

Submission by FLAC (Free Legal Advice Centres)

Equality Bill 2004 Part III: Proposed Amendments to Equal Status Act 2000

Introduction

FLAC welcomes the introduction of amendments to bring existing legislation into accordance with the European Directives.

However we are of the view that in relation to the proposed amendments to the Equal Status Act 2000, the most striking changes in fact have the effect of narrowing rather than enhancing protection against discrimination. In particular, we are concerned at an apparent trend towards allowing discrimination on the part of State institutions which would be unlawful if carried out by non-State actors.

FLAC's principal concerns are the following:

1. Section 45: Amendment of Section 7 (educational establishments)

45.- Section 7 (educational establishments) of the Act of 2000 is amended by the addition of the following subsection:

(5)(a) in this subsection "grants" means grants to assist persons to attend or continue to attend-

(i) an institution providing duly, continuing or further education,

(ii) a university, or

*(iii) any other third-level or higher-level institution,
whether or not supported by any public funds.*

(b) The minister for Education and Science does not discriminate where he or she where he or she –

(i) requires grants to be restricted to persons who are nationals of a member state of a member state of the European Union, or

(ii) requires such nationals and other persons to be treated differently in relation to the making of grants"

This section permits the Minister to continue the current practice whereby non-nationals are excluded from third-level grants.

The Equality Tribunal considered this issue last year in a case brought by FLAC on behalf of two complainants, both of whom were permanently resident in Ireland together with their families and had been here for a considerable number of years. The Equality Officer's decision issued 28 May 2003. stated

"Clause 4.4. of the Maintenance Grant scheme for Students states that candidates must hold EU nationality or have official refugee status in order to qualify for a grant which, in my opinion, is clearly contrary to the Equal Status Act's prohibition of discrimination based on nationality....I consider that a continuing discriminatory rule still exists and accordingly in the interests of

preventing future unlawful discrimination, I would suggest that clause 4.4 be annulled completely rather than simply being disapplied as the need arises. I would also recommend that the Department, in designing grant schemes in future should take full account of the provisions of the Equal Status Act 2000.

(Two complainants –v- the Department of Education and Science(DEC2003- 042/043)

It is disappointing in the extreme that rather than take into account the Equality Officer's recommendations and amend grant schemes to be non-discriminatory, the Government has chosen to approach the matter by amending the Equal Status Act in order to allow the discrimination to continue. While there may be legitimate concerns about potential strain on grant schemes caused by persons coming to the country specifically to avail of education, the imposition of a blanket nationality clause is both disproportionate and discriminatory and alternative restrictions such as residency requirements could adequately deal with any potential abuse.

2. Section 47: amendment of section 7 (certain measures and activities not prohibited)

Section 47 adds the following to the list of measures and activities not prohibited by the Equal Status Act 2000:

"Any action taken in accordance with any provision or condition made by to under any enactment or made otherwise by a public authority, and governing or arising from entry to and residence in the State of persons who are not nationals or a category of such person. "

Nationals are defined *"those persons lawfully resident in the State, except those who have applied to the Minister under paragraph (a) or (c) of the Refugee Act 1996 for a declaration...and have not been given it".*

The exclusion therefore applies to asylum seekers- who are lawfully in the State- as well as people who are without legal status in the State. To remove the protection of the Equal Status Act from a particularly vulnerable category such as asylum seekers in relation to their dealings with public authorities is a severe undermining of the intent and purpose of the Equality legislation.

While "entry" clearly refers to immigration requirements *per se*, "residence in the State" is potentially open to an extremely wide interpretation covering more than strictly immigration-related issues. When interpreted in conjunction with the wide-ranging definition of public authorities - including health boards, local authorities, statutory bodies and state-owned companies- **it gives rise to the concern that it is intended to ensure that practices over a broad range of areas, including health care and social welfare provision, which would otherwise be discriminatory, will be lawful when carried out by the State.**

Community welfare officers and NGOS have consistently expressed concern at differential treatment of asylum seekers in the area of social welfare. The payment of reduced supplementary welfare allowance of €19.10 to asylum seekers is contrary to the practice applied in relation to any other category of people. FLAC suggested in its report "Direct Provision-Direct Discrimination?" (June 2003) that this might constitute a case of indirect discrimination on grounds of nationality contrary to the Equal Status Act 2000. It would appear that one of the purposes of this amendment would be to preclude such a challenge. However, it also leaves the way open for an expansion of institutionalised discrimination.

The Government in its draft First Report to the UN Convention on the Elimination of Racial Discrimination has pointed to the Equality legislation to illustrate its compliance with its international obligations. It has made no reference to these amendments which erode the protection afforded, particularly on the race ground.

3. Reasonable accommodation: disparity between employers and service providers

It is also disappointing that the government has chosen a minimalist approach to implementing the changes required by EU Directive 78/2000. In accordance with the Directive, the bill proposes amendments to the Employment Equality Act 1998 in relation to reasonable accommodation for people with disabilities, requiring employers to make reasonable accommodation where this does not impose a disproportionate burden. This is a higher onus on employers than that imposed under the original legislation where reasonable accommodation is not required if it imposes more than a "nominal cost", a concept which has never been clearly defined. **There is now a disparity as between employers and service-providers in relation to the obligation to make reasonable accommodation, as the opportunity has not been taken to replace "nominal cost" with "disproportionate burden" in the Equal Status Act 2000.**

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