

Irish Report

Review and Reform of EU Equality Law : Ireland

Ursula Barry

Research Assistant : Joan O' Connor

Women's Education Research and Resource Centre
University College Dublin

April 2003

Introduction

Equality legislation in Ireland originates with Irish membership of the European Union (EU) - then the European Economic Community (EEC) - in 1973. Up until this time, gender equality and equal opportunities had not been addressed within the Irish legal framework. Ireland has a written Constitution, adopted in 1937, which refers to the equal treatment of citizens before the law, but makes no specific recognition of gender inequality. In fact the Constitution specifically refers strongly to the importance of women's role within the home and the need for the State to support that role taken a negative or restrictive perspective on women's paid employment. The Constitution states that

- men and women equally have the right to an adequate means of livelihood
- the State must ensure that they may through their occupations have the means of making reasonable provision for their domestic needs
- citizens shall not be forced by economic necessity to enter vocations unsuited to their sex, age or strength
- by her life within the home, woman gives to the State a support without which the common good cannot be achieved
- the State should endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to neglect of their duties in the home

Given the lack of reference to gender equality or to discrimination in the Constitution, EU Directives on equal pay and anti-discrimination were highly significant in Ireland and brought about far reaching changes in employment law. Of equal significance in the early seventies was the removal of the 'marriage bar' which had operated to enforce compulsory retirement of women from employment on marriage in the civil service, most public sector organisations and certain large private sector organisations, such as the banks. Again it was membership of the EU which brought about the removal of this restrictive bar on women's employment. Later EU Directives on social security, protection of pregnancy, maternity and parental leave have all contributed to a strengthening of that legal framework.

In more recent years equality legislation in Ireland has undergone a major transformation resulting in an extension of anti-discrimination law from employment to service provision and the broadening of grounds of discrimination to nine grounds from sex, marital and family status, to include age, disability, race, sexual orientation, religion, and membership of the travelling community. These developments have been the result of national political initiatives rather than a response to the requirements of EU law. In this context Ireland has become an initiator of progressive change in equality legislation within the EU, particularly in its Equal Status legislation providing protection against discrimination in the provision of services on the same nine grounds. Together with this legislative change, a stronger and broader equality infrastructure has been put in place including a new Equality Authority and dedicated equality units in specific government

departments. One result of these changes is that gender equality has become one part of a wider equality agenda, both in legislative terms and in the practice of public policy.

Despite the evolution over three decades of a relatively comprehensive legal framework for gender equality focused primarily on employment, there is still evidence of significant gender based discrimination. For example, women are crowded into particular segments of the labour market, there is a persistent gender pay gap and the lack of representation of women in civil and political life is striking. Assessing the impact of equality legislation in Ireland is a complex process. The Irish economic and social system has undergone enormous changes over the thirty year period since joining the EU. The position of women in relation to the labour market has changed dramatically as women's participation in paid employment has risen very strongly linked to falling fertility rates, higher levels of educational attainment, periods of strong economic growth, rising expectations as well as the positive impact of equality legislation. Disentangling the specific effects of equality legislation is a difficult task. This Report looks at the legislative changes which have taken place and the corresponding changes in women's employment rate, employment conditions and in the gender pay gap in order to provide a context for such an assessment. Some evaluative work on equality legislation is also outlined.

Section 1 : Impact of EU legislation in Ireland

Equality Legislation in Ireland

The first piece of equality legislation introduced into Ireland following membership of the EU was the Anti Discrimination (Pay) Act, 1974 designed to bring the Irish legislative framework into line with EEC Directive 117. The Act only finally came into effect on January 1st 1976 following a period of strong resistance from employers organisations supported by the government of the time. Women's organisations, trade unions and some political parties engaged in a strong campaign to bring about the implementation of the Act. Once brought into law, under this Act, women and men were deemed to be entitled to equal pay for 'like work' including work of 'equal value' defined in terms of skill, physical or mental requirements, responsibility or working conditions.

The following year saw the introduction of the Employment Equality Act 1977 prohibiting discrimination on the grounds of sex or marital status in recruitment, training, conditions of employment and promotion opportunities. This Act also outlawed indirect discrimination, where a condition or requirement essential to a job is applied to both sexes but operates such that the proportion of persons disadvantaged is much higher among one sex. This legislation also saw the establishment of the Employment Equality Agency (EEA) which had roles both in investigating claims of discrimination and in promoting non-discrimination and equality issues. The information and monitoring role of the EEA, together with its enforcement role, had the potential of allocating a significant role to the agency, but one which was in practice limited by lack of resources.

These two pieces of legislation constituted the legal framework for equality in employment in Ireland over a period of twenty years. These Acts were implemented through a complaints-based system. Cases were pursued through Equality Officers or through the Labour Court. Equality Officers and the Employment Equality Agency had the power to carry out an investigation into discrimination claims. An important aspect of the legislation was the provision for representation of claimants by trade unions which has meant that a number of named women could be part of and benefit from the same action. This increased the impact of the legislation and the capacity of individuals and groups to seek redress through the system.

There were however significant limitations to these two pieces of legislation which curtailed their effectiveness :

- There was no reference in the legislation to a job classification system or a job evaluation system. This limited the extent to which different jobs could be compared on the basis of 'equal value'.
- Comparisons under the legislation were restricted to those who worked for the same or associated employer. As a result, the capacity of the legislation to reduce wage differentials that arise through segregation has been extremely limited.
- Because the legislation operated on the basis of a complaints system, there was no allowance for class action or action by State agencies.

Individual cases however have established important breakthroughs in establishing greater equality of pay. In 1997, for example, a flexible interpretation of the 'work of equal value' clause resulted in a record equal pay award by the Labour Court to four women clerical workers employed by the Irish Civil aviation Authority as communications assistants earning IR£12,468 per year. The court ruled that the women's work was equal in value to that of male radio officers earning IR£21,941 and each woman received IR£100,000 in back pay. (Murphy and Roche 1997).

Case law has also played an important role in achieving a fuller implementation of other EU Directives on equal treatment of women and men. The implementation of the EU Directive on Equal Treatment in Social Security during the mid 1980's was the subject of much controversy in Ireland. Initially it was brought into Irish law under the Social Welfare (No 2) Act 1985 but was only implemented in 1986. Due to the lack of provisions for the full equal treatment of married women under this legislation, it was the subject of case law which finally ruled in favour of the complainants resulting in the payment of significant amounts of backpay to the women affected amounting to a total value of IR£350 million. The 1980s also saw the removal of the prohibition on women's industrial night work under the Employment Equality (Employment of Women) Order 1986. This change was the direct result of European regulation. More recently the EU Directive on Parental Leave, which the Irish government adopted a minimalist approach

to its implementation, was also subject to legal controversy eventually forcing the amendment of national legislation.

Equal pay and equal treatment legislation introduced in the 1970's appears to have had an initial positive impact in narrowing the gender pay gap but this situation leveled off during the 1980s to the present day with only marginal closing of the gender pay gap evident over this period. Detailed analysis of the impact of the legislation is severely hampered by the absence of comprehensive national pay data in Ireland. Official national pay data has been collected only for the industrial sector (manufacturing and construction) over the decades and not the critical services sectors where the vast majority (four out of five) women are concentrated. Data collected for the 'Living in Ireland Survey' the Irish component of the European Community Household Panel (ECHP) does provide an estimate of the gender pay gap on an economy wide basis. (Callen et al 2000).

Recent Amendments to Equality Legislation

In 1998, the existing two equality laws were replaced with the Employment Equality Act, 1998 which extended the grounds on which discrimination in employment is outlawed from the two grounds of sex and marital status to a further seven grounds: race, sexual orientation, age, disability, religion, membership of the Travelling Community and family status. Under this Act equal pay for 'like work' is provided for. Like work is defined as work which is the same, similar or of equal value. Four categories of discrimination are prohibited under this Act : direct and indirect discrimination, harassment and victimisation. This new legislation brought in some important new legislative provisions but did not change the key limitations of equality legislation in Ireland outlined above :

- The Act provides that all employment contracts shall be deemed to include equality and equal remuneration clauses. Discrimination on the nine grounds is outlawed in relation to a broad range of employment-related activities including training or experience for, or in relation to: employment; access to employment; conditions of employment; promotion; classification of posts; activities of employment agencies; and advertising. It applies to employing organisations including trade and professional organisations, trade unions and to collective agreements.
- The time limit for claims was changed from six months from the date of the first occurrence to six months from the most recent occurrence.
- The Employment Equality Agency was reconstituted as the Equality Agency and given a stronger role in conducting equality reviews and preparing equality action plans. Businesses failing to implement the provisions of an equality action plan can be issued with a substantive notice to be enforced by the courts if necessary. To date the Authority has taken the approach of voluntary compliance.

- Perhaps the most important change (together with the extended grounds of discrimination) is the legal definition of sexual harassment and harassment contained in Irish law for the first time under this new Act. Employers may be liable for their own discriminatory conduct but are also liable for harassment to employees perpetrated in the course of their employment for example sexual harassment of employees by customers, clients or business contacts. Sexual harassment is defined so as to include acts of physical intimacy, requests for sexual favours, unwelcome acts including words, pictures or gestures.
- Positive action measures designed to remove existing inequalities and promote equal opportunities between women and men, persons with a disability, persons over the age of 50 and members of the traveller community are provided for under the Act.
- The comparator for the purposes of equal pay claims while still restricted has been made broader and more flexible in that it may be in the 'same' or 'associated' employment as the complainant.
- The Act includes definitions of indirect discrimination on gender grounds bringing Irish law in line with decisions of the European Court of justice.
- Definition of pay does not specifically include pension rights.
- The Act is applied to the defence forces for the first time.

Particular Strengths of Irish Legislation compared to EU regulations

1. Irish equality legislation now covers nine grounds of discrimination using the legislative approach to gender equality in employment and applying it to specific minorities vulnerable to discrimination, such as people with disabilities, racial minorities, lesbians and gay men and others. The enactment of this legislation in 1998 protecting against discrimination in pay and working conditions for each of the nine specified grounds puts Irish equality law significantly in advance of that covered by EU directives.
2. Since 2000 Irish equality law has been extended to cover protection against discrimination in the provision of services (in addition to existing legislation on employment). This legislation covers the same nine grounds of discrimination specified in employment legislation. By outlawing discrimination in service provision and by covering specified minorities as well as sex discrimination, this aspect of the Irish equality framework encompasses social and economic activity not covered by EU Directives.
3. The 1998 Employment Equality Act defined sexual harassment in Irish law for the first time. Prior to that there were individual case laws which provided valuable precedents but no specific legislative provisions.

4. Employment equality legislation in Ireland, in line with EU legislation, makes definite provision for equal pay on the basis of work of 'equal value'. In this context, it takes a generally broad and flexible approach to the implementation of the principle of equal pay.
5. Irish equality legislation makes specific provision for positive action measures in relation to specific sectors of the population - women, older people, disabled people and members of the traveller community - who have experienced historical discrimination. This provision is aimed at bringing Irish legislation in line with the EU Amsterdam Treaty covering positive action.
6. In implementing the Directive on Maternity Leave, successive Irish governments limited entitlement to the minimum required under EU regulations. However, as a result of strong lobbying from trade union, women's organisations and others, statutory maternity leave entitlement was raised in 2001 to 18 weeks paid and 8 weeks unpaid leave. This entitlement is still lower than that provided for in other EU member states but no longer constitutes the minimum specified under EU regulations.
7. Irish equality legislation has generated a significant amount of case law, at a higher level than in many other member States. Both the Equality Authority, which has a direct role in advising and assisting claimants, as well as trade unions have played a central role in ensuring that cases of discrimination are taken through the system. Positive outcomes on discrimination claims are common.

Particular Weaknesses of Irish Legislation compared to EU regulations

1. Employment equality law in Ireland is restricted to claims made against the same employer or related employers. In this sense it does not provide for the use of a broad based comparator in equal pay claims and consequently restricts the applicability and the effectiveness of the legislation.
2. Leave entitlements are extremely low in Ireland. Following the coming into force of the Parental Leave Directive, the then Irish government took a minimalist approach to its implementation in Ireland. Little has been done to change this situation. Statutory parental leave is unpaid in Ireland and there is no statutory provision for paternity leave. Recent improvements in maternity leave (paid from 14 to 18 weeks and unpaid from 4 to 8 weeks) has been a significant improvement but Ireland continues to provide relatively low provision in EU terms.
3. The definition of remuneration used in Irish equal pay legislation excludes pension benefits. However, recent EU case law will be applied in the Irish context, thus ensuring that pension entitlements are taken into account in equal pay cases.
4. There are a number of exceptions under equality legislation in Ireland, where, for example anti-discrimination provisions are not applied. For example, equal status

legislation covering service provision exempts educational establishments from complying with anti-discrimination provisions where issues of 'religious ethos' arise.

5. On a number of occasions over the last three decades, Ireland has been very slow to implement EU Directives to the extent that special 'derogations' from the EU timetable have been secured, in relation to for example equal pay and parental leave. In other instances the Irish State has eventually been forced to make significant back payments (in the case of social security provision). In effect, political campaigning and lobbying have frequently been necessary to ensure implementation of EU Directives.
6. Despite the fact that case law is extensive under Irish equality legislation, penalties, sanctions and enforcement systems are weak. There are some individual examples of significant settlements but there are also many examples of the application of low level sanctions.
7. Enforcement of equality legislation in Ireland is restricted due to the lack of provision for class actions, group cases or representative actions. Trade unions, for example, are currently not allowed to take proceedings under their own name on behalf of members.

Conclusion

EU legislation has played a critical role in establishing a legal framework for gender equality and equality of opportunity in Ireland. Ireland lacked any legal framework for equality on joining the EU (EEC) in 1973. From a position of complying (if reluctantly) with EU directives and regulation in the 1970s and 1980s, Ireland has become a developer of new legal initiatives on equality within the EU. Throughout this thirty year period, EU legislation and policy making has been essential in providing for greater equal opportunities in employment.

- It has acted as driving force in 1970s and 1980s in bringing about changes to Irish legislation establishing equal opportunity in employment and employment related activities.
- By strengthening equality legislation in Ireland, it has contributed to the rise in the demand by Irish women for paid employment contributing to the strong increase in women's employment rate.
- It has strengthened women's attachment to the labour market in Ireland, extending the time period during which women stay in paid employment, thus reducing turnover on the labour market and contributing to the development of a productive labour force.
- It has improved the conditions of women in paid employment through contributing to the establishment of leave entitlements and other conditions of employment.

Section 2 : Progress towards Equality

"Irish women have the Community to thank for the removal of the marriage bar in employment, the introduction of maternity leave, greater opportunities to train in a skilled trade, protection against dismissal on pregnancy, the disappearance of advertisements specifying the sex of an applicant for a job and greater equality in the social welfare code." (Dail Eireann Joint Committee on Secondary Legislation of the European Communities 1984)

While equality legislation introduced since the 1970's brought about improvements in the position of women in employment, its implementation coincided with enormous changes in the economic situation of Irish women. The most dramatic of these has been the huge increase in the numbers of women in the paid labour force, now accounting for over 40% of the total. As more women have been drawn into paid employment, the gender pay gap has narrowed and there has been a stronger representation of women in administrative, lower and middle management and certain professional occupations in both the private and the public sector.

It is difficult to assess the extent to which equality legislation has stimulated this higher rate of women's paid employment in Ireland as a number of different factors have acted together, such as changing expectations, lower fertility rate, higher levels of educational attainment, the expansion of both public and private services, periods of economic growth. Ireland's fertility rate fell dramatically from 3.8 in 1960 to 3.3 in 1980 to 2.1 in 1989 and 1.9 in 2000 bringing with it fundamental changes in Irish women's social and economic position, and particularly in women's demand for paid employment. (Eurostat 2002) Evidence from recent years indicates that lack of childcare facilities and the high cost of childcare both of which act as barriers to women's employment, are also linked with deferment of childbirth to later age and reduced family size (Report of the Working Group on Childcare Services 1998) Greater access to employment has resulted in an improved economic position and a greater degree of economic independence among Irish women. However women's disadvantaged position within the employment system together with women's carrying of care responsibilities has meant that the move towards greater equality of opportunity has been uneven and even contradictory at times.

Employment Rates

Significant changes in the employment rate among Irish women have taken place over the past twenty years. From a position when only 26% of the Irish labour force were women in the early 1970's, today women make up 43% of the total. Married women accounted for a large amount of the increase during the 1970s and 1980s increasing their proportion of the female labour force from 14% in 1971 to 30% in 1981, to 40% in 1987 and 52% in 2001. Women's employment rate has risen from 28% in 1971 to 30% in 1981, 32% in 1987, 49% on 1998 and 55% in 2001. The majority of these work part-time. This growth in women's paid employment has transformed the Irish labour force and it is a pattern that has continued up to the present day. A five percentage point increase in the

average employment rate between 1998 and 2001, driven largely by a strong rise in the employment rate of women and older people, are evident from the following data.

Table 1

1. Female Labour Force Participation Rate

Year	1971	1981	1987	2001
All Women	25.7%	29.1%	30.9%	43.2%
Married Women	13.6%	30.2%	39.6%	52.3%

2. Employment Rates 15 – 64 years of age

Year	1998	1999	2000	2001
Overall	60.5%	63.2%	65.1%	65.7%
Female	48.9%	51.9%	54.9%	55.1%
Older	41.6%	43.7%	45.3%	46.4%

Central Statistics Office, 1998, 1999, 2000, 2001.

Barriers to employment among women persist in Ireland, blocking progress towards equality and also to the potential benefits from the greater implementation of equal opportunities across the economic and social system. A recent survey by the Chambers of Commerce in Ireland highlighted the lack of childcare services as a key factor in restricting women's employment and hence their access to a productive workforce. One third of businesses surveyed by the Chambers of Commerce in Ireland in 2001 believed that low availability and high costs of childcare were impeding their efforts to recruit and retain employees. According to the employers surveyed, cost was the biggest barriers to employees finding suitable childcare. 72% of employers cited the cost of childcare as a major barrier and 67% the lack of available childcare places. (Chamber of Commerce Ireland 2001)

Gender Pay Gap

The period immediately following the introduction of equality legislation in the 1970s saw a narrowing of the recorded wage gap between women and men, a trend which leveled off during the 1980s. Callen and Wren's (1994) analysis of male-female wage differentials in the manufacturing sector highlights the faster rate of growth in female over male manufacturing earnings following the introduction of equal pay legislation in the 1970s. A number of commentators highlight the restrictive application of equal pay legislation in a highly segregated labour market as the reason for this limited amount of progress.

" In 1975 the ratio of women's hourly earnings to that of men was 60.7% which increased steadily to 68% in 1981. In 1984 it dropped to 67.9% but climbed back to 68.1% in 1985.

Disappointingly, by 1987 it had fallen back to 67%. This means that during the 1980s the narrowing of the gap between women's and men's hourly earnings in manufacturing industry had come to a standstill. Clearly, the 1974 Act has had some small impact on the male/female wage differential, but the legal intervention in this area has been limited conceptually since it ignores the specificity of women's position and participation in the labour market. " (Curtin 1989)

The restricted applicability of equal pay legislation is clearly highlighted by the work of Rosheen Callender and Frances Meenan writing in 1994 :

" Progress towards equality must involve more effective outlawing of discriminatory practices in employment, together with positive action to ensure women's full and equal participation at all levels of economic and social life. To date the overall impact of European equality legislation in assisting this process has been limited. In the 17 years from the enactment of equal pay legislation until the end of 1992, some 437 claims, involving fewer than 10,000 workers (only about 2% of the female workforce), were the subject of Equality Officer recommendations. Over the entire period, a majority of these claimants were successful in establishing their entitlement to equal pay; but in recent years both the number of claims and the proportion of successful ones have been falling.

Claims under the equal opportunities legislation have been even smaller in number : between 1978 and 1992 only 254 claims came to the Equality Officers for recommendation and only about 500 workers were successful in establishing an entitlement to equal treatment. Yet potentially this is the legislation which should have the most positive implications for women at work, by outlawing many forms of discrimination in employment and encouraging the entry of more women to traditionally sex-segregated industries, occupations and grading structures."

(Callender and Meenan 1994)

Mary Redmond commenting on the sectoral impact of the 1974 Equal Pay Act makes the point that

"...since the 1974 Act came into force, the gap between men's and women's earnings has marginally narrowed. There is no data on the number of women employed in work that is the same, similar, or equal in value as the work carried out by men in the same employment. The overall problem in relation to women's pay in Ireland is that they are virtually absent from those parts of the workforce where earnings are the highest. There is some indication from trade union sources that progress in negotiating equal pay has been made in the following sectors : Food, Tobacco, Paper and Printing, Chemicals, Metals and Engineering. Large numbers of clerical, administrative and distributive workers, as well as nurses and hotel workers, have benefited from equal pay settlements." (Redmond, 1984).

Analysis of the period since the mid 1980s reveals a continuation of this limited impact of equal pay legislation. The Irish economy has continued to show a wide and persistent gender wage gap over the last fifteen years although there has been some narrowing of

the gap between men's and women's earnings since the late eighties. Central Statistics Office data for the manufacturing sector shows a reduction of the gender wage gap since 1988 when women were earning on average just over two-thirds of men's hourly earnings. The female to male wage ratio stood at 61.3% in 1977, rose to 67.6% in 1988, 72.7% in 1994, 74.4% in 1998 and rose further to 75.9% in 2001. The high rates of economic growth which occurred in the late nineties through to the present day only brought with it a marginal reduction in the gender pay gap of 1.5 percentage points between 1998 and 2001. So despite some significant narrowing of the wage gap over the period of time during which equality legislation has been in place for nearly three decades, the wage gap has remained wide in manufacturing, at 24% in 2001.

Table 2 Average Hourly Earnings for Women and Men in Manufacturing Industry for Selected Years

Year	Female	Male	Total	Female/Male Ratio
1977	1.68	1.03	----	61.3%
1987	4.85	7.15	6.29	67.6%
1994	6.53	9.10	8.14	72.7%
1998	7.60	10.21	9.27	74.4%
2001	9.43	12.41	11.4	75.9%

Source : Central Statistics Office, Blackwell, 1989.

The most recent published study of pay and the gender pay gap in particular was published in 2000 by Oak Tree Press for the Economic and Social Research Institute (ESRI), (authors A. Barrett, T. Callan (ed), A. Doris, D. O' Neill, H. Russell, O. Sweetman, J. McBride) entitled 'How Unequal – Men and Women in the Irish Labour Market'. This study was undertaken following a commitment under Partnership 2000, the National Agreement between the social partners. The study itself was monitored by a committee representing the social partners and relevant government departments. The study draws on data from the 1987, 1994, 1997 and 2000 Living in Ireland Surveys, the Irish element of the European Community Household Panel.

The following data is taken from a Report by Helen Russell and Brenda Gannon of the ESRI on Equal Opportunities between Women and Men and published on the Department of Enterprise and Employment Website (www.entemp.ie 2002). Using data from the Living in Ireland Surveys, it draws on and updates the statistical trends presented in the Barrett et al Report and represents the most recent analysis of trends in the gender pay gap in Ireland. Data for all employees based on Economic and Social Research Institute (ESRI) survey data reveals a higher female to male wage ratio covering the period 1987-1997, rising from 80.1% in 1987 to 82.8% in 1994, to 85.0% in 1997 and to 85.3% in 2000. It is clear from this data that the gender wage gap narrowed very gradually but significantly by five percentage points over the decade 1987 to 1997 but has remained almost static over the years 1997-2000. It was in 1997 that the European Employment Strategy was first put in place.

Table 3 Gender Pay Gap, 1987 - 2000, Living in Ireland Surveys

Year	F/M Ratio %	Wage Gap %	Mean Hourly Wage 2000	
			Male £	Female £
1987	80.1	19.9	4.27	3.59
1994	82.8	17.2	7.71	6.38
1997	85.0	15.0	8.88	7.55
2000	85.3	14.7	10.29	8.77

Source : Russell and Gannon, 2002

1987 figures taken from Callen and Wren. Figures for 1994 and 1997 vary slightly from Barrett et al due to use of individual rather than household weighting.

A number of different factors have influenced the way in which the gender pay gap operates in practice for example age, work experience, educational attainment and occupation. These factors can also affect women and differently depending on their different labour market situations. Russell and Gannon 2002 examine a number of these factors in turn using the Living in Ireland Surveys data to give a detailed picture of how labour market characteristics influence the gender wage gap.

A definite pattern is evident when data on the gender wage gap is broken down on an age group basis. The gender wage gap widens in the older age groups except in the oldest 55-64 age group where labour force participation, particularly among women, is very low. Interruptions in the labour market experience of women who tend to have significant periods of absence from paid employment leading to disadvantage on the labour market is reflected in the wider pay gap among most of the older age categories. The gap is particularly wide in the 45-54 age group, at a level of 26.7% in 2000. The wage gap has been static or increasing in the younger age groups and narrowing in the middle and older age groups (although from a wide base) across the time period 1994 to 2000.

Table 4 Male and Female Wage Differentials by Age Group

Age Category	1994 Ratio	1997 Ratio	2000 Ratio	Mean Hourly Wage 2000	
				Male	Female
17-24	107.3%	107.0%	96.3%	£6.79	£6.54
25-34	96.8%	90.8%	90.3%	£9.75	£8.80
35-44	81.8%	91.5%	87.4%	£10.88	£9.51
45-54	70.7%	72.6%	73.3%	£13.29	£9.75
55-64	77.7%	74.3%	80.1%	£12.41	£9.94

Source : Russell and Gannon 2002.

A key factor in understanding the gender wage gap in Ireland is an examination of occupational segregation, particularly vertical segregation which has the effect of

crowding women into the low paid and low status end of the jobs hierarchy and out of the higher paid employment. Horizontal job segregation is also widespread in Ireland. Two thirds of women workers are employed in just four strongly female dominated occupations - clerical workers, nurses, teachers and personal services workers. While European Labour Force Data reveals a strong representation of women in Ireland in higher level and professional jobs, the vast majority of these are accounted for by first and second level teachers and nurses.

Table 5 Female Share of Higher Level and Professional Jobs in Ireland and EU (%)

	1992		1995		2001	
	Ireland	EU	Ireland	EU	Ireland	EU
Female share of Higher Level Jobs	38.5	40.6	41.7	42.0	44.1	43.4
Female share of Professional Jobs	49.7	41.1	54.3	43.2	51.7	43.8

Source : European Labour Force Survey. EWERC calculations.

As Deirdre Curtin, writing in 1989, points out

" It is evident...that considerable horizontal segregation still exists in the Irish labour market, from the high proportion of women in clerical work, nursing, primary school teaching and personal services. Evidence also suggests that where women are crowded into certain occupations the pay of that occupation is depressed. However, under the terms of existing equal pay legislation, unless a woman in a 'crowded' occupation can point to an actual male comparator doing similar work or work of equal value, she is without redress under the legislation." (Curtin 1989)

A possible solution to the more effective application of equal pay legislation put forward by Curtin is the use of a hypothetical male comparator, an approach which she states has been rejected at both national and EU levels. While viewing a hypothetical comparison as potentially valuable in broadening the scope of equal pay legislation, she also identifies certain weakness associated with this model, for example its lack of recognition of differences between men and women's 'life-time participation on the labour market' and the use of the male worker as the reference point.

Some progress towards greater gender equality has been reflected in the narrowing of the gender pay gap. But the fact that the gender pay gap continues to be significant and persistent reflects both the way in which women are penalised in paid employment because of their time spent on care responsibilities and also the undervaluing and underpayment of women's work. Increased participation has resulted in some increased equality of opportunity and outcome but gender discrimination is still evident. Women continue to be concentrated in a narrow range of occupations, they make up the majority

of those on low pay, those living in poverty and are crowded into the lowest part of the jobs hierarchy.

As well as equality legislation, other legislation covering part-time employment and the minimum wage have played important roles in improving the employment position of women. As women account for most of those on low pay and the large majority of part-time employees in Ireland, regulation in this area is particularly important. Because the minimum wage was set at a low level and was introduced at a time of strong economic growth and rising demand for labour, its positive impact on women in low paid employment was limited. It is estimated that 6% of women employees experienced some benefit from the setting of the minimum wage (Nolan et al 2002)

Educational attainment is another factor which affects women's position on the labour market and consequently their relative earning situation. However, data shows that substantial gender wage gaps are evident even where women's educational qualifications are high and little change has taken place in this pattern over the last eight years. It is also very clear from the data that the gender wage gap is the highest among women and men with the lowest educational attainment levels and lowest at the highest educational attainment level. High educational attainment does however mean that women earn above the average earnings and above male average earnings. Different factors may come into play here. For example, women with higher educational attainment linked to higher levels of earnings are more likely to have a stronger attachment to the labour market, resulting in fewer periods and shorter periods of absence from paid employment.

Table 6 Male/Female Wage Differentials by Educational Qualifications

	1994	1997	2000	Mean Hourly Wage 2000	
	Ratio	Ratio	Ratio	Male	Female
No secondary qual	65.6%	68.3%	69.5%	£7.72	£5.37
Junior/Group cert	73.3%	75.5%	75.0%	£8.41	£6.30
Leaving Cert/Dipl	80.5%	81.9%	82.3%	£10.03	£8.26
Degree	84.9%	90.6%	84.9%	£16.40	£13.93

Source : Russell and Gannon 2002

Strong increases in women's participation in education and training have paralleled increases in women's employment rate. Women account for the majority of those with third level education in Ireland, a gap particular apparent among younger people aged 25-34 compared to the older age group 55-64. This reflects a generational change as young women in Ireland look to increased educational attainment as a means to strengthen their situation on the labour market in terms of both pay and occupational position.(OECD 2002) The female proportion of second level students has been at slightly over 50% of the total since the late 1970's, while within the third level sector, female students have risen significantly from a position of under- to one of over-representation over the same time period. Over the last twenty years, the female share of students in third level education has risen continuously as the following figures show :

Table 7 Female Share of Third Level Students

1979	42.3%	
1985	43.2%	
1990	45.3%	
1995	49.3%	
2000	54.1%	(OECD 2002 Lynch, 1999)

Within the second level system, data shows that girls have begun to consistently outperform boys in the results achieved in the Leaving Certificate examination, including subjects such as maths in which 83% of girls attaining a grade C or higher in higher level maths in 1996 compared to 79% of boys. This compares to figures of 35% of girls attaining a grade C or higher in higher level maths in 1979 compared to 44% of boys. Looking at the field of study that new entrant female and male students are engaging in data from 1998 shows strong gender differentiation. Over two-thirds of those take up study in Humanities, Social Sciences or Art and Design fields are female compared to only 22% of those taking up study in Technology fields (Clancy 2001).

Data from the State training agency AnCO - later reestablished as FAS - show a strong increase in women's participation in training and employment schemes. In 1975, women accounted for only 10% of trainees compared to 30% of trainees in 1980. (AnCO 1980) Recent data from FAS indicates that women today account for 46 % of participants on training and employment schemes - 35% of training programme participants and 46% of employment scheme participants. Women have strongly increased their proportion of participants on active labour market schemes due to changes in eligibility criteria allowing for lone parents (the large majority of whom are women) and women spouses of long term unemployed men to enter these schemes. However, underlying the global figures for women's equal participation rates, there is evidence of significant sex differentiation. There has also been a steady increase in the percentage of women undergoing specific skills training. Between 1990 and 2000, women increased their proportion of participants on specific skills training from 37% to 45%. However, underlying the global figures for women's more equal participation rates, there is evidence of significant sex differentiation. Within specific skills training women tend to be grouped into certain training programmes and in apprenticeship training women make up only a tiny percentage of participants. Women accounted for 56% of those on general specific skills training courses but only 15% of those on sponsored specific skills training i.e. linked to specific employers or employment opportunities in 2000. Less than 1% of those undergoing apprenticeship training that year were women. (Cousins 1996, FAS 2000)

Development of Equality Infrastructure

Another indication of progress towards equality is the provision of an equality infrastructure which can facilitate and enable gender discrimination to be addressed and equality policies to be enhanced and implemented. Together with the introduction of new

equality legislation, the five year period from 1998 has also seen the strengthening of the equality infrastructure in Ireland. The Equality Authority established under the 1998 Employment Equality Act has increased resources, a greater range of activities, a stronger and more proactive role as well as a higher public profile than the Employment Equality Agency which preceded it. It is however also responsible for nine different areas of discrimination of which gender is only one. Alongside the Equality Authority, new equality units have been established in specific government departments, the Department of Justice Equality and Law Reform and the Department of Education and Science. The Department of Justice Equality and Law Reform has overall central government departmental responsibility for equality, established in the 1990s following the dissolution of the Ministry for Women's Affairs which was in place during the 1980s. Other important initiatives include the establishment of an Equal Opportunities Monitoring Committee in relation to the implementation of the National Development Plan (NDP) 2000-2006. Parallel to the adoption of the NDP, Gender Impact Assessment Guidelines have been adopted by Cabinet in 2001 which must be applied to the large majority of policy initiatives under the Plan. This range of initiatives represent a broader based commitment within the legal and institutional system towards gender equality and equality generally. It is not yet evident however, whether these changes are resulting in greater equality of opportunity in practice. The definite lack of gender equality in the core decision-making systems (see below) and the weaknesses of systems of enforcement combine to limit the effectiveness of such changes. (Barry 2001)

Recent Equality Law Cases

While the majority of recent equality law cases take place under the new equality legislation, there are still cases arising which date back to earlier equal pay and anti-discrimination legislation. In the most recent major equal pay case settled in May 2003, over 5000 mainly women civil servants received 34 ml euros from a claim dating back twelve years. Most claimants will receive about 6,000 euros each in what the Civil and public Service union describe as "the biggest equal pay claim conceded in Europe". This claim was based on the fact that up until the late 1990s paperkeepers, most of whom were men were paid around IR£50 more per week than clerical assistants, most of whom were women, for doing similar work. Both grades were in fact amalgamated into the clerical officer grade in 1997. This huge pay gap arose from the practice in the Civil Service of paying married men 20% more than other staff until the 1970s when equal pay legislation was introduced and the marriage bar was lifted. The successful outcome of this case provides a clear example of how significant equal pay legislation can be where the strict criteria of the legislation are fulfilled and how important EU directives have been in the Irish context.

New cases under current equality legislation are documented annually by the Equality Authority. Reports from the Equality Authority established under the 1998 Employment Equality Act reveal that gender equality cases, including equal pay cases, dominate the equality cases they handle. The Equality Authority Annual Report for 2002 records over a hundred cases in which their assistance was granted over that year. Cases of sex discrimination accounted for by far the largest set of employment complaints. Of the fifty

employment claims 28 were gender related; of the 57 equal status claims the vast majority, three-quarters, involved complaints by members of the Traveller community. Reviewing the cumulative total of Casework Activity under the 1998 Act, the Authority records a nearly 500 cases, one-third of which concerned gender discrimination. Gender discrimination emerges as the single biggest category, followed by race discrimination, disability and age. Dismissal, working conditions and sexual harassment were the three most frequent reasons for these cases.

The importance of these individual cases cannot be overestimated, although the level of overall structural change in women's economic position attributable to new equality legislation may be limited as some have argued :

"...the potential for further reductions in the gender wage gap through equal pay and equal opportunities-type legislation is limited in a number of respects. Previous research suggests that the greatest limitation is the inability to make comparison across establishments and the difficulties in establishing 'equal value' across very different types of jobs. Direct discrimination in terms of different pay for the same job is becoming increasingly rare....and the amount of unexplained variance in men's and women's wages that can be attributed to human capital differences has decreased since 1987; therefore it cannot be expected that the new legislation will have as large an impact as the earlier laws. " (Barrett et al 2000)

Without substantial changes in current equal pay legislation then, it is unlikely that the gender wage gap will narrow significantly over the coming years. In this context, it is important to consider equality issues within the decision-making environment in Ireland which would be central to bringing about such fundamental change. Irish women's representation within the core decision-making structures of Irish society is extremely low, and has changed only marginally over recent years. Only 13% of those elected to the Dail (Parliament) are women, a percentage that has risen by only 1% over the past ten years. Under UN (United Nations) ranking Ireland ranks 59th out of 120 nations in the world in relation to parliamentary representation. 17% of those elected to the Seanad (Senate) and 15% of those elected as local councillors are women - a percentage which has not risen since 1991. Despite an official government guideline on gender representation on State Boards based on 40% representation of women and men, this guideline has rarely been reached in practice. Women continue to be severely under-represented on State Boards, including health Boards, Regional Authorities, Enterprise Boards and Education Committees (National Women's Council 2002). It is evident from this data that women are severely under-represented within the decision-making system and that there has been only the most marginal change in this situation over the last decade. Women's exclusion from the various levels of political decision-making in Ireland makes it more difficult to achieve reform of the legislative framework for equality which would ensure movement towards greater gender equality in practice.

Conclusion

Equality legislation came into effect in Ireland as a direct result of membership of the European Community and has played a significant role in improving the situation of women on the Irish labour market. Equal Pay and Anti-discrimination laws coincided with dramatic changes in Irish women's position on the formal labour market, reflected in a dramatic increase in labour force participation from a traditionally low base. Women's access to education, employment and training all increased through the 1970's and 1980s through to the present day. Discrimination and disadvantage however continue to mark the labour market position of Irish women. High level vertical and horizontal segregation are associated with the crowding of women into a narrow range of occupations and into the low paid and precarious parts of the job market. In this context, while the positive impact of equality legislation is significant in the general workings of the labour market, the direct impact of the legislation has been limited. Only a small proportion of women workers have been in a position to use equality legislation to address pay discrimination and other forms of disadvantage in employment and service provision. The requirement to have a direct male comparator when making an equal pay claim has restricted its application and the system of penalties and enforcement is weak. Where the legislation has been applied, there has been a large number of cases and some significant decisions favouring women workers. Recent changes to equality legislation has taken place as a result of national rather than EU initiatives and extends equality provisions to cover nine different grounds of discrimination (including gender) and service provision as well as employment.

The persistence of discrimination on the Irish labour market has consequences in the lack of utilisation of women's actual and potential labour supply. Data clearly demonstrates that women's rising employment rate was key to the recent period of high growth in the Irish economy. There continues to be strong evidence of latent women's labour supply, women who experience barriers in accessing employment due to the lack of and high cost of childcare services. For those women in employment, large numbers experience low pay and low status undermining their long-term attachment to the labour force. In this context, it can be clearly argued that a potentially higher productive women's labour force could be activated and retained on the Irish labour market if a stronger and greater commitment to equality were applied in practice. In the absence of a strategy based on equal opportunities in practice, women will continue to be underpaid, to lack opportunities for job advancement and career development and to experience high levels of poverty and social exclusion.

Section 3 : Social and Economic Impact of Proposed Reform of EU Legislation

This section of the Report looks at the potential impact of specific proposed changes in EU equality legislation particular in relation to pension entitlements and to the enforcement of equality legislation in Ireland.

Irish Pension System - the Context

The Irish pension system operates through two main pillars : a State social welfare system and a voluntary pension system (made up primarily of occupational pensions). The State provides for significant tax relief to those paying into occupational and personal pension schemes. The State welfare system comprises both a contributory and a non-contributory pension establishing a minimum level of income for those aged 65 years and over.

Non-contributory State pension : This is a means tested payment under the social assistance part of the welfare system.

Contributory State pension : This pension benefit is non means tested and the level of benefit is related to the level of contributions made over a working life. These payments may be supplemented by private or occupational pensions.

Tax relief for occupational and private pensions : Tax relief on up to 15% of income is available to those contributing to occupational or private pensions and on lump sums payable on pension age.

State pensions are flat rate payments, not related to previous income. They include additional allowances for dependants, those living alone, those over 80 years of age and subsidies towards the costs of electricity, fuel in winter months, telephone rental and TV license. Those over 66 are entitled to free travel on public transport, subject to peak hours restrictions. Those over 75 years are also entitled to a medical card providing access to public hospital services and general practitioner services.

Social assistance pensions are financed from taxation revenue. State contributory pensions are financed by pay-related contributions by employers, employees and the self-employed. An income ceiling applies to employee contributions but was removed from employer contributions in 2002. Recent years have seen the extension of insurance-based contributory State pensions to broader sections of the workforce, including public sector workers and the self-employed. About 60% of those on State pensions are on the social insurance pensions. Women accounted for 31% of those on social insurance based contributory pensions and 57% of those on social assistance or non-contributory pensions in 2002. (Dept of Social and Family Affairs 2002)

While the contributory system is currently self-financing, in previous years (and likely future years) State subventions to the fund have been necessary. Total expenditure on old age payments accounted for 25% of all social welfare expenditure in 2001. In 2001, a Pension Reserve Fund was established in anticipation of State pension liabilities (both social welfare and public sector occupational pensions), after 2026. Government projections expect pension costs to increase from 4.5% of GNP in 2001 to 8% in 2026 and 9% in 2056. Pensions legislation regulates occupational and private pensions and a Pensions Board (made up of government representatives, the social partners and 'interested parties' nominated by government) monitors compliance with, and enforcement of, the legislation.

The Irish social welfare system is predominantly a breadwinner model and this is reflected in the operation of the pension system. The insurance (State contributory) and occupational pensions schemes are employment related and the social assistance pensions are based on a single adult (mainly male) claimant. Because of Irish women's (particularly married women and women with children) traditionally low participation rate on the formal labour market, women's pension entitlements are often derived benefits or payments. Many women have no independent entitlement to a pension.

Among women in paid employment, pension entitlements are also weak. Women employed in the private sector are much less likely to be covered by occupational pension schemes than men. Because women are crowded into part-time, temporary and contract employment where low pay is common and pension provision is rare.

Data from the Quarterly National Household Survey for 2002 shows pension coverage among women and men in Ireland :

Table 9 Pension coverage for persons in employment aged 20 to 69 years

	Occupational pension only	Personal pension only	Both	Total coverage
Women	36.0	6.0	2.2	44.2
Men	34.6	17.4	3.4	55.4
All	35.2	12.6	2.9	50.7

Source : Central Statistics Office, 2002.

What is evident from this data is that while women and men have similar levels of coverage within occupational pension schemes (36% of women and 35% of men in employment), men have far higher levels of personal pension cover than women. This is largely due to the significance of public sector employment for women where there is

extensive occupational pension coverage (88% coverage), but the precariousness of women's private sector employment where absence of coverage is common. For example only 26% of employees in the wholesale and retail trade and 13% of employees in hotels and restaurants are covered. (Central Statistics Office, 2002)

"Less than one in three women working in the private sector are covered by occupational pension schemes - this figure is frighteningly low at only 31%. Throughout the economy as a whole only 43% of women workers are covered by an occupational pension as opposed to 58% of men. This is partly due to the kind of industries and occupations women work in, and in particular to the number of women who have part time or contract employment which has a low level of pension coverage. It is also due to the old view that the man was the 'bread winner' and would provide the main source of income and pension for his family." Anne Maher, Chief Executive of the Pensions Board. 2001

A Report published by Hughes and Whelan of Economic and Social Research Institute shows significant differences in occupational and personal pension coverage across age groups and between women and men, based on 1995 data. Of the 52% of those in paid employment only 48% of women compared to 77% of men were covered in the over 40 age group. In the 30-39 age group the gender gap is narrower, with 60% of women and 67% of men covered while for those under 30 years coverage was at the same level of 29%. This Report highlights key areas where the gaps in coverage are severe : among part-time and temporary staff (less than 10%), among women (14 percentage points lower than men) among employees of firms with less than 50 employees (31% overall; 15% in firms of up to four people).(Hughes and Whelan 1996)

The introduction of the Personal Retirement Savings Account (PRSA) in 2003 was intended to address the lack of pension coverage across much of the private sector and has the potential to benefit many women workers. The PRSA operates as a flexible pension scheme which can be carried from employment to employment and can be availed of by all of those in employment, regardless of employment status. Employers are obliged to facilitate their employees unless they already operate a pension scheme for their employees. It is intended to review this scheme following three years of its operation.

".....the Personal Retirement Savings Account (PRSA)...will be a low-cost, easy-access, long-term personal investment account available to all. The PRSA is a radical attempt to help those who are not already in pension arrangements to make provision for their retirement. It is intended to be particularly suitable for women, part-timers, contract workers and those in lower-paid employment." Anne Maher, Chief Executive of the Pensions Board. 2001

1. Removal of Exemption with respect to Actuarial Exemptions

The Pensions Act 1990 requires that men and women be treated equally in relation to Occupational Pension Schemes. In this context, the Irish pensions system has met the

requirements of European Law and the judgments of the European Court of Justice to date. Where a scheme is deemed to operate on an unequal basis, the more favorable treatment accorded to one sex must be applied equally to persons of the other sex.

The principle of equal treatment is provided for under the Pension Act covers eligibility for membership, retirement ages (with the exception of benefits earned for service before May 1990 retiring up to December 2017), contribution levels and provision for survivor's benefits. In Defined Benefit Schemes accrual rates for women and men must be the same. However, there are ways in which women and men are treated differently despite the legal provision for equal treatment. These are as follows :

Options for Members : The Rules of a Defined Benefit Scheme normally provide for members to opt (in some cases subject to the consent of the Trustees and/or the employer) for pension to be paid earlier or later than normal pension age, and to surrender part of their retirement benefit for a lump sum, or for additional survivor's pension. The terms for these options are based on Actuarial Values, which take into account future mortality rates of members and their spouses. As women live longer, on average, than men, the actuarial factors used in such calculations differ for men and women, and this is permitted under the Pensions Act.

Benefits on Leaving Service : Benefits available on leaving a Defined Benefit Scheme are a refund of contributions, a Deferred Benefit or a transfer payment to another pension arrangement. As the transfer payment is calculated as the Actuarial Value of the alternative Deferred Benefit, the actuarial factor used to calculate a transfer payment will be different for men and women. This means that for a man and a woman of the same age who have identical Deferred Benefit entitlements from a scheme, the transfer payments offered in lieu of these deferred entitlements may be different.

Defined Contribution Schemes : Under a Defined Contribution Scheme, the accumulated fund at retirement is used to purchase an annuity which provides retirement income for the member. As annuity rates differ between males and females, the amount of pension which may be purchased by a man is likely to be greater than that which could be purchased by a woman of the same age, with the same accumulated retirement fund. If the Rules of the scheme provide for different rates of contribution to be paid by the employer in respect of males and females to provide for more equal pensions at retirement, this is not in contravention of the principle of equal treatment under the Act. (Pension Board 2003)

Pensions Provision on Separation or Divorce : Where pension entitlements arising from occupational or personal pension arrangements are affected by separation or divorce specific provision is made in Irish law. The Family Law Act, 1995, sets out the treatment of pension in cases of judicial separation, and the Family Law (Divorce) Act, 1996 makes similar provisions in relation to divorce proceedings. These Family Law Acts require pension benefits to be taken into account in arriving at a financial settlement in the case of a judicial separation or divorce. Allowance can be made by the courts in one of two ways: (i) by a Pensions Adjustment Order, or (ii) by making orders in relation to some

other assets e.g. family home, savings, which the court considers provides a fair distribution of the total assets.

Irish pension legislation and provision complies with current EU legislation. There is no distinction in retirement ages under either State or private pension schemes. Standard qualifying conditions and standard qualifying ages apply to all schemes. Equal treatment between women and men is specifically provided for under pension law. Dept of Social and Family Affairs data show that there were 242,000 women of pension age in the State in 2002, of whom 85% were receiving financial support through the welfare system. Of those on financial support, 92% were receiving payments in their own right, 41 % of these on 'survivor's benefit'. The remaining 8% are classified as dependents on the pension of their spouse.

Women and men who qualify as claimants are treated equally under State contributory and non-contributory pension schemes. However, despite this equal treatment of claimants, the household nature of the Irish welfare system means that men often claim pensions on behalf of the household. This occurs in households in which the male insurance record is the basis for the pension entitlement and also in households claiming non-contributory pensions. This classifies many older women as dependents, provided for through a 'qualified adult allowance', without independent claimant status and rights. The Qualified Adult Allowance, paid in respect of the 'dependent' adult (usually woman) is currently calculated at 70% of the adult rate and since 2002 can be paid directly to the qualifying adult.

Women's traditionally low rate of labour force participation, the existence of the 'marriage bar' in Ireland up until 1973, the fact that public sector workers were largely not insured for contributory-based pensions and the lack of provision for time spent out of the workforce caring for children have all contributed to women's lack of qualification for contributory pensions in their own right. (Dept of Social and Family Affairs 2002) Some changes over recent years are increasing women's potential for independent qualification:

- Extension of social insurance to self employed (1988), part-time workers (1991) and public sector workers (1995).
- Introduction of Homemakers Scheme (1994) which allows those employees who leave the workforce to care for children or sick relatives to have up to 20 years disregarded in calculating their contribution record.
- The average number of contributions required for a minimum pension was reduced from 20 to 10 in 1997.

Recommendations for further reform of the State pension system put forward by the National Women's Council of Ireland (NWCI) reflect a demand for a more individualised pension system and greater economic independence for women.

"All women engaged in full-time caring work should be given pension and social insurance credits for periods of up to twenty years to enable them to qualify for full

contributory old-age pensions and maternity benefit. This entitlement should be available retrospectively so that older women, including those now of pension age, can qualify.

The government should implement its commitment without delay that all women of pension age be given the full, non-contributory pension, rather than the Qualified Adult Allowance, the lower payment to which they are currently entitled. "
(National Women's Council of Ireland, 2002)

Economic and social policy in Ireland is placing increasing emphasis at present on private, voluntary and supplementary pension provision, reflected for example in the new PRSA scheme introduced over the last year. Occupational and personal pension coverage is likely to rise among women and men as a result of this policy, and at a higher rate among women due to their increasing rate of employment and the traditionally low level of coverage. This means that issues of equal treatment are becoming even more important and significant to increasing numbers of women. Women's stronger attachment to the workforce needs to be reflected in increased returns from employment, greater economic independence and improved living conditions in old age.

Differential actuarial calculations with respect to occupational pensions on the basis of sex are permitted under Irish law, a situation which has negative effects on pension payments and benefits to women. They are permitted under 'defined benefit', 'deferred benefit' and 'defined contribution' schemes. Such sex differentiated calculations discriminate against women who face both higher contribution and lower benefit levels under many occupational pensions. A new EU Directive prohibiting sex-based actuarial calculations would have a positive impact on the economic position of older women in Ireland, a sector of the population at a particularly high risk of poverty. There is no data available on the actual numbers of women affected by sex differentiated actuarial calculations. However, 36% of women in employment covered by occupational pension schemes and a further 6% by personal pension schemes are potential beneficiaries of a prohibition on sex differentiated actuarial calculations. This could be accomplished simply by sharing the life expectancy risks and probabilities between women and men, and averaging upwards the pension entitlements accordingly.

Another aspect of pension provision in Ireland which operates in a discriminatory manner and has so far remained untouched by equality legislation is the restriction of survivor pension entitlements to spouses and children. This means that co-habiting couples and same sex couples are not permitted to benefit from the pension entitlements established by their partners. Even though equality legislation in Ireland prohibits discrimination on grounds of marital status or sexual orientation, pension provision which restricts survivor entitlements have not yet been challenged under the law. Under the present system many public sector workers, for example, are obliged to contribute to a pension scheme under which they are not in a position to establish a beneficiary on their death. A system of nominating a beneficiary would allow for more flexible and non-discriminatory provision of pension entitlements and benefits. Similar discriminations exist in the operation of capital acquisition tax (inheritance and gift taxes) which provides for favourable treatment to married couples and only limited recognition of co-habiting couples and

same sex couples. Legal recognition of same sex and other partnerships (as has occurred in other EU countries) could potentially address these forms of discrimination.

2. Possible Impact in Ireland of Proposed Reform of EU Equality Directives

The provisions under the newly proposed EU Directive 2002/73 are unlikely to have significant or measurable effects in Ireland, primarily due to the important changes which have taken place to the framework for equality legislation in Ireland over the last five years. The Irish Employment Equality Act 1998 includes definitions of direct and indirect discrimination and sexual harassment. This Act established the Equality Authority (which replaced the Employment Equality Agency), and provides for company level equality plans, has a specified role for the Equality Authority in providing guidelines for equality plans, working with individual companies and enforcing regulations on equality plans. Irish equality legislation does provide for employees to take 'positive action' measures to promote equal opportunities for women and to facilitate the integration into employment of disabled people, persons over 50 years and members of the Traveller community. In this context, it is likely that Ireland already complies with the majority of provisions under the proposed Directive in respect of indirect discrimination, sexual harassment and the establishment of an equality agency. The burden of proof in indirect discrimination cases lies with the employer under this legislation. If protection against discrimination in job evaluation systems is specified under EU law this will bring a potentially significant change into Irish equality legislation.

Sexual harassment (and harassment by reference to an individual's relevant characteristics) was codified in Irish law for the first time under the 1998 Employment Equality Act under which employers may be liable for sexual harassment by other employees as well as customers, business clients and business contacts. Employers are permitted a defence that they took steps which were 'reasonably practical' to prevent the harassment. As well as these provisions under equality legislation, labour law provides for a claim of 'constructive dismissal' (under the Unfair Dismissal Act 1996) which may be applied to situations of sexual harassment and the Safety and Health at Work Act 1989, which implements the EU Directive on safety and health of workers, also contains relevant provisions.

Despite the strengthening of the legislative framework for equality discrimination is evident. Research indicates that sexual harassment is a prevalent experience among workers in Ireland. A study of over 1,000 firms in 1993 revealed that two out of five companies had received reports of sexual harassment. Studies of specific sectors of employment have also revealed significant experience of sexual harassment. For example nearly 50% of women surveyed in the Electricity Supply Board, 25% of women civil servants (majority men) and 14% of women workers in the retail sector stated that they had experienced sexual harassment at work, (Browne 1998). Nearly 16% of cases recorded by the equality Authority in 2002 were sexual harassment and harassment claims (Equality Authority 2002)

Workplace bullying and harassment have been addressed through codes of practice introduced over recent years :

- code of practice and guidelines on the prevention of workplace bullying (Health and Safety Authority 2002)
- procedures for addressing bullying in the workplace (Dept of Enterprise, Trade and Employment, 2002)
- code of practice on sexual harassment and harassment at work which can be admitted as evidence in casework (Equality Authority 2002)

Discrimination against pregnant women in employment is a significant issue, a situation reflected in cases coming to the Labour Court under the Employment Equality Act. An important new development has been the increased level of penalties or remedies recently applied by the Court. Seven recommendations on pregnancy related discrimination were issued by the Labour Court in 2002 and a further seven cases were settled by the Equality Authority directly. Women dismissed because of pregnancy have received the equivalent of one year's salary in these recent cases before the Labour Court. The frequency of pregnancy related discrimination and sexual harassment cases coming to the Equality Authority and before the courts provides clear evidence of the continuation of discriminatory practices in workplaces in Ireland and the importance of the legislation in providing remedies and redress for claimants.

Given the existing level of provision in Irish equality legislation covering indirect discrimination and sexual harassment, it is unlikely that the proposed new EU Directive will require changes in the law. Because both social welfare and pensions in Ireland come under separate legislation, there may be some greater impact of new EU proposals. Sex differentiated actuarial calculations mainly in 'defined benefit' occupational and personal pension schemes if prohibited will require definite changes in Irish legislation and could benefit significant and increasing numbers of older women. Because current equality legislation as it applies to equal pay in Ireland excludes pensions, new EU provisions which would specifically include pensions would require an change to equality legislation and play an important role in establishing gender equality in such schemes.

3. Limitations of Existing Equality Legislation

Ireland has a well-developed legislative framework for equality providing for equal pay for work of equal value, protecting against sexual harassment and harassment and prohibiting direct and indirect discrimination in employment and in service provision. Legislative change has succeeded in reducing the level of gender discrimination in Ireland reflected for example in a narrowing of the gender pay gap and in the greater access by women to training, employment and education. Gender discrimination persists and this is in part a consequence of the shortcomings of the legislation itself. Limitations of existing legislation arise for a number of reasons :

- specifying of exclusions and exemptions (including pensions) under existing legislation

- high level of segregation within the Irish labour market
- undervaluing of women's paid employment
- use of 'male comparator' in equal pay cases
- lack of specification of job evaluation
- lack of provision for, or recognition of, women's caring responsibilities
- penalties arising from the specific pattern of women's labour market participation
- persistence of discriminatory practices in workplaces
- household based 'male breadwinner' characteristics of social welfare system
- restrictions on survivors pensions to spouses

Employment equality law in Ireland is restricted to claims made against the same employer or related employers. In this sense it does not provide for the use of a broad based comparator or 'hypothetical comparator' in equal pay claims and consequently restricts the applicability and the effectiveness of the legislation. Leave entitlements are extremely low in Ireland. The definition of remuneration used in Irish equal pay legislation excludes pension benefits. However, recent EU case law will be applied in the Irish context, thus ensuring that pension entitlements are taken into account in equal pay cases. Statutory parental leave is unpaid in Ireland and there is no statutory provision for paternity leave. Recent improvements in maternity leave (increase in paid leave from 14 to 18 weeks and unpaid leave from 4 to 8 weeks) marks a significant improvement but from an extremely low base. There are a number of exceptions under equality legislation in Ireland, where, for example anti-discrimination provisions are not applied. For example, equal status legislation covering service provision exempts educational establishments from complying with anti-discrimination provisions where issues of 'religious ethos' arise. Enforcement of equality legislation in Ireland is restricted due to the lack of provision for class actions, group cases or representative actions. Trade unions, for example, are currently not allowed to take proceedings under their own name on behalf of members.

Equality legislation came into effect in Ireland as a direct result of membership of the European Community and has played a significant role in improving the situation of women on the Irish labour market. Equal Pay and Anti-discrimination laws coincided with dramatic changes in Irish women's position on the formal labour market, reflected in a dramatic increase in labour force participation from a traditionally low base. Women's access to education, employment and training all increased through the 1970's and 1980s through to the present day. Discrimination and disadvantage however continue to mark the labour market position of Irish women. High level vertical and horizontal segregation are associated with the crowding of women into a narrow range of occupations and into the low paid and precarious parts of the job market. In this context, while the positive impact of equality legislation is significant in the general workings of the labour market, the direct impact of the legislation has been limited. Only a small proportion of women workers have been in a position to use equality legislation to address pay discrimination and other forms of disadvantage in employment and service provision. The requirement to have a direct male comparator when making an equal pay claim has restricted its application and the system of penalties and enforcement is weak. Where the legislation

has been applied, there have been a large number of cases and some significant decisions favouring women workers. Key changes which would strengthen the impact of equality legislation in Ireland would be the

- establishment of an independent review/analysis of job grading and job evaluation systems. A recent review of public sector pay systems took place without any analysis of gender issues and failed to address issues of gender discrimination in the structure of public sector pay. (Public Sector Benchmarking Body 2002)
- provision for a 'hypothetical comparator' in equal pay claims
- promote stronger commitment to positive action

The persistence of discrimination on the Irish labour market has consequences in the lack of utilisation of women's actual and potential labour supply. Data clearly demonstrates that women's rising employment rate was key to the recent period of high growth in the Irish economy. There continues to be strong evidence of latent women's labour supply, women who experience barriers in accessing employment due to the lack of and high cost of childcare services. For those women in employment, large numbers experience low pay and low status undermining their long-term attachment to the labour force. In this context, it can be clearly argued that a potentially higher productive women's labour force could be activated and retained on the Irish labour market if a stronger and greater commitment to equality were applied in practice. In the absence of a strategy based on equal opportunities in practice, women will continue to be underpaid, to lack opportunities for job advancement and career development and to experience high levels of poverty and social exclusion.

Although recent changes to equality legislation in Ireland have taken place as a result of national rather than EU initiatives, EU legislation remains a vital part of the legislative framework and proposed new EU initiatives have the potential to address significant weaknesses in Irish equality law. Reviewing the Irish experience of equality legislation, it is evident that the legal certainties provided by EU Directives and Case Law have played and can continue to play an critical role in progressing equal opportunities and greater gender equality in Ireland.

Bibliography

Advisory Committee for Equal Opportunities for Women and Men (2002) : An Input to a New Directive on Sex Discrimination. Equality Office, EU.

Barrett, A., Callan, T (ed), Doris, A., O'Neill, D., Russell, H., Sweetman, O., McBride, J.(2000) : How Unequal - Men and Women in the Irish Labour Market. Economic and Social Research Institute.

Barrett, A. Fitzgerald, J., and Nolan, B. (2000): Earnings Inequality, Returns to Education and Low Pay in Boom to Bust ? The Irish Experience of Growth and Inequality. (eds) Brian Nolan, Philip O'Connell and Christopher Whelan. Economic and Social Research Institute.

Barry, Ursula (1999): Gender and the Irish Employment Action Plan 1998 Women's Education Research and Resource Centre, UCD.

Barry, Ursula (2000) : Gender and the Irish Employment Action Plan 2000 Women's Education Research and Resource Centre, UCD.

Barry, Ursula (2001) : Gender Impact Assessment in Ireland 2001 Women's Education Research and Resource Centre, UCD.

Barry, Ursula (2001) : Gender and the Irish Employment Action Plan 1997-2001. Women's Education Research and Resource Centre, UCD.

Barry, Ursula (2002) : Gender and the Irish Employment Action Plan 2002. Women's Education Research and Resource Centre, UCD.

Blackwell, John (1986,1989) : Women in the Labour Force. A Statistical Digest. Employment Equality Agency.

Browne, Josephine (1996) : Sexual Harassment at Work - Ireland.

Callan, T and Wren, A (1994) : Male-Female Wage Differentials: Analysis and Policy Issues. General Research Series Paper No. 163.Economic and Social research Institute.

Callender, Rosheen and Meenan, Frances (1998) : Equality in Law between Men and Women in the European Community. Martinus Nijhoff Publishers.

Central Statistics Office : Quarterly National Household Survey, Labour Force Survey, Industrial Series, Survey of earnings in financial business, banks and credit sector.

Chambers of Commerce of Ireland (2001) : Labour Force 2001 : Childcare. Chamber of Commerce of Ireland.

Clancy, Patrick (2001) : College Entry in Focus : A Fourth National Survey of Access to Higher Education. Dublin. Higher Education Authority.

Curtin, D : (1989) : Irish Employment Equality Law. Round Hall Press.

(Dail Eireann Joint Committee on Secondary Legislation of the European Communities 1984) : Report on Proposals Relating to Equality of Opportunity. Government Publications office.

Department of Enterprise, Trade and Employment (2002) : Ireland's Employment Action Plan. April 2002. Department of Enterprise, Trade and Employment.

Department of Justice, Equality and Law Reform (2001) : Report of the Working Group on the Review and Improvement of Maternity Protection Legislation. Dept. of Justice, Equality and Law Reform.

Department of Justice, Equality and Law Reform (2002) : Report of the Working Group on the Review of the Parental Leave Act. Dept. of Justice, Equality and Law Reform.

Equality Authority (2002) : Annual Report. Equality Authority.

Equality Authority (2002) : Strategic Plan 2003-2005. Equality Authority.

European Labour Force Survey - Calculations European Work Research Centre, University of Manchester.

EUROSTAT (2002) : The Social Situation in the European Union. EUROSTAT.

EUROSTAT (2002) : Statistics in Focus Series. Women's Earnings in the EU, At the Margins of the Labour Market - Women and Men in Temporary Jobs in Europe. Earnings of Men and Women in the EU.

FAS/ESRI (2002) : Occupational Employment Forecasts 2015. FAS/ESRI Manpower Forecasting Studies. Report No. 10. Economic and Social Research Institute.

Hughes, Gerry (2002) : Employment and Occupational Segregation in Impact Evaluation of European Employment Strategy in Ireland. Section 4.2 Department of Enterprise, Trade and Employment Website. www.ent.ie

Irish Congress of Trade Unions (1999) : Fourth Equality Programme. Delivering Gender Equality 1999-2004. Irish Congress of Trade Unions.

Irish Congress of Trade Unions (2002) : The Equal Pay Agenda. Irish Congress of Trade Unions.

Irish Congress of Trade Unions (2002) : Identifying Members Childcare Needs. Irish Congress of Trade Unions.

Irish Congress of Trade Unions (2002) : Gender and Pay Project. Brochure. Irish Congress of Trade Unions.

Lynch, Kathleen (1999) : Equality in Education. Dublin. Gill and MacMillan.

National Women's Council (2000) : Out of Sight - Women and Poverty in Ireland. National Women's Council.

National Women's Council (2002) : Irish Politics - Jobs for the Boys. Recommendations on increasing the number of women in decision-making. National Women's Council,

Nolan, Brian (1997) : Low Pay in Ireland. Economic and Social Research Institute.

Nolan, Brian, O'Neill, Donal, Williams, James (2002) : The Impact of the Minimum Wage on Irish Firms. Economic and Social Research Institute.

OECD (2002) ; Education at a Glance 2002 and Education On-Line Data Base.

Public Service Benchmarking Body (2002) : Report of the Public Sector Benchmarking Body. PSBB.

Russell, Helen (2002) : *Gender Gaps in Employment and Participation Rates in Impact Evaluation of European Employment Strategy in Ireland*. Section 4.3 Department of Enterprise, Trade and Employment Website. www.ent.ie

Russell, Helen, Smyth, Emer, Lyons, Maureen, O'Connell, Philip (2002) : Women Returning to Employment, Education and Training. Economic and Social Research Institute.

Russell, Helen and Gannon, Brenda (2002) : *Equal Opportunities between Men and Women in Impact Evaluation of European Employment Strategy in Ireland*. Section 4.1 Department of Enterprise, Trade and Employment Website. www.ent.ie

United Nations (2001) : Human Development Report. United Nations.