

Heads of Irish Human Rights and Equality Commission Bill 2012

Positives:

- Commitment to adopt a transparent appointment system regarding the Board of the Human Rights and Equality Commission. Expressions of interest from suitably qualified/expert candidates will be invited – 12 Commissioners will be selected by a panel of 5 experts (appointed by Govt)
- The Commission shall consult in the preparation of its strategic plan with such bodies and groups as it sees fit, including but not limited to educational institutions, representatives of civil society and Government Departments and agencies. This is a strengthening of the independence of the body, as previously there was a requirement on the Equality Authority to have its strategic plan approved by the Minister
- The Commission will be made more accountable to the Oireachtas, including, including presentation of its strategic plan to the Oireachtas
- Head 28 provides that: “The Commission shall be provided with sufficient resources to ensure that it can carry out each of its functions effectively.”
- A public sector positive duty is being introduced. The Bill explains the duty as follows : *the public body shall in the exercise of its functions have due regard to the need to eliminate prohibited discrimination, promote equality of opportunity and treatment and protect the human rights of its staff and the persons to whom it provides services. Due regard for the purposes of this section shall mean giving consideration to these matters in the planning and execution of the body’s policies and actions, and in its Strategic Plan, and reporting annually on its implementation of this obligation in its annual report or otherwise”.*

The Commission is given a range of possible functions in regard to supporting public bodies to implement the duty, including: development of Codes of Practice; developing performance measures and operational standards; offering support and advice.

Concerns:

- The commitment to resourcing of the Commission is one which civil society will need to continue to lobby on. In addition, the Commission will continue to be funded through the Department of Justice, which means it remains vulnerable to cuts to its resourcing by the parent Department.
- Autonomy to recruit staff at all levels: the Bill states that “the Commission is established in compliance with the Paris Principles and shall be guided in the exercise of its functions by those principles”. A key standard in regard to the independent functioning of human rights institutions, as outlined in the Paris Principles, is that the body has autonomy to recruit its own staff at all levels. The working group on the merger recommended that the new Commission would appoint its Director, however, the Heads of Bill states the following:

“The first Director of the Commission shall be the person who on the day prior to the establishment day is the Chief Executive of the Equality Authority and her contract with the Authority and the period specified in that contract shall be deemed to be a contract and a period for the purposes of subsection (2)”. (pg 35)

This is contrary to principles of independence and international standards. It is imperative that the Commission be allowed to recruit its staff, particularly at senior level, thus ending the process of secondment from the Civil Service, as recommended for example by the Fundamental Rights Agency¹.

- While the introduction of a public sector duty is a very positive step, a key weakness with the proposed duty is the absence of enforcement mechanisms to ensure compliance by public bodies. In addition it is unclear whether there will be additional resourcing of the Commission to provide the necessary guidance and Codes of Practice to support public bodies to implement the duty, which will be critical to the success of the duty.

¹ (2010) *National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I*, pg 9, EU Fundamental Rights Agency