



## Appendix 2

### Legislation Governing Public Service Recruitment and Related Responsibilities

- **This guide will provide support to those involved in the selection process for confined recruitment.**
- **All those involved in any stage of the selection process are obliged to read and understand the legislation governing the selection process and their responsibilities under the legislation.**
- **Any further questions should be addressed to Local HR.**

#### **Public Service Management (Recruitment & Appointments) Act 2004**

- Since 1<sup>st</sup> April 2005 the HSE has recruited under a recruitment licence following the establishment of Commission for Public Service Appointments (CPSA)
- The CPSA seeks to ensure the following principles are adhered to -probity, merit, best practice, consistency, transparency and appointments promoting equality, diversity and inclusion.
- Codes of practice were published which govern how public service recruitment must be carried out.
- Full details are available on [www.cpsa.ie](http://www.cpsa.ie)

Those involved in the selection process should know their responsibilities under the Codes of Practice:

- ✓ ensure any selection criteria used are directly mappable to that which is needed for the post
- ✓ ensure the post is correctly and fairly advertised
- ✓ familiarise yourself with the Role Description/ Job Specification, the selection criteria, the interview structure and format, and other relevant campaign information
- ✓ when carrying out the eligibility sift/ short listing ensure that the criteria are fairly applied to all applicants
- ✓ inform applicants of the rationale for being deemed eligible/ ineligible or for being short listed/ not short listed
- ✓ ensure the interview/ selection process used is applied fairly to all candidates
- ✓ take notes throughout the interview to support the decisions that are made
- ✓ following interview give feedback to all applicants so they are informed of the rationale for their scoring assessment at interview for example a constructive and meaningful comment for each competency area to support the score on the marking sheet
- ✓ participate in the appeals process in line with dedicated timeframes

#### **Public Service Management (Recruitment & Appointments) Amendment Act 2013**

The Public Service Management (Recruitment & Appointments) Amendment Act is to enable the redeployment of members of staff in the civil service and certain other sectors of the public service to other positions in the public service (whether the civil service or other foregoing sectors): To provide for regulations concerning sick leave in the public service; for that purpose to amend the public service management (recruitment and appointments) act 2004, and to provide for related matters.

The act removes the legislative barriers to redeployment and mobility in general within the public service.



## The Employment Equality Acts 1998 to 2015

The Employment Equality Acts 1998 to 2015 outlaws discrimination in employment on nine grounds. These are:

- gender
- marital status
- family status
- age
- disability
- race
- sexual orientation
- religious belief
- membership of the Traveller Community

Discrimination is described in the Act as the treatment of a person in a less favourable way than another person is, has been, or would be treated.

### **Implications of the Employment Equality Acts on recruitment and selection**

The following guidelines should be adhered to by interviewers to ensure that their practices are in line with the Employment Equality Act:

#### ***The requirements of the job must be carefully defined***

The employer should examine the job requirements and include only those which are essential for the job. This is necessary to guard against indirect discrimination as unnecessary job requirements may prevent suitable candidates from applying.

#### ***Questions must relate to the requirements of the job***

Questions should relate to the requirements of the job as specified in the Job Specification.

#### ***Avoid questions relating to personal/family circumstances***

Candidates should not be asked questions about their personal or family background or any questions in relation to the nine grounds on which discrimination is prohibited. A candidate's personal background is irrelevant to the ability to perform a particular job and candidates may perceive personal questions as being an indication of discrimination on the part of the interviewer.

#### ***Marks should be awarded to candidates in relation to the relevant criteria.***

Candidates should be scored only in relation to the evidence they put forward during the interview. A clearly defined marking scheme helps ensure that candidates are assessed objectively and that other factors such as 'gut feeling' do not influence the assessment. It is important to remember that feedback may be given to candidates.

- it is important to ensure that equal treatment is afforded to all applicants;
- discrimination narrows the field of good candidates available;
- interviewers must be vigilant in guarding against discrimination in recruitment which might

## Irish Human Rights and Equality Commission Act 2014

The Irish Human Rights and Equality Commission Act is an administrative consolidation of the Irish Human Rights and Equality Commission Act 2014. It is prepared by the Law Reform Commission in accordance with its function under the Law Reform Commission Act 1975 (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

It says that a public body must, in the performance of its functions, have regard to the need to: Eliminate discrimination. Promote equality of opportunity and treatment of its staff and the persons to whom it provides.



A public body shall, in the performance of its functions, have regard to the need to—

- a) eliminate discrimination,
- b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and
- c) protect the human rights of its members, staff and the persons to whom it provides services.

### **Disability Act 2005**

The Disability Act 2005 is a law that was passed on 8 July 2005. It says that Government departments and public bodies must work to improve the quality of life for people with disabilities.

An obligation will be placed on all public bodies, insofar as practicable, to take all reasonable measures to promote and support the employment of people with disabilities (with the exception of the Garda, Defence Forces or prison officers). Public bodies must ensure that at least 3% of their workforce are people with disabilities. Furthermore, the level of compliance with these targets must be monitored.

Under the Comprehensive Strategy for People with Disabilities (2015 – 2024), the Government has committed to increasing the public service employment target for persons with disabilities on an incremental basis from a minimum of 3% to a minimum of 6% by 2024.

### **Official Languages Act 2003**

The Official Languages Act is to promote the use of Irish in public affairs and to ensure the use of Irish by public bodies when communicating with the public and/or providing services to the public.

When recruiting, you will need to familiar with, and abide by the requirements under Section 11 of the Act which provides that public bodies have a duty to prepare a statutory scheme detailing the services that they will provide:

- a)
  - through the medium of Irish
  - through the medium of English, and
  - through the medium of Irish and English

and

- b) the measures to be adopted to ensure that any services not provided by the body through the medium of the Irish language will be so provided

Also, Section 13 provides that public bodies have a duty to ensure that:

- an adequate number of its staff are competent in the Irish language (Section 13(2)(c))
- the particular Irish language requirements associated with the provision of services in the Gaeltacht are met (Section 13 (2)(d))
- the Irish language shall become the working language of public offices situated in the Gaeltacht areas, within a certain timeframe to be agreed between the public body and the Minister (Section 13(2)(e))



## Data Protection Act 2018

Under Data Protection Act 1988 (and subsequent updates), organisations keeping personal information must give individuals access to their personal information, and must correct or delete any information found to be inaccurate or irrelevant. Organisations must also ensure that they:

- obtain personal information fairly and openly
- use it only in ways compatible with the purpose for which it was given in the first place
- secure it against unauthorised access or loss
- ensure that it is kept accurate and up to date

Organisations must not:

- further process data in a manner incompatible with the purpose for which it was given
- retain it for longer than is necessary for the purpose for which it was given

## Protected Disclosures Act 2014 and (Amendment) Act 2022

The Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022, protects workers in the public, private and not-for-profit sectors from retaliation if they speak up about wrongdoing in the workplace

The following workers are protected:

- Employees or former employees
- Trainees
- People working under a contract for services
- Independent contractors
- Agency workers
- People on work experience
- Unpaid trainees
- Board members
- Shareholders
- Volunteers
- Job applicants

## The Freedom of Information Act 2014

FOI establishes three statutory rights for citizens:

1. The right to access information held by public bodies
2. The right to have official information relating to you amended where it is incomplete, incorrect or misleading
3. The right to obtain reasons for decisions affecting oneself

To ensure that the selection process adheres to the above those involved in the process should ensure that:

- Applicants have access to information pertaining to decisions made regarding their candidature i.e. written rationale for an applicant progressing/ not progressing in the selection process (rationale for being deemed ineligible/ not short listing, interview notes taken throughout the interview, marking sheets being automatically given to applicants post interview).