. Its responsibilities should include: (a) prepare reports on its own initiative or on request on any matter concerning the promotion and protection of human rights; (b) promote harmonisation of legislation, practices, regulation with international human rights instruments © encourage their ratification and implementation (d) contribute to reports that States have to complete to the UN; (e) cooperate with UN bodies competent in human rights; (f) assist in developing education and research programmes (g) increase awareness of human rights and combat discrimination.
Composition and guarantees of independence and pluralism	(1) Composition and appointment should guarantee pluralist representation to enable effective cooperation with representative of NGOs, trends in religious or philosophical thought, universities, qualified experts, parliament, government departments; (2) NHRI should have infrastructure suited to smooth conduct of activities in particular adequate funding. Purpose of funding is to have own staff and premises to facilitate independence: (3) Stable mandate for members through appointment by official act establishing duration.
Methods of Operation	The NHRI is (a) free to consider any question within its competence either at govt. request or on its own initiative; (b) hear any person or obtain documents to assess situations within its competence; © address public opinion directly; (d) meet regularly; (e) establish working groups and set up local/regional sections; (f) maintain consultation with other bodies responsible for promotion and protection of human rights; (g) develop relations with NGOs (human rights, economic and social development, combating racism, protecting vulnerable groups)
Additional principles concerning the status of commissions with quasi-judicial competence	Where an NHRI is authorised to hear and consider individual complaints and petitions, the following principles apply: (a) seek amicable settlement through conciliation, binding decisions or basis of confidentiality (where necessary); (b) inform petitioner of their rights and remedies; © hear any complaints/petitions or transit them to other competent authorities; (d)make recommendations to competent authorities on amendments or reforms of laws regulation and administrative practices that create difficulties for individuals in asserting their rights.

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