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## **REVISED EUROPEAN SOCIAL CHARTER**

8th National Report on the implementation of  
the Revised European Social Charter

submitted by

**THE GOVERNMENT OF IRELAND**

(Articles 8, 17 and 27  
for the period 01/01/2003 – 31/12/2009;  
Articles 7, 16 and 19  
for the period 01/01/2005 – 31/12/2009)

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Report registered by the Secretariat on 8<sup>th</sup> June 2011

**CYCLE 2011**

**ÉIRE / IRELAND**

**EIGHTH REPORT**

**ON THE IMPLEMENTATION**

**OF THE**

**REVISED EUROPEAN SOCIAL CHARTER**

**OF THE**

**COUNCIL OF EUROPE**

**SUBMITTED BY**

**THE GOVERNMENT OF IRELAND**

**IN RESPECT OF**

**THE ACCEPTED PROVISIONS OF**

**ARTICLES 7, 8, 16, 17, 19,  
27 and 31.**

**FOR THE PERIOD**

**FROM 1<sup>st</sup> JANUARY 2003**

**TO 31<sup>st</sup> DECEMBER 2009.**

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### CONFIRMATION OF COMMUNICATION OF COPIES

1. **Copies of this report have been communicated to the:**

**Irish Congress of Trade Unions (ICTU)**

**And**

**Irish Business and Employers' Confederation (IBEC)**

**It is not yet known whether they will make any comments on the report or request that such are relayed to the Secretary-General.**

## ***ARTICLE 7: THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION***

### **General Note :-**

Specific questions posed and comments made by the European Committee of Social Rights (ECSR) in relation to this Article are dealt with together at the end of the report on Article 7.

### ***ARTICLE 7.1***

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;"*

Information to be submitted on Article 7.1:

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

### ***Scope of the provisions as interpreted by the ECSR***

***Paragraph 1:*** The Minimum age for employment in all sectors of the economy, including agriculture, and all work places, including family undertakings and private households, set at 15 years, subject to exceptions for children employed in prescribed light work with no risk of harm to their health, morals or education.

### **Ireland's response on Article 7.1 in its Eighth Report**

- 7.1.1 In the Third Report of the Government of Ireland on the Implementation of the Revised European Charter submitted to the Council of Europe in 2006, it was stated that Ireland has enacted legislation that remains in place in relation to the minimum age of admission to employment. This is provided for in both the Protection of Young Persons (Employment) Act, 1996 - commonly referred to as the PYP Act and, in the Education (Welfare) Act, 2000. In addition, more recent legislative initiatives are also relevant such as the Youth Work Act, 2001 (No. 42, 2001). There has been no change since the status report given in that Report however the general legal framework that exists is explained in following paragraphs:
- 7.1.2 The [Protection of Young Persons \(Employment\) Act, 1996](#) is designed to protect the health of young workers, and to ensure that work undertaken during the school years does not put their education at risk. The law sets minimum age limits for employment, sets rest intervals and maximum working hours, and prohibits the employment of those under 18

years of age on late night work. Employers must also keep specified records for those workers aged under 18.

- 7.1.3 In general, the PYP Act prohibits the employment of children under the age of 16. However, employers can take on 14 and 15 year olds during the school holidays, part-time during the school term (over 15 years only and only for up to 8 hours) as part of an approved work experience or education programme where the work is not harmful to their safety, health, or development. Children (i.e. under 16s) can be employed in cultural, artistic, sports or advertising work which is not harmful to their safety, health, or development and does not interfere with their attendance at school, vocational guidance or training programmes or capacity to benefit from the instruction received.
- 7.1.4 In order to do so permission must be obtained by way of a licence issued on behalf of the Minister for Jobs, Enterprise and Innovation. The type of activities for which licence applications are made would typically be television commercials or films that require the presence of a child. The licence sets out the conditions under which the children may be employed, such as general conditions about parental consent, supervision and education arrangements, and the maximum working times and minimum breaks appropriate to each group.

**Table 4-** Number of licences issued in 2010 and from 1 Jan to 30 April 2011:

Year	No. of licences issued	No. of Children included in licences issued
2010	146	229
2011 (to 30/4/2011)	41	107

- 7.1.5 In addition to the **Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005)** which is the principal legislation governing occupational health and safety in Ireland, Ireland has, since our response in 2007, enacted detailed secondary legislation to compliment the Safety, Health and Welfare at Work Act 2005, including, inter alia, **Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. 299 of 2007)** which commenced on 1 November 2007.
- 7.1.6 The Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) replace a range of earlier regulations as well as re-transposing a number of EU-Directives on occupational safety. These Regulations, which were designed to be easier to use, introduce a number of refinements to make them more coherent and relevant to the changed work environment. The Regulations contribute towards the Irish Government’s “Better Regulation” agenda in that they included in one text virtually all of the specific safety and health laws which apply generally to all employments. The Regulations place obligations as regards safety and health on employers, employees and others. They apply to all workplaces. They lay down a basis for managing safety and health and ensure that employers consult with employees on safety and health matters.
- 7.1.7 Chapter 1 of Part 6 “Sensitive Risk Groups” of the General Application Regulations transposes the health and safety aspects of the Council Directive 94/33/EC on the protection of young persons at work. From 1 November 2007, Chapter 1 of Part 6 of the General Application Regulations replaced the Safety, Health and Welfare at Work

(Children and Young Persons) Regulations 1998 (S.I. 504 of 1998) which were revoked from that date.

- 7.1.8 Children over the age of 14 may only be employed in light, non-industrial work, where there is no risk to the safety and health of the child, and which is not harmful to their attendance at school.
- 7.1.9 Ireland's position remains that it is best to tackle occupational safety and health problems by a process of hazard identification, risk assessment and the putting in place of appropriate prevention and control measures rather than prescribing occupations as dangerous or unhealthy.
- 7.1.10 An employer is required to carry out a risk assessment prior to a child or a young person commencing employment. Also, when there is a major change in the place of work or the work to be carried out, the employer is required to ensure that there is no significant risk to the safety and health of the child or young person. The risk assessment must take account of the layout of the place of work and the individual workstation and any potential exposure to physical, chemical or biological agents, any machinery, devices and apparatus which may place the child's or young person's safety and health at risk. Consideration must also be given in the risk assessment to the actual work processes, the way they are organised and the level of training, instruction and supervision provided.
- 7.1.11 The employer must ensure that any risks to the safety and health of a child or young person or to their development, are assessed, taking into account the increased risk arising from the child or young person's lack of maturity and experience in identifying risks to their own safety and health and, specifically, that any exposure to physical, biological and chemical agents or certain processes is avoided as identified in Schedule 7 to the Regulations. The employer must also appoint a competent person, preferably in the employer's employment, to ensure the protection from and the prevention of risks to the safety, health and welfare of young persons or children.
- 7.1.12 The employer is required to inform the child or young person of any risks identified by the risk assessment and of any control measures to prevent and protect the young person or child from any risk. In the case of a child, the employer is also required to inform the parent or guardian.
- 7.1.13 The employer must not employ a child or young person if the safety and health of that child or young person would be put at risk because the work: is overly physical; may psychologically affect them; exposes them to any agent, such as toxins, carcinogens or radiation; places them at undue risk of accidents because of their inexperience; or exposes them to risk of extreme heat, cold, noise or vibration.
- 7.1.14 As well as the above, there is also the [Code of Practice on Preventing Accidents to Children & Young Persons in Agriculture](#) launched in 2010 (by the Health & Safety Authority), aimed at farmers, contractors or anyone who may be in control of work activity on the farm. It replaces the 2001 code of the same name and complements the 2006 Agriculture Code of Practice for Preventing Injury and Occupational Ill-health in Agriculture.

7.1.15 The Statement by Ireland, made at the Committee of Ministers' Deputies Meeting held on 26 September 2007 regarding the proposed adoption of a recommendation against Ireland in relation to Article 7, Paragraphs 1 and 3, reproduced below remains largely relevant.

### **Statement by Ireland**

Mr. Chairman,

I refer to the proposed adoption of a recommendation on Ireland in relation to Article 7 – the Right of Children and Young Persons to Protection, Paragraphs 1 and 3.

The Protection of Young Persons (Employment) Act 1996 (the PYP Act) is the principle legislation in Ireland, on the employment of young persons. The 1996 Act repeals a previous enactment of 1977, also on the protection of young persons in employment, and gives effect to the EU Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work, except for Articles 6 and 7 (*Official Journal L 216, of 20.8.94, p.12*). These latter Articles are implemented under the Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998 (S. I. No. 504 of 1998).

The PYP Act, generally speaking, raised the minimum age for normal working from 15 to 16 years. It “aims to protect young people at a stage when they are moving from the field of education into work, from the home into independence and when they are combining work with education”. It also sends a very strong signal that education comes first.

Section 9 of the PYP Act 1996, gives the Minister authority to make exclusions from or modifications to certain provisions of the Act, by way of Regulation. Following the enactment of the PYP, the Minister made the Protection of Young Persons (Employment) (Exclusion of Close Relatives) Regulations 1997 (S. I. No. 2 of 1997), which provided for the exclusion of close relatives from certain provisions of the PYP Act. This mirrored similar exclusions in the same vein provided by way of Regulation, made in 1977, under the terms of the Protection of Young Persons (Employment) (Exclusion of Close Relatives) Regulations 1977 (S. I. No. 303 of 1977).

Legislation on the protection of young persons has now been in place for over three decades. It reflects the need to strike the right balance between the protection of young persons in employment so that they are not exploited by employers, and to ensure that it is not inimical to their education. The Labour Inspectorate of the Department of Enterprise, Trade and Employment is responsible for the enforcement of the PYP, and can institute and obtain prosecutions against employers for non-compliance with the Act. The most recent social partnership agreement in Ireland – *Towards 2016* – commits to further enhance compliance with statutory rights such as that afforded under the PYP, with the number of Inspectors increased threefold - from 30 to 90 - by the end of 2007.

In adopting Regulations which exclude close relatives from certain provisions of the PYP, the Government was mindful of the constitutional rights of the family. They were of the view that it was, at the same time, important for young people to be able to help out in the family farm or business as an integral part of the family unit. By its nature and scope these flexible and general arrangements in respect of close relatives are a practical option for all concerned in a family situation and reflect national custom and practice. In this regard, the State is very sensitive, in

particular, to the special role given to the family in the Irish Constitution and in the exercise of its powers in a family context.

Successive Irish Governments have ensured that Children's and Young Persons' educational attainment is paramount to their possible work within the family. The State through its many institutions, agencies and initiatives in the areas of education and child welfare is, at all stages, endeavoring to align its responsibilities and efforts to the educational benefit and attainment of young persons. In particular, the State's institutional structures for the protection of the welfare of children and young persons have been significantly enhanced and improved in recent years.

Ireland has adopted a National Children's Strategy, the implementation of which is the responsibility of a specially established Office of the Minister for Children. In addition, the Minister for Children has a seat in the Cabinet of the Government and therefore is involved in all policy decisions that may affect the welfare of Children and Young Persons. This structure brings greater policy coherence in the area of policy-making for children and young persons and has been recognized internationally as an example of good practice. In addition, the establishment of the Ombudsman for Children, under the terms of the Ombudsman for Children Act 2002, provides an independent monitoring authority in respect of children's rights. The structure is also complemented by substantive legislative developments in the area of education, through the Education Act 1998 (No. 51 of 1998) and the Education (Welfare) Act 2000 (No. 22 of 2000).

Legislation in respect of the protection of young persons under the PYP Act 1996 is currently operating fully and effectively in Ireland, without any call by the public or interested parties in Ireland at any stage for its modification, adjustment or repeal. The legislation both reflects and respects the customs, traditions and practices at the national level and, is consistent with the EU Council Directive of 1994, on the Protection of Young People at Work. In the absence of evidence of problems, the Minister for Jobs, Enterprise and Innovation is of the view that our existing legislation has won broad public support and is appropriate to this society.

#### **ARTICLE 7. 2**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

#### **Appendix to Article 7§2**

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions



prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

**Scope of the provisions as interpreted by the ECSR**

**Paragraph 2:** Minimum age for employment in prescribed occupations regarded as dangerous or unhealthy, which must be specified in legislation, set at 18 years, though exceptions are allowed if such work is essential for vocational training purposes, subject to strict conditions.

7.2.1 The description of the legal framework set out in earlier paragraphs that obtains in Ireland under the PYP Act and Health and Safety legislation in particular, is relevant to the protection of persons up to 18 years of age. In terms of enforcement under the PYP legislation, this is undertaken by the National Employment Rights Authority (NERA) whose labour inspectors undertake inspections under the Protection of Young Persons (Employment) Act 1996. These inspections are carried out across all sectors of industry and are undertaken both during the day and at night. The inspections are carried out by the Inspection Services, which are located in five Regional Offices- Carlow, Cork, Dublin, Shannon and Sligo. The night-time visits are carried out with inspectors working in pairs and calling into premises open after 8 pm and 10 pm, and also spot checks on employers’ premises after 10pm and at weekends to ensure compliance and to ascertain if young persons are working after designated hours. Enforcement of Health and Safety legislation is carried out by the Health and Safety Authority who undertake inspections at workplace level.

7.2.3 Statistical Information:-

**Table 1** below summarises the inspection activity and outcomes in respect of PYP cases concluded in 2010 and in the period January – April 2011.

**NERA PYP Inspections undertaken in 2010**

	Breach Details												
	No. of Cases	No. in Breach	Incidence of Breach %	Statutory Minimum Rate	Other Pay		Non Display of Poster		Records		Other Terms and conditions of employment		
					No. in Breach	Incidence of Breach %	No. in Breach	Incidence of Breach %	No. in Breach	Incidence of Breach %	No. in Breach	Incidence of Breach %	
PYP DAY	120	36	30%	1	1%	1	1%	27	23%	18	15%	16	13%
PYP NIGHT	3,415	20	1%	1	0%	1	0%	11	0%	11	0%	10	0%

## NERA PYP Inspection Cases undertaken in Jan-April 2011

	No. of Cases	No. in Breach	Incidence of Breach %	Breach Details				
				Statutory Minimum Rate	Other Pay	Non Display of Poster	Records	Other Terms and Conditions of Employment
PYP DAY	15	8	53%	0	0	5	2	5
PYP NIGHT	621	0	0%	0	0	0	0	0

The experience of inspectors is that most irregularities identified by them, in the course of inspections, more often than not, are that these are resolved through co-operation of the employers in question who come into compliance as opposed to the need to have recourse to legal proceedings. Where such co-operation is not forthcoming, it is the policy to initiate prosecutions against the employers.

**Table 2** Shows the small number of cases prosecuted in respect of offences under the Protection of Young Persons (Employment) Act 1996.

**Table 2:**

Year	Number of cases Prosecuted
2010	1
2011 (to 30/4/2011)	0

**Table 3** Protection of Young Persons (Employment) Act, 1996 Day-time and night-time Inspections 2003-2009

Year	P.Y.P. Act Night-time Inspections	P.Y.P. Act Day-time Inspections	No. Referred for Prosecution
2003	594	999	19
2004	1259	577	14
2005	1443	564	24
2006	1766	1581	2
2007	1695	930	11
2008	4160	3915	23
2009	4218	4014	3

**Note:** The Number of prosecutions reduced since 2008 due to a change in employment compliance policy. Previously it was the policy to initiate prosecutions where breaches were detected under this legislation. In line with the policy to encourage compliance under employment legislation in general, employers are afforded an opportunity to rectify breaches and prosecutions are initiated only where the employer fails to comply.

7.2.4 NERA's Information service provides information (including information on the Protection of Young Persons (Employment) Act, 1996 in an impartial manner to key stakeholders including employers and employees, migrant workers, employee representative groups and other public bodies. NERA does this through a variety of channels, including via its website, a LoCall phone service, an e-mail service, making presentations to stakeholders at exhibitions and to employers/employees at specifically organised events countrywide.

7.2.5 During 2010 NERA began a series of regional roadshows, aimed at providing information on employment rights legislation in regional centres and allowing employers and employees to meet NERA staff and discuss any particular issues they may have on a confidential, one to one basis.

**Article 7.2 Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.**

7.2.6 It is Ireland's aim to make occupational safety, health and welfare an integral part of doing business in every Irish workplace. Ireland's strong legislative programme is fundamental to these objectives. To ensure compliance with the legislation - primarily to reduce workplace accidents - guidance and support is provided to employers and employees. Where the preventive approach fails, legal action is taken to protect workers, the environment and enforce health and safety standards.

7.2.7 In relation to children and young persons, Ireland believes that education is the key to fostering a culture of safety and health, to heighten awareness and keep young people safe and healthy in the home, school, community and workplace.

7.2.8 The following programmes aimed at delivering key messages to young people have been developed by the Health and Safety Authority for delivery through the school system.

- **Student Safety in the Workplace** - introduces students to the principles of workplace safety and health. It is aimed at Transition Year students (age 15/16) (and other senior cycle students) as a preparation for the world of work and is particularly relevant for those undertaking some form of work experience.
- **Choose Safety** – is an educational programme on the principles of safety and health in the workplace for students. This course is specifically aimed at Transition Year, Leaving Certificate Applied, Leaving Certificate Vocational Programme and Post Leaving Certificate Students.

7.2.9 A short guide “[Health and Safety Matters for Students embarking on work experience – short guide for teachers](#)” was produced to assist teachers in preparing their students for the health and safety aspect of their work experience programme. It offers practical information and advice on workplace health and safety that can be taught and discussed with students in the classroom before they embark on work experience.

7.2.10 The following were also developed;

- [A Guide to the Safety, Health and Welfare at Work \(General Application\) Regulations 2007 Chapter 1 of Part 6: Protection of Children and Young Persons](#)
- [Safety Toolkit and Short Guide to the Safety, Health and Welfare at Work \(General Application\) Regulations 2007 Children and Young Persons](#)
- [A Code of Practice \(COP\) on Preventing Accidents to Children and Young Persons in Agriculture \(2010\)](#)

7.2.11 These publications are available to download from [www.hsa.ie](http://www.hsa.ie).

**3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.**

Statistical Information :-

The following table shows a sectoral breakdown of **reported fatalities** (sub-NACE) in the 0-17 age band from 2007 – 2010:

<b>Fatalities involving 0-17 year olds (HSA)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Crop and animal production, hunting and related service activities	1	3	1	3	<b>8</b>
Construction of buildings	1	-	-	-	<b>1</b>
Specialised construction activities	1	1	-	1	<b>3</b>
Waste collection, treatment and disposal activities; materials recovery	-	-	-	1	<b>1</b>
Wholesale and retail trade and repair of motor vehicles and motorcycles	-	-	-	1	<b>1</b>
Warehousing and support activities for transportation	-	-	1		<b>1</b>
<b>Total</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>6</b>	<b>15</b>

The following table shows a sectoral breakdown of **reported non-fatal injuries** (NACE) in the 0-17 age band from 2007 – 2010

<b>Non-fatal injuries involving 0-17 year olds (HSA)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
Agriculture, forestry and fishing	1	1	1	0	<b>3</b>
Manufacturing	6	4	2	0	<b>12</b>
Electricity, gas, steam and air conditioning supply	0	1	0	0	<b>1</b>
Construction	19	13	4	5	<b>41</b>
Wholesale and retail trade; repair of motor vehicles and motorcycles	3	2	16	7	<b>28</b>
Transportation and storage	1	0	0	0	<b>1</b>
Accommodation and food service activities	2	0	6	8	<b>16</b>
Information and communication	0	0	1	0	<b>1</b>

Financial and insurance activities	0	0	2	5	7
Real estate activities	0	0	0	1	1
Professional, scientific and technical activities	1	0	0	1	2
Administrative and support service activities	0	1	3	4	8
Public administration and defence; compulsory social security	0	1	2	1	4
Education	3	10	12	12	37
Human health and social work activities	3	2	4	5	14
Arts, entertainment and recreation	0	0	1	3	4
Other service activities	3	8	2	0	13
<b>Total</b>	<b>42</b>	<b>43</b>	<b>56</b>	<b>52</b>	<b>193</b>

The following table shows the total number of inspections from 2007 – 2010:

<b>Number of Inspections</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Total Inspections	<b>13,631</b>	<b>16,009</b>	<b>18,451</b>	<b>16,654</b>

7.2.12 Further information is shown in the Summary of workplace Injury, Illness and Fatality Statistics 2007 – 2008 and the Summary of Workplace Injury, Illness and Fatality Statistics 2008 – 2009 and in the Annual Reports of the Health and Safety Authority. The texts of these reports are available to download at [www.hsa.ie](http://www.hsa.ie)

### **ARTICLE 7. 3**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

#### ***Scope of the provisions as interpreted by the ECSR***

**Paragraph 3:** Prohibition of the employment of children still subject to compulsory education in work that would deprive them of the full benefit of their education. National legislation must limit working hours in school term time and offer sufficient leisure time during school holidays.

7.3.1 Please refer to sub-paragraphs 7.3.1 and 7.3.2 of Ireland's Third Report on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. There has been no change since then.

The responses given under Articles 7.1.1 to 7.1.4 of the current Report are also relevant.

**ARTICLE 7. 4**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply any relevant statistics or other information on the proportion of workers not covered by these limits and the reasons why they are not covered, and state whether any particular measures have been taken to assist young persons under 18 who do not benefit from any restrictions on their working hours.

***Scope of the provisions as interpreted by the ECSR***

*Paragraph 4: Limits, in legislation, regulations, contracts or practice, in the working hours of persons under 18 years of age to take account of their development needs, and particularly their need for vocational training.*

***Response:***

7.4.1 Please see the responses outlined under Article 7.1.1 to 7.1.4

7.4.2 Further information is given on the "Youthreach" programme under Article 17, Paragraph 1, of this Report. Further information on Youthreach may also be accessed on the dedicated website: [www.youthreach.ie](http://www.youthreach.ie).

**ARTICLE 7. 5**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply any relevant statistics or other information on the remuneration

of young workers as well as on other appropriate allowances for apprentices, and on the adult reference wage or salary.

***Scope of the provisions as interpreted by the ECSR***

*Paragraph 5:* Right of young workers and apprentices to a fair wage or other appropriate allowances, determined with reference to the basic or minimum wage paid to adults, after deduction of social security contributions and taxes.

**Response:**

**National Minimum Wage**

7.5.1 The National Minimum Wage Act 2000 became law on 1 April 2000. Under the terms of the Act, rates for workers in different categories are set out.

7.5.2 Employers are permitted to pay employees who are under 18, first-time job entrants, or those undergoing structured training, specified rates below the current top rate of €7.65 per hour. For training rates to apply, the training must be split into three equal parts of not less than one month and not more than twelve months each. Pay rates increase for each third of the training as set out in the table below. There are a number of other conditions that must also be met. In particular, the training must:

- Have set out in writing its title and purpose, objectives and an outline plan of its duration and approach;
- Be assessed by means of a recognised certification procedure on completion;
- Be paid for by the employer;
- Be related to improving work performance;
- Be a minimum of three months;
- Require the worker to be away from day to day operational duties at least 10% of the time.

Employees under the age of 18 years of age are currently entitled to a minimum hourly rate of pay of €5.36. An explanatory guide to the provisions of the Act is available at: [www.employmentrights.ie](http://www.employmentrights.ie)

7.5.3 The provisions of the National Minimum Wage Act apply to all employees except the following categories of employees who are excluded from its provisions:

- Employees who are close relatives of the employer, and
- Apprentices (other than apprentice hairdressers) as set out in Statutory Instrument No. 168 of 1997.

**Table A - National Minimum Wage Rates**

<b>Worker to whom the Rate Applies</b>	<b>Gross Rate Per Hour</b>
Under 18	€5.36
Over 18 and in the first year after the date of first employment	€6.12
Over 18 and in the second year after the date of first employment	€6.89
Over 18 and in the first third of a structured training programme	€5.74
Over 18 and in the second third of a structured training programme	€6.12
Over 18 and in final third of a structured training programme	€6.89
Experienced Adult Worker - only employment experience acquired after age 18 is taken into account	€7.65
Named experienced workers whose employer has successfully applied to the Labour Court for a once-off, temporary derogation from the National Minimum Wage on inability to pay grounds	The Labour Court may grant a temporary exemption to the adult experienced rate. In such cases the Labour Court decides the rate per hour.

7.5.4 Prior to the introduction of the National Minimum Wage legislation, the *National Minimum Wage Commission* was appointed by the Government to advise on the introduction of a national minimum wage. The Commission examined a number of issues including the social implications of a national minimum wage and the determination, implementation and enforcement of a minimum wage.

7.5.5 The *National Minimum Wage Commission* recommended that employees under the age of 18 should be entitled to 70% of the national minimum wage. This percentage was recommended to strike a balance between ensuring that young employees are not exploited and ensuring that the rate of pay does not encourage students to leave full-time education.

7.5.6 This recommendation was endorsed by the *Inter-Departmental Group on Implementation of a National Minimum Wage* who felt that a reduced rate for those under 18 raised important issues for national education and employment policies and required particular careful consideration. In their report they stated that '*the Group is of the view that, having regard to the fact that there*



*will always be a certain group of young people entering full time employment before the age of 18, that this group is amongst the most vulnerable in society, there is need to cater for them in the context of a national minimum wage. Nevertheless, it is also clear that the introduction of a national minimum wage has two possible effects on this group - a possible increase in the supply of such workers attracted by the minimum wage rate to leave education earlier than they would otherwise have done and a possible reduction in demand for such workers by raising their price to beyond a level which employers were prepared to pay. ‘*

7.5.7 The sub-minimum rate for those under 18, therefore, was recommended by the *National Minimum Wage Commission*, endorsed by the *Inter-Departmental Group on the Implementation of a National Minimum Wage* and subsequently implemented in the Minimum Wage legislation.

### **Minimum Wage for young workers under 16 years of age**

7.5.8 The same sub-minimum rate of the National Minimum Wage applies to young workers who are under 16 years of age as applies to those aged 16 – 18 years. It should be noted however that the employment of children under 16 is generally prohibited by the Protection of Young Persons (Employment) Act 1996, though a child over 14 years may be permitted to do light work during school holidays provided it is not harmful to health, development or schooling or may be employed as part of an approved work experience or education programme. A child over 15 may also do such work for up to 8 hours a week during school term. Any child under 16 may be employed in film, theatre, sports or advertising activities under licence from the Minister for Jobs, Enterprise and Innovation.

### Categories excluded from the provisions of the National Minimum Wage Act

#### 7.5.9 Close Relatives

The principle of excluding an employee who is a close relative of an employer from certain employment rights legislation was established prior to the Minimum Wage Act. It was not considered desirable to ban arrangements, which could include evening, weekend and summer work, or assistance at critical times, that derive from the special relationship between the employee and employer, as constituting a criminal offence if the minimum wage was not paid for the hours worked by a close relative. The exclusion of close relatives from the provisions of the Minimum Wage Act was supported by the national Social Partners.

#### 7.5.10 Apprentices

Apprentices serving statutory apprenticeships as defined in the Industrial Training Act 1967 and the Labour Services Act 1987 are excluded from the provisions of the National Minimum Wage Act as their pay rates are determined in accordance with long established practice and procedure involving a direct relationship with current craft rates. The apprenticeships lead to craft worker status for the apprentices who complete their apprenticeship.

7.5.11 The Inter-Departmental Group on the Implementation of a National Minimum Wage recommended the exclusion and stated:

*“apprentices are in a somewhat different position to other employees. They are also distinguishable from most other trainees in that the off-the-job element of apprenticeship is more intense and of longer duration than is the case for most trainees in employment. Apprentices’ pay is determined by means of long established practice, which relates it to the rate for equivalent fully qualified employees. The involvement of the relevant unions in the process minimises any prospect of exploitation. It is questionable whether such a well established practice should be upset by imposing a generally applicable rate.”*

The Social Partners supported the exclusion of these apprentices from the provisions of the Minimum Wage legislation.

7.5.12 Employers in financial difficulties exempted by the Labour Court

In order to reduce potential job losses arising from the payment of the National Minimum Wage, an employer, who is unable to pay, may apply to the Labour Court for a temporary exemption from the experienced adult national minimum hourly rate of pay in respect of an employee or a number of employees. An application cannot be made in respect of an employee who is paid less than minimum wage rate of €7.65 (e.g. this exemption cannot be sought where an employee is being paid less than €7.65 because they are under the age of 18).

\*The Minimum Wage rates that came into effect on February 1<sup>st</sup> 2011, were reductions in the rates that had been in effect since July 1<sup>st</sup> 2007. The decision to reduce the rates was made by the Government as part of its labour market reforms which were outlined in the National Recovery Plan 2011-2014. That plan also included the removal of barriers to job creation and the development of new labour market activation and welfare policies. (The subminima rates were also reduced pro rata on February 1<sup>st</sup> 2011 to those set out in *Table A*). The top rate of €7.65 is due to increase to €8.65 from 1 July 2011.

**Industries that have their own Minimum Wage**

7.5.13 Joint Labour Committees

Minimum rates of pay, and other conditions of work, for workers in certain sectors are determined by Joint Labour Committees (JLCs). Currently, there are 13 JLCs in existence. Each JLC is composed of representatives of workers and employers in the sector concerned.

While JLCs are established by means of a statutory order made by the Labour Court, they are independent bodies, which determine minimum rates of pay and conditions of employment for workers in their respective sectors. The pay and conditions agreed by the JLCs are given the force of law in Employment Regulation Orders made by the Labour Court on foot of proposals made to the Court by the JLCs.

#### 7.5.14 Registered Employment Agreements

Statutory regulation of wages or other conditions of employment is also carried out through the Registered Employment Agreement (REA) mechanism. While the terms of collective agreements in Ireland are normally not legally binding, a facility is available under the Industrial Relations Acts to register an agreement with the Labour Court and thereby give it legal effect. In the case of a sector-wide agreement, the effect of registration is to make the agreement binding on all employers and employees in the categories covered by it even if they were not involved in its negotiation. Registered Employment Agreements differ from Joint Labour Committees in that the parties to an REA must have reached agreement on its content before an application for registration is made to the Labour Court.

7.5.15 An independent review of the framework of statutory wage setting mechanisms (EROs and REAs) was established in February 2011, in line with a commitment in the National Recovery Plan, 2011 – 2014. The terms of reference for the review were agreed with the European Commission Services under the provisions of the joint EU-IMF Programme for Ireland. The review has recently been published and its recommendations are under active consideration by Government.

#### **Update concerning FÁS programmes**

7.5.16 Sub-paragraphs 7.5.21; 7.5.22; 7.5.24 and 7.5.25 of Ireland's Third country Report refer. The updated position on

- Information on apprenticeships, may be accessed on the website of FÁS (An Foras Áiseanna Saothair – the National Training and Employment Authority) [www.fas.ie/apprenticeships](http://www.fas.ie/apprenticeships) ;
- Allowances paid, where applicable, by FÁS to those receiving training, may be accessed on the website of FÁS (An Foras Áiseanna Saothair – the National Training and Employment Authority) [www.fas.ie/allowances](http://www.fas.ie/allowances)

7.5.17 Further information is given in this Report in respect of Article 17, Paragraph 2. In terms of the wage levels prescribed by the minimum wage legislation, the National Employment Rights Authority (NERA) enforces the payment of wages aspect as part of the general inspection carried out and on which prosecutions can be taken.

#### **ARTICLE 7. 6**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;"*

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

***Scope of the provisions as interpreted by the ECSR***

*Paragraph 6:* Right of young persons for time spent in vocational training during normal working hours to be treated, with the consent of the employer, as part of the working day.

**Question 1:-**

7.6.1 The regulations / collective agreements, which provide that the hours spent by young persons in their vocational training during normal working hours with the consent of their employers, are treated as forming part of the working day and the time allowed to young persons for this purpose are detailed in this Report under Article 7, Paragraph 5 above.

**Question 2:-**

7.6.2 Please see response under sub-paragraphs 7.5.1 to 7.5.17 above in relation to the payment of the national minimum wage.

**Question 3:-**

7.6.3 The measures described in detail in Article 7 Paragraph 5 above apply to all young people who do not continue on with their full time Second or Third Level Education.

***ARTICLE 7.7***

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

***Scope of the provisions as interpreted by the ECSR***

*Paragraph 7:* Employed persons under 18 years to be entitled to a minimum of four weeks' annual holiday with pay, subject to the same arrangements as those applicable to the annual paid holidays of adults (Article 2, paragraph 3).

**Response: -**

7.7.1 Please refer to the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in April 2006, in particular, to Article 7, Paragraph 7, sub-paragraphs 7.7.1 to 7.7.9. There has been no change in this situation since our Third Report.

7.7.2 The responses in relation to labour inspection contained at sub-paragraphs 7.2.1 to 7.2.8 above are relevant in that NERA has powers to inspect also under the Organisation of Working Time Act to ensure the correct allocation of holidays to all employees.

**ARTICLE 7.8**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

**Appendix to Article 7§8**

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

***Scope of the provisions as interpreted by the ECSR***

*Paragraph 8:* Persons under 18 years of age shall not be employed in night work, with the exception of certain occupations provided for by national laws or regulations.

**Response:-**

7.8.1 Please refer to the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in April 2006, in particular, to Article 7, Paragraph 8, Sub-Paragraphs 7.8.1 to 7.8.10 inclusive. There has been no change in this situation since our Third Report.

## **ARTICLE 7. 9**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;"*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 9:* Persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to compulsory and regular medical examinations.

- 7.9.1 Ireland has accepted this provision in the Revised European Social Charter, which we signed and ratified on 4 November 2000. The Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in April 2006, refers.

### **Response to Question 1**

- 7.9.2 The Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) is the principal legislation governing occupational health and safety in Ireland. Ireland has enacted detailed secondary legislation to compliment the Safety, Health and Welfare at Work Act 2005, including, the Safety, Health and Welfare at Work (General Application) Regulations 2007.

- 7.9.3 The Safety, Health and Welfare at Work Act 2005 requires employers to ensure that health surveillance relevant to the risks to safety, health and welfare identified by risk assessments, and any particular health surveillance required by relevant safety and health legislation, is available to employees. The risk assessment should identify those circumstances in which such health surveillance is required.

- 7.9.4 Chapter 1 of Part 6 and the related Schedule 7 to the Safety, Health and Welfare at Work (General Application) Regulations 2007 requires that children over the age of 14 may only be employed in light, non-industrial work, where there is no risk to the safety and health of the child.

7.9.5 The employer is required to carry out a risk assessment prior to a child or a young person commencing employment. Where the risk assessment reveals a safety or health risk or a risk to the physical or mental development of a child or young person, the employer is required to provide any necessary health surveillance. Health surveillance means the periodic review of the health of employees for the purpose of protecting health and preventing occupationally related disease, so that any adverse variations in their health that may be related to working conditions are identified as early as possible.

7.9.6 An assessment of the health and capabilities of any child or young person must be carried out prior to them carrying out night work.

7.9.7 The employer must inform the child or young person of the results of the health surveillance or health assessment and, in the case of a child, the parent or guardian must also be informed.

### **Response to Question 2**

7.9.8 Details of the measures taken including administrative arrangements, programmes, and action plans etc to implement the legal framework have been indicated in response to question 2 relating to Article 7, Paragraph 2.

### **Response to Question 3**

7.9.9 The type of information requested is not available.

### **ARTICLE 7. 10**

*"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work."*

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 10:* Article 7, paragraph 10, guarantees the right of children to protection against all forms of exploitation and against the misuse of information technologies. This Article covers also the trafficking of human beings since this is a form of exploitation. This Article is interpreted by the Committee akin to the right to life and

dignity, similar to the rights guaranteed by the European Convention on Human Rights.

States party must take specific measures to prohibit and combat all forms of sexual exploitation of children. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

States party must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States party must also take measures to prevent and assist street children.

7.10.1 The Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in April 2006, in particular, Article 7, Paragraph 10, Sub-Paragraphs 7.10.1 to 7.10.8 refer.

### **Criminal Law (Human Trafficking) Act 2008**

7.10.2 The *Criminal Law (Human Trafficking) Act, 2008* - effective since 7 June 2008 - contains a series of measures to criminalise trafficking in adults and children (persons under 18) for the purposes of labour exploitation or removal of organs. It also criminalises trafficking in adults for sexual exploitation. It also raises the penalty for child trafficking in the **Child Trafficking and Pornography Act, 1998** from 14 years to life imprisonment and amends the definition of trafficking of a child from 17 to 18 years. It makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose. Penalties of up to life imprisonment apply in respect of these offences. It is an offence under the Act for a person to solicit a trafficked person for the purposes of prostitution where the person soliciting knows, or has reasonable grounds for believing, that the person has been trafficked. There is a penalty of an unlimited fine and up to 5 years imprisonment if convicted on indictment.

7.10.3 The *National Action Plan to Prevent and Combat the Trafficking of Human Beings in Ireland, 2009-2012* published in June 2009 sets out the framework for an administrative and legislative policy response to all aspects of human trafficking including Child Trafficking. The Plan contains a Section entitled 'Responses to Child Trafficking'. The objectives of the response to child trafficking include:

- To implement specific measures to reduce the vulnerability of children to trafficking and create a protective environment for them;
- To implement special identification procedures for suspected child victims of human trafficking;
- To implement special measures to protect the identity of child victims of human trafficking particularly during court proceedings;



- To implement measures to provide child victims with assistance in their physical, psychological and social recovery;
- To implement measures to ensure enhanced co-operation in the search for missing children;
- To implement measures to ensure a child victim's residency permit is issued in accordance with best interests of the child principles and repatriation programmes for children, if necessary, have full regard for their best interest.

7.10.4 The establishment of a **Working Group on Child Trafficking** under the auspices of the **Interdepartmental High Level Group on Combating Trafficking in Human Beings** is a key element in developing a response to child trafficking and in facilitating the creation of an environment which protects children. The High Level Group monitors the work of the Working Group and the implementation of the National Action Plan. A mid-term review of the National Action Plan has commenced which will identify and assess progress as well as identifying gaps or deficiencies in service provision.

#### *Services to Child Victims of Human Trafficking*

7.10.5 The Health Service Executive (HSE) is responsible for the protection and welfare of children within the Republic of Ireland under the Child Care Act 1991 and the Children First Guidelines. The HSE is responsible for the reception into care and provision of care to all separated children/unaccompanied minors. This is a national service. When any child requiring a service comes to the attention of the HSE, an assessment takes place of the needs of that child and that assessment includes an assessment of the needs of children who may be victims of human trafficking. It makes all necessary provisions for any unaccompanied child identified as a potential/suspected victim of trafficking. The services (set out in the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012) being provided include - accommodation, counselling and debriefing, full medical screening with referral to more specialist medical services, if required and a multi-disciplinary assessment of need which will lead to a Care Plan being developed. Each child is allocated a Social **Worker** to oversee and implement the Care Plan. The Garda National Immigration Bureau (GNIB) deals with the issues which are appropriate to the Garda Síochána in conjunction with the HSE. Similarly the HSE liaise with the Legal Aid Board in relation to the provision of legal aid and advice.

#### *Statistics*

7.10.6 The Department of Justice Anti-Human Trafficking Data Strategy '**Summary Report of Trafficking in Human Beings in Ireland for 2009**' states that 68 incidents of human trafficking involving a total of 66 cases of potential and suspected trafficking in human beings came to the attention of the Garda Síochána of which 17 were minors and 5 of these minors were in the care of the HSE. In 2009 six persons were prosecuted for human trafficking related offences. One person was prosecuted for 3 offences related to a minor. One

person was convicted of an offence of attempting to traffick a child for the purpose of sexual exploitation.

7.10.7 In the previous report there is some commentary in relation to Internet Safety. However, the up to date position in relation to internet safety generally in Ireland is set out below.

7.10.8 The Irish Government's **Office for Internet Safety (OIS)** was established in March 2008 with responsibility for promoting internet safety, particularly in relation to combating child pornography (child abuse images) on the internet. The Office oversees the operation of the Internet Hotline service {www.hotline.ie} which provides a facility for the anonymous reporting by the public of suspected illegal material on the internet. The Internet Hotline is operated and funded by the Internet Service Providers' Association of Ireland. The Office works with a range of partners to further enhanced public awareness of internet safety issues to ensure a safer online environment for children and young people.

7.10.9 The Office was established to take forward the work previously undertaken by the Internet Advisory Board. OIS aims to strengthen partnership efforts with all key stakeholders in raising public awareness about internet safety. In pursuing its efforts in this regard, the Office is advised by the Internet Safety Advisory Council, which has representatives from key stakeholders including Government Departments and Agencies, Industry and Child Protection Interests. Since the Internet is an international phenomenon, it has no borders and no single organisation controls it. Therefore measures to combat illegal materials are hampered by a multiplicity of jurisdictions, differing legal systems and differing societal norms. Combating illegal use of the internet therefore requires responses at national, EU and international levels.

7.10.10 Under a **Code of Practice and Ethics** agreed by the **Internet Service Providers' Association of Ireland in 2002**, material or services that are illegal under Irish law will not be carried on Irish servers and if such are found they will be removed immediately under agreed protocols. However, in situations where illegal or harmful materials are hosted outside of Ireland, the laws applying in that jurisdiction will apply and materials may be legal in other jurisdictions which would be considered illegal in the Irish context.

### **Public Awareness**

7.10.11 OIS has continued the public awareness activities which were put in place by the Internet Advisory Board. Advisory publications for Parents have been published on a range of relevant issues including:

- A Parents Guide to New Media Technologies
- A Parents Guide to Filtering Technologies
- A Parents Guide to Social Networking Sites
- A Guide to Cyberbullying

7.10.12 All of these publications can be downloaded from [www.internetsafety.ie](http://www.internetsafety.ie) or can be obtained on request from the **Office for Internet Safety** {Tel: 01 4086122 or email: [internetsafety@justice.ie](mailto:internetsafety@justice.ie)}.

7.10.13 A wide range of internet safety awareness raising activities, particularly targeting children and young people are carried out by the **National Centre for Technology in Education (NCTE)**, which manages the Irish internet safety awareness node, [www.webwise.ie](http://www.webwise.ie) and through another website [www.watchyourspace.ie](http://www.watchyourspace.ie). The NCTE also works to disseminate internet safety messages through the educational curriculum.

### **Safer Internet Ireland Project**

7.10.14 A key element of the Office's work is its involvement in European co-operation, particularly in view of its participation in the EU's **Safer Internet Programme**. The Office coordinates the Safer Internet Ireland project, which receives funding from the **EU Safer Internet Programme**. OIS's partners in the Safer Internet Ireland project are the **National Centre for Technology in Education**, the [www.hotline.ie](http://www.hotline.ie) service, the **National Parent's Council** (Primary) and the **Irish Society for the Prevention of Cruelty to Children (ISPCC)** Childline service.

7.10.15 Key components of the project are:

- Awareness raising is carried out by the NCTE. It aims to educate and promoted dialogue between children, teachers and parents on safe and appropriate use of the internet;
- The children's helpline is operated by the ISPCC as part of its Childline service, providing a national freephone helpline where children can raise concerns related to their use of online technologies, including issues regarding illegal and harmful content;
- A parents helpline is being operated by the National Parent's Council (Primary) as an extension of its existing national confidential helpline for parents, focusing on assisting parents with internet safety issues including cyberbullying;
- The internet hotline service, [www.hotline.ie](http://www.hotline.ie), which provides a means for the public to anonymously report suspected illegal content or activities found on the Internet. It assesses content reported to it, and where the content is deemed to be illegal, the hotline passes the report along with related technical information to law enforcement or corresponding international internet hotlines for action.

### **EU Kids Online Project**

7.10.16 It is encouraging to note that the initial results of empirical research commissioned across the EU under the **EU Kids Online project** (see [www.eukidsonline.net](http://www.eukidsonline.net)) which was published in October 2010 showed that children in Ireland are amongst the most responsible users of social networking sites. The EU Kids Online project aims to enhance knowledge of European children's and parents' experiences and practices regarding risky and safer use of the internet and new online technologies. The survey results

are based on detailed interviews in the home with a random sample of children (aged 9 to 16 years) and parents across Europe. Some key findings in Ireland were:

- Internet-using children in Ireland predominantly access the internet at home (94%). Private use of the internet by children in their own bedroom was low at 35%, compared with the European norm of 48%;
- Just over half (57%) of Irish children used the internet every day or almost every day. This was well below top countries where 83% of children reported daily use (Sweden, Spain);
- Children in Ireland are amongst the most responsible users of social networking sites. They are the least likely to publish their address or telephone number on their profile (7% compared with an EU average of 14%) and were most likely to have a private profile;
- In general, children in Ireland were found to be less likely to encounter key risk factors on the internet – such as pornography, bullying, sending/receiving sexual messages, going to meetings with contacts first met online – than most of their counterparts in other EU countries;
- Irish children were ranked 21<sup>st</sup> of 23 for those who had been bullied online in the last 12 months (4%). Only in Turkey (2%) had fewer children than in Ireland (3%) have gone to meet anyone face-to-face that they first met online;
- Parental involvement is particularly evident in Ireland with some 93% of parents reporting that they practice some form of parental mediation of their children's use of the internet. The evidence also suggests that parents in Ireland are more restrictive in their approach to their child's online activity (EU 83%, Ireland 94%) in the form of setting rules or restrictions to manage their internet use.

#### **7.10.17 Irish Websites with Internet Safety Materials**

[www.internetsafety.ie](http://www.internetsafety.ie) (website of the Office for Internet Safety)

[www.webwise.ie](http://www.webwise.ie) and [www.watchyourspace.ie](http://www.watchyourspace.ie) (websites operated by National Centre for Technology in Education targeting children & young people)

[www.childline.ie](http://www.childline.ie) (the Irish Society for the Prevention of Cruelty to Children (ISPCC) provide the well-known childline service. As a partner in the Safer Internet Ireland project, the childline service provides advice and support to children and young people around issues they may encounter in relation to the internet and/or their use of online technologies)

[www.npc.ie](http://www.npc.ie) (website of the National Parent's Council (Primary). As a partner in the Safer Internet Ireland project, the NPC delivers a seminar for parents groups on internet safety. The NPC's parents' helpline can also provide advice and support for parents in relation to issues around internet safety)

[www.hotline.ie](http://www.hotline.ie) (confidential reporting service for persons who encounter suspected illegal content on the Internet. The [www.hotline.ie](http://www.hotline.ie) service is operated by the Internet Service Providers' Association of Ireland and is part-funded by the EU through the Safer Internet Ireland project).

## **Ireland's Response to specific Questions posed by the Council of Europe's European Committee of Social Rights (ECSR)**

### (1) Negative Conclusions of the European Committee of Social Rights

#### Question 1: Article 7.1

The Committee requested further information on how “**light work**” is defined. The report does not provide the information requested. The Committee repeats its question and considers that should the Government fail to provide this information, there would be no evidence that the situation in Ireland is in conformity with Article 7.1 of the Revised Charter.

#### **Reply**

While there is no formal definition of the type of work that might constitute “light” work, in the PYP legislation, it will be noted that there are substantial obligations currently in place on employers under the terms of the Safety, Health and Welfare at Work (General Application) Regulations 2007 to assess any risk to the safety, health and welfare of a child or young persons at the place of work. Employers’ duties in this regard are explicitly set out in the Regulations and in particular include the following:

A requirement obliges an employer to carry out a risk assessment prior to a child or young person commencing employment;

A requirement also requires that when there is a major change in the place of work or work to be carried out, the employer is required to ensure that there is no risk to the safety and health of the child or young person;

The employer must ensure that any risks to the health and safety of a young person or to their development are assessed taking into account the increased risk arising from the child’s or young person’s lack of maturity and experience in identifying risks to their own safety and health. Consideration must also be given in these risk assessments to, inter alia, the actual work processes, the way they are organised and the level of training, instruction and supervision provided. The employer is required to inform the child or young person of any risks identified and any control measures to prevent and protect the child or young person from any risk;

A prohibition on an employer from employing a child or young person at work if the safety and health of the child or young person would be put at risk because the work is overly physical, may psychologically affect them, expose them to any agent such as toxins, places them at undue risk of accidents because of their inexperience or exposes them to risk of extreme heat, cold, noise or vibration.

#### **Question 2: Article 7.1**

The Committee noted that the Protection of Young Persons (Employment) Act of 1996 provided for derogations in respect of children employed by a close relative. These children are still being excluded from the statutory framework. Why?

The Committee concludes that the situation in Ireland is not in conformity with Article 7.1 of the Revised Charter on the ground that the minimum age of 15 years does not apply to children employed by a close relative. Give indications of change, if any?

### Reply

The Statement submitted by Ireland to the Council of Europe's Committee of Ministers' Deputies meeting, of 26 September 2007, elaborates on the background and rationale for the inclusion of such a legislative requirement under the Protection of Young Persons Act, 1996. Clearly, the legislation was responding to a matter of long-standing custom and practice in Ireland which was designed as a balanced approach to the removal of children and young persons who are close relatives from scope of the PYP while endeavouring to ensure in particular, that any such approach was not inimical to the educational development of the child or young person. In this latter regard, the Education Welfare Board is responsible for monitoring and responding to those situations in which children might fail to come to or attend school fatigued or in a manner deemed to detrimental to their future educational progression.

In this regard, Ireland would recall that there is extensive legislation in place to protect children and young people against risks on the farm and this would cover the place of greatest incidence of work being carried out by a family member.

### Question 3: Article 7.3

The Committee also previously concluded (*ibidem*) that the situation was not in conformity on the ground that the Protection of Young Persons (Employment) Act 1996 governing the employment of children did not apply to children employed by a close relative.

### Reply

See response to Question 2 above.

### Question 4: Article 7.5

In the case of young persons between 15 and 16 years of age, wages 30 % lower than the adult wage are acceptable. Between the ages of 16 and 18 years, the reduction may not exceed 20% (Conclusions 2006, Albania, Article 7§5). As the wage difference is 30 % for all workers under 18 years of age, the Committee considers that the situation is not in conformity on this point.

### Reply

The differentials included in national minimum wage legislation was first proposed by the Minimum Wage Commission in Ireland which recommended in their report to Government at the time (2002) that a differential approach in respect of a young person's wage compared to the adult wage was to assist the thrust of government policy of dissuading young persons from abandoning their studies in favour of paid employment which would be to the detriment of and inimical to the future development of their employment and career paths. There was a particular concern that young persons from disadvantaged backgrounds would abandon studies in favour of paid jobs without meaningful career prospects or no proper training. The thrust of Government policy is to avoid creating a situation where an insufficient wage differential would run counter to Government policy, and would only lead to outcomes for young persons which would be inimical to their educational progress and development.

Question 5: Article 7.1

What inspection does the Labour Inspectorate do in respect of workers working from home?

Reply

**The Labour Inspectorate has always been responsive to any complaints they receive in terms of an individual working in a household setting who claims that their employment rights are being infringed. In 2010, the Inspectorate undertook a specific campaign aimed at the domestic workers sector. They commenced with a programme of education and awareness to which employers and employees were invited. The programme was also devised in consultation with the Migrant Rights Centre of Ireland who were asked to provide the names of persons they thought should be included in the programme. This has been followed up with a programme of inspections that commenced in the first quarter of 2011 and is ongoing. Although, in law the home is protected in the Constitution in the context of privacy, in practice the Inspectors have not encountered difficulties in gaining access to the home. In situations where the employer requests to meet in a neutral venue to provide employment records etc. this has been arranged outside of the home.**

Question 6: Article 7.2

The Committee noted that the Protection of Young Persons (Employment) Act 1996 provided that the minimum age for employment in occupations regarded as dangerous or unhealthy was 18 years. However, the report did not indicate the types of occupation regarded as dangerous or unhealthy, nor whether there were exceptions to this rule, for example for young persons undergoing vocational training. The Committee requested more detailed information on the subject

Reply

Minimum age for employment in prescribed occupations regarded as dangerous or unhealthy, which must be specified in legislation, is set at 18 years, though exceptions are allowed if such work is essential for vocational training purposes, subject to strict

conditions.

Question 7: Article 7.4

(Length of working time) The Committee requests information on the number of young persons employed by close relatives and on any other categories of workers not covered by the Act and information/statistics on the hours worked by those workers.

Reply

Official statistics from the national Central Statistics office are not disaggregated to the level requested by the Committee nor is there information/data available from current administrative sources to provide the information requested.

Question 8: Article 7.5

Noting that the National Minimum Wage Act did not apply to workers employed by close relatives, the Committee asked for information on the number of young workers excluded from the scope of this Act.

Reply

In the absence of the collation of such information as set out in the response to Question 7, it is not possible to provide this information.

Question 9: Article 7.6

The Committee asked what is the situation of young workers who do not profit from the statute of the law combining work/training scheme. The report simply repeats the previous report and does not answer the question asked.

Reply

Please see our response under sub-paragraph 7.4.1 and 7.4.2. Anyone who works for an employer for a regular wage or salary has automatically a contract of employment whether that is expressed in written form or not. Any time spent with the consent of the employer by a young person working under a combined work/training scheme is deemed to be working time.

Question 10: Article 7.7

The Committee notes that under Section 19 of the Organisation of Working Time Act 1997, young workers, like all other workers, have a right to four weeks' paid annual leave provided that they have worked at least 1,365 hours (unless it is a leave year in which they have changed employment). Paid annual leave may be suspended in case of accident or illness. The committee asks what are the corresponding rules with respect to young part-time workers.

**Reply**



Young part-time workers are subject to the same provisions of the Organisation of Working Time Act, 1997.

Question 11: Article 7.7

– Are apprentices or trainee soldiers covered by the Organisation of Working Time Act 1997 and are they prohibited from doing night work?

**Reply**

Section 3(1) of the Organisation of Working Time Act 1997 provides that the Act shall not apply to a member of the Defence Forces. Accordingly, there is no prohibition on apprentices or trainee soldiers from engaging in night work. Military law is prescribed in the Defence Act, 1954 and in Defence Force Regulations made pursuant to various provisions of the Defence Act. Paragraph 23(1) of Defence Force Regulations A.11 (Leave (Other than Sick Leave) – Officers and Men) provides for a period of 28 days annual leave to be granted to personnel each calendar year and insofar as the essential requirements of security and training allow, officers and men who wish to avail of annual leave shall be permitted to do so. Furthermore, paragraph 50(1) of the Regulations provide for an additional 13 days Army holidays for Defence Forces personnel. The bulk of these additional days are reflective of the normal bank holiday leave arrangements and the balance (3) are of Military significance.

Question 12: Article 7.7

The ECSR asks whether young workers in general may waive their right to paid annual leave.

**Reply**

Young workers may not waive their right to paid annual leave under the Organisation of Working Time Act, 1997.

# ARTICLE 8: THE RIGHT OF EMPLOYED WOMEN TO PROTECTION OF

## MATERNITY

### General Note :-

All the questions asked and comments made by the European Committee of Social Rights (ECSR) are appended together at the end of this report on Article 8.

### ARTICLE 8 . 1

*"With a view to ensuring the effective exercise of the right of employed women to protection of maternity, the Parties undertake: to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least 14 weeks;"*

#### **Information to be submitted**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information to demonstrate that the level of maternity benefit is adequate.

#### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 1:* guarantees the right of employed women to maternity leave of at least 14 weeks for all categories of employees. In all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. Maternity leave must be accompanied by the continued payment of the individual's wage or salary or by the payment of social security benefits or benefits from public funds. A benefit must be adequate and must be equal to the salary or close to its value.

#### **Ireland's response:**

8.1.1 The information supplied in sub-paragraph 8.1.1, page 111 of Ireland's 15th Report submitted in 1995 and in sub-paragraph 8.1.1, page 60 of our 19th Report, submitted in 2001, has changed. In essence, the Maternity Protection Acts 1994 to 2004 entitle a pregnant employee to **26 consecutive weeks**

maternity leave, of which at least two weeks must be taken before the end of the week in which the baby is due, and four weeks after that week. The remaining 20 weeks can be taken before or after the birth, as the employee wishes. The Acts also provide an entitlement to an optional further 16 weeks additional maternity leave to be taken immediately after the maternity leave. Maternity Benefit is not payable in respect of additional maternity leave. Below is a link to the statutory instrument which implements these changes. Thus Ireland currently affords protection way beyond the minimum outlined in Article 8.1.

[http://www.justice.ie/80256E010039E882/vWeb/flJUSQ6LLKDA-en/\\$File/Maternity51of06.pdf](http://www.justice.ie/80256E010039E882/vWeb/flJUSQ6LLKDA-en/$File/Maternity51of06.pdf)

- 8.1.2 Section 8 of the Maternity Protection Act 1994 (as amended), provides an entitlement to a pregnant employee to maternity leave from her employment for a period (referred to as the "minimum period of maternity leave") of not less than 26 consecutive weeks. The Act provides that at least 2 weeks must be taken before the end of the week in which the baby is due and four weeks after that week. An employee is entitled to 26 weeks maternity leave even if she is not able to take the four weeks ante-natal leave because of the early birth of her baby.
- 8.1.3 The Department of Social Protection pays maternity benefit to insured workers during the full period to which they are statutorily entitled to maternity leave. Maternity Benefit is paid for a continuous period of 26 weeks. A self-employed person is entitled to benefit for the same period subject to satisfying the contribution condition.
- 8.1.4 Some 88% of insured persons (persons between 16 and 66 years of age who are in employment or self-employment) are covered, including agricultural and domestic workers, the principal exceptions being:**
- (a) pensionable civil and public servants who commenced employment before 1995, and who are paid full wages by their employer during maternity leave, and
  - (b) persons who are in State-sponsored (FÁS) employment training schemes, or whose employment income is less than €38 per week and who would not be dependent on this income.
- 8.1.5 The contribution conditions for employees are:
- (a) 39 weeks contributions paid in the 12 month period before the first day of maternity leave, or
  - (b) 39 weeks contributions paid since first starting work and at least 39 weeks contributions paid or credited in the relevant tax year or in the year following the relevant tax year; or
  - (c) 26 weeks contributions paid in the relevant tax year and at least 26 weeks contributions paid in the tax year before the relevant tax year, or
  - (d) for self-employed persons, 52 contributions paid in the last or second last contribution year or in the year after the relevant tax year.

8.1.6 The rate of benefit is 80% of earnings or self-employed income which the person received in the previous contribution year, subject to maximum and minimum rates as follows:

Table

	Maximum weekly rate	Minimum weekly rate
January 2011	EUR 262.00	EUR217.80

Further information is available at:

[www.welfare.ie/EN/Publications/SW11/Documents/sw11.pdf](http://www.welfare.ie/EN/Publications/SW11/Documents/sw11.pdf)

**8.1.7 The payment of maternity benefit by the Department of Social Protection is dependent on social insurance contributions without regard to nationality.**

8.1.8 Any dispute relating to any entitlement under the Maternity Protection Act, 1994 which does not relate to a dismissal, or health and safety issues, may be referred by either party to a Rights Commissioner of the Labour Relations Commission within six months of the date of the commencement of the dispute. Either party may appeal the decision of a Rights Commissioner to the Employment Appeals Tribunal within four weeks of the date of the decision. A Rights Commissioner or the Employment Appeals Tribunal may, as appropriate, order either party to the dispute to take certain action in resolution of the dispute, order the granting of leave for a specified period and/or compensation of up to 20 weeks' remuneration to be paid to the employee by the employer.

8.1.9 The decision of a Rights Commissioner or determination of the Employment Appeals Tribunal must be carried out within four weeks of being communicated to the parties unless a specified date has been set. If a party fails to carry out the terms of such a decision or determination within the specified period, the Circuit Court may make an order directing that it be carried out and may direct the employer to pay interest on the compensation in accordance with Statute. Either party to the proceedings may appeal the determination of the Employment Appeals Tribunal to the High Court on a point of law.

8.1.10 The Maternity Protection Acts 1994 and 2004 provide for 26 weeks maternity leave plus an optional 16 weeks additional maternity leave which does not attract a social security benefit. The Act does not provide for an option which allows a woman to voluntarily give up all or part of the 26 weeks maternity leave. The 16 weeks additional maternity leave is optional and the exercise of this option is at the discretion of the woman concerned.

## **ARTICLE 8. 2**

8 (2) With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

*to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;*

### **Appendix to 8§2**

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

- a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
- b. if the undertaking concerned ceases to operate;
- c. if the period prescribed in the employment contract has expired.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 2:* provides that it must be unlawful to ordinarily dismiss female employees from the time they notify the employer of their pregnancy to the end of their maternity leave. In cases of dismissal contravening this provision of the Charter, national legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be able to take their case before the courts.

### ***Text of Ireland's Eighth Report under the Revised European Social Charter in relation to Article 8, Paragraph 2:-***

- 8.2.1 See sub-paragraphs 8.2.2 and 8.2.3, Article 8, Paragraph 2 of the Second Report of the Government of Ireland under the Revised European Social Charter, which was submitted to the Council of Europe in March 2009. There has been no change in the situation since then.**

## **ARTICLE 8. 3**

*"With a view to ensuring the effective exercise of the right of employed women to protection of maternity, the Parties undertake: to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;"*  
*Please indicate the rules which apply in this respect, stating whether time off for breastfeeding is considered as working hours and paid as such.*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

**Scope of the provisions as interpreted by the ECSR**

*Paragraph 3:* all employed mothers who breastfeed their babies must be granted time off for this purpose. Time off for nursing should in principle be granted during working hours should be treated as normal working time and remunerated as such. Time off for nursing must be granted at least in principle until the child reaches the age of nine months.

**8.3.1 See sub-paragraphs 8.3.1 to 8.3.7 inclusive, Article 8, Paragraph 3 of the Second Report of the Government of Ireland under the Revised European Social Charter, which was submitted to the Council of Europe in March 2009. There has been no change in the situation since then.**

**ARTICLE 8.4**

*"With a view to ensuring the effective exercise of the right of employed women to protection of maternity, the Parties undertake:*

*to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;"*

Please give details on the regulations of night work of pregnant women, women who recently have given birth or who are nursing their infants and stating in particular the hours to which the term "night work" applies.

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

*Scope of the provisions as interpreted by the ECSR*

*Paragraph 4:* does not require States party to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman.

- 8.4.1 See sub-paragraphs 8.4.1 and 8.4.2 inclusive, Article 8, Paragraph 4 of the Second Report of the Government of Ireland under the Revised European Social Charter, which was submitted to the Council of Europe in March 2009. There has been no change in the situation since then.**
- 8.4.2 Council Directive 92/85/EEC of 19th October 1992 provides for a variety of measures to improve the safety and health at work of workers, who are pregnant, who have recently given birth or who are breastfeeding. The Maternity Protection Act 1994 which incorporates the employment rights' aspects of this Directive into Irish law, includes specific provisions covering the safety and health of employees in the workplace and night work. The Maternity Protection Act 1994 also provides for time off work during normal working time, without loss of pay, for post - natal care. While the EU Directive affords the entitlement to time off work for ante-natal visits only, the inclusion of post-natal absences has been provided to reinforce the protection of the safety and health of workers, who return to work in the early post-natal period. This entitlement applies during the first 14 weeks immediately following the birth.
- 8.4.3 The Maternity Protection Act 1994 provides that an employee, who is pregnant or who has recently given birth, shall be granted health and safety leave until she commences maternity leave, where compliance is not possible with health and safety legislation, which requires that such employees shall be given suitable alternative work, if it is medically certified (by their own medical adviser in this particular case) that the performance of night work constitutes a danger to their health and safety. During the first three weeks of such leave employees must be paid full pay, while after that period Health and Safety Benefit shall apply.
- 8.4.4 As regards the question of women working in underground mines, when they are pregnant, the issue is decided, as with all safety and health legislation in Ireland, upon the assessment of the risks involved. It would be theoretically possible for a woman, for instance, to carry out occupational hygiene or other scientific or administrative duties, which require them to work underground, providing there is no risk to the woman or her pregnancy as detected by risk assessment. Likewise, while the risk assessment requirements are in place, there is no prohibition, as such, on work which is perceived as dangerous or arduous in nature. It is fair to say that by using the process of risk assessment, that "dangerous, unhealthy or arduous work" is in fact prohibited.
- 8.4.5 Under the Maternity Protection Act 1994, an employee is entitled to health and safety leave, up to a maximum period of 26 weeks following the birth, as long as a risk exists to her health and safety and she is breastfeeding and for whom suitable alternative employment cannot be found.
- 8.4.6 Where health and safety leave is granted, the employer is liable to pay the employee for the first three weeks of such leave. An employee, who satisfies the necessary Social Insurance contributions' conditions, is entitled to claim Health and Safety Benefit in respect of any balance, if any, of health and safety leave to which the employee is entitled.

8.4.7 The statistics on the proportion of women employed on night work in industry, on women who do shift work are shown in the *Quarterly National Household Survey (QNHS)*, which replaced the old Labour Force Survey. Please see the following websites for information:-

[http://www.cso.ie/newsevents/pr\\_qnhsq12009.htm](http://www.cso.ie/newsevents/pr_qnhsq12009.htm) (The latest Quarterly National Household Survey QNHS)

[http://www.cso.ie/releasespublications/documents/labour\\_market/2008/workcond\\_q1\\_2008.pdf](http://www.cso.ie/releasespublications/documents/labour_market/2008/workcond_q1_2008.pdf) (Working Conditions, QNHS 2008- Quarter 1, in particular, Chapter 2, pages 17-25)

[http://www.cso.ie/search/searchResults.htm?cx=007477919376516988184%3Akd8dk\\_fgnnq&cof=FORID%3A11&ie=UTF-8&q=teleworking&sa=Search&siteurl=www.cso.ie%252Fqnhs%252Fspe\\_mod\\_qnhs.htm#956](http://www.cso.ie/search/searchResults.htm?cx=007477919376516988184%3Akd8dk_fgnnq&cof=FORID%3A11&ie=UTF-8&q=teleworking&sa=Search&siteurl=www.cso.ie%252Fqnhs%252Fspe_mod_qnhs.htm#956) (Teleworking)

[http://www.cso.ie/search/searchResults.htm?cx=007477919376516988184%3Akd8dk\\_fgnnq&cof=FORID%3A11&ie=UTF-8&q=length+and+pattern+of+work&sa=Search&siteurl=www.cso.ie%252Fqnhs%252Fspe\\_mod\\_qnhs.htm#909](http://www.cso.ie/search/searchResults.htm?cx=007477919376516988184%3Akd8dk_fgnnq&cof=FORID%3A11&ie=UTF-8&q=length+and+pattern+of+work&sa=Search&siteurl=www.cso.ie%252Fqnhs%252Fspe_mod_qnhs.htm#909) (Length and Pattern of Work)

## ARTICLE 8. 5

*"With a view to ensuring the effective exercise of the right of employed women to protection of maternity, the Parties undertake: to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to taken appropriate measures to protect the employment rights of these women".*

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 5:* prohibits the employment of the women concerned in underground work in mines. This applies to extraction work proper. Certain other activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work.



**8.5.1 See sub-paragraphs 8.5.1 to 8.5.13, Article 8, Paragraph 5 of the Second Report of the Government of Ireland under the Revised European Social Charter, which was submitted to the Council of Europe in March 2009. There has been no change in the situation since then.**

## **Question 1 – general legal framework:-**

8.5.2 The **Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005)** is the principal legislation governing occupational safety and health in Ireland. It is complimented by the **Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. 299 of 2007)**.

8.5.3 Chapter 2 of Part 6 and the related Schedule 8 to the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) relates to the protection of pregnant, post natal and breastfeeding employees. From 1 November 2007, Chapter 2 of Part 6 of the General Application Regulations 2007 replaced the Safety, Health and Welfare at Work (Pregnant Employees etc) Regulations 2000 which are revoked from that date. The purpose of these provisions is to transpose the occupational safety & health provisions of Council Directive 92/85/EEC of 19<sup>th</sup> October 1992 on the introduction of measures to encourage improvements in the safety & health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

8.5.4 The Regulations require an employer to assess the specific risks to pregnant, post natal and breastfeeding employees and take action to ensure that they are not exposed to anything in the workplace referred to in Schedule 8 of the General Application Regulations 2007, **including underground mine work**. Schedule 8 also lists physical, biological and chemical agents, processes and working condition known to endanger the safety or health of pregnant or breastfeeding employees and the developing child.

8.5.5 The general protections afforded by the Irish Maternity Protection legislation have already been notified to the Council in previous reports.

## **Question 2 – Measures taken to implement legislation**

8.5.6 The Health and Safety Authority conducted 13,631 inspections in 2007, 16,009 inspections in 2008, 18,451 inspections in 2009 and 16,654 inspections in 2010. These inspections took place across all sectors. The highest levels of activity were targeted in sectors and on topics which are high risk and have most impact on workplace safety and health. The focus of occupational health related topics included pregnancy and post-natal provisions.

8.5.7 A **Guide to the Safety, Health and Welfare at Work (General Application) Regulations 2007 Chapter 2 of Part 6: Protection of Pregnant, Post Natal and Breastfeeding Employees** and guidance in the form of frequently asked questions (**FAQs**) which seeks to give practical advice to employers and employees on the Protection of Pregnant, Post Natal and Breastfeeding Employee Regulations arising from requirements of Part 6, Chapter 2 of the

Safety, Health and Welfare at Work (General Application) Regulations 2007 were produced.

8.5.8 These publications are available to download from [www.hsa.ie](http://www.hsa.ie) or by clicking on the links above.

8.5.9 In addition, a Workplace Health for Small Business Pregnancy Workshop was also held in 2010.

8.5.10 The Department of Social Protection pays health and safety benefit to women who are entitled to health and safety leave. Benefit is payable after the 21 days during which the employer is responsible to pay wages, for the duration of the leave except for any period during which maternity benefit is payable. In order to qualify for Health & Safety Benefit a person must have

- at least 13 weeks PRSI paid in the 12 months immediately before the date her baby is due OR
- 52 weeks PRSI paid since first starting work and 39 weeks PRSI paid or credited in the relevant tax year, or in the year following the relevant tax year OR
- 26 weeks PRSI paid in the relevant tax year and 26 weeks PRSI paid in the tax year prior to the relevant tax year.

8.5.11 With the exception of self-employed persons, it is payable to the same range of employees as maternity benefit.

8.5.12 Health and Safety benefit is payable at a flat rate, identical to sickness or unemployment benefit rates. The rates payable were as follows:

Table 8.5.

	Jan 2011 (€)
Personal rate	188.00
Increase for qualified adult	124.80
Increase for qualified child	29.80

For further information please see:

<http://www.welfare.ie/EN/Publications/SW21/Documents/sw21.pdf>

**Ireland's Responses to the Questions asked by the European Committee of Social Rights (ECSR) in relation to Article 8**

**(1) Negative Conclusions of the European Committee of Social Rights**

**Question 1: Article 8. 1 -Right to maternity leave**

*The Committee notes that, with regard to the right to maternity leave, the situation of female employees has not changed since the previous supervision cycle.*

*Under the Maternity Protection Act, 1994, the minimum maternity leave entitlement is fourteen weeks, at least four of which must be taken before confinement and four after.*

Reiterating that the Charter requirement is at least six weeks' compulsory post-natal leave, the Committee concludes that Ireland is *not in conformity* with Article 8 para. 1 in this respect

**Response to Question 1:**

Please see the responses given at paragraphs 8.1.1 to 8.1.10 earlier which outlines the most recent developments arising from the Maternity Protection Acts 1994-2004 and which provide for a period of maternity leave of 26 weeks.

**Question 2: Article 8.4**

*The Committee also noted that Irish law did not prohibit the employment of women in underground extraction work and in mines.*

*Since no change in the law has been reported on this last point, the Committee concludes that the situation in Ireland is not in conformity with Article 8 para. 4b of the Charter.*

**Response to Question 2**

While the employment of women in underground extraction work and in mines is not specifically prohibited in Irish law, it is the case as outlined at paragraphs 8.5.2 to 8.5.12 above that under Health and Safety legislation, the practical effect is that such protection is in fact afforded given the risk assessment that an employer must undertake etc.

**Question 3: Article 8.1**

The Committee first recalls that in Conclusions XIII-4 (p. 73) it asked a general question on the proportion of fixed-term contracts, excluding specific or traditional cases justifying use of such contracts. The Committee reiterates that use of this type of contract is not in itself contrary to Article 8 paras. 1 and 2. However, the fact remains that expiry of a contract during maternity leave renders the rules on suspension of the contract devoid of force and allows the employer to withhold, from the date of termination of the contract, the maternity benefits payable by law. The Committee notes that the number of insecure employment contracts is generally increasing and that this phenomenon has implications for the protection of maternity required under Article 8 para. 1. It wishes to know whether and in what way use of insecure contracts is regulated and, in particular, whether the granting of successive fixed-term contracts entails their transformation into an indefinite contract. The Committee would also like to know the total number of persons employed under insecure contracts, the proportion of women in this total, and, where the use of such contracts is permissible by law, employer policy concerning their renewal.

### **Response to Question 3**

Unfortunately, official statistics from the national Central Statistics Office are not disaggregated to the level requested by the Committee nor is there information/data available from current administrative sources.

### **Question 4: Article 8. 1**

The Committee wishes to know what type of payment is made to women members of the armed forces and stresses that, under Article 8 para 1, this category of employees has the same rights as others, regardless of any considerations relating to national security requirements.

### **Response to Question 4**

The full suite of statutory maternity benefits extend also to members of the Defence Forces as they do to all other employees. Currently, Members of the Defence Forces availing of maternity leave are entitled to 26 weeks paid leave under the terms and conditions set out under the response under Article 8.1.

### **Question 5: Article 8. 1**

Benefits are payable to employees who have contributed to the social security scheme for at least thirty-nine weeks during the twelve months preceding the first day of maternity leave, or at least thirty-nine weeks since they first started work, and have thirty-nine weeks of contributions credited for the fiscal year preceding the year in which they take maternity leave. In this connection, the Committee wishes to know whether periods of unemployment are taken into account in calculating the required period of affiliation.

### **Response to Question 5**

*Where a claimant is entitled to a credited contribution for the periods of their unemployment this credit can be taken into account when qualifying for Maternity Benefits.*

**Question 6: Article 8. 1**

The Committee asks that the next report indicate what proportion of women among the 43 % receiving the maximum benefit has earnings in excess of this maximum rate.

**Response to Question 6**

Unfortunately we are advised that the Irish Department of Social Protection does not collate the information as requested by the Committee.

**Question 7: Article 8. 4**

*Regulation of night work for women in industrial employment (Article 8 par. 4a)*

*The Committee takes note of the information contained in the Irish report.*

*The Committee had previously found that the situation in Ireland with regard to night work by women was not in conformity with Article 8 paragraph 4, in that only employees who were pregnant, had recently given birth or were breastfeeding were afforded sufficient protection against the harmful effects of night work, whereas the Charter requires that all women employees be granted such protection.*

*In its previous conclusion the Committee asked to be informed of any change in Irish law on night work, in particular in the light of Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time<sup>1</sup>.*

*The report states that the Community Directive was incorporated into Irish law by the Organisation of Working Time Act of 1997. Under Section 16 of the Act, anyone working between midnight and 7 am for at least three hours per day and for who night work represents more*

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<sup>1</sup> Official Journal N° L 307 of 13/12/1993 pp. 18 - 24.

*than 50 % of their total annual working hours qualifies as a night worker. Such persons are subject to the general statutory limit on weekly working time, i.e. no more than an average of 48 hours. The reference period for the calculation of the average is limited to two months. This may be extended by collective agreement if the Labour Court grants approval.*

*The Committee takes note of this legislative development, but would like more information in order to assess the exact situation in Ireland with regard to Article 8 para. 4a. In particular, it wishes to know how breaks during working time and periods of rest following spells of night work are determined; whether night work is authorised only in view of specific production requirements and having regard to workplace conditions and work organisation; whether, excluding cases where the labour court's permission is required, assignment of a female employee to night work is subject to rules requiring an authorisation from, or prior reporting to, the labour inspectorate; and, lastly, how night work is regulated in the case of persons whose total hours of night work are less than 50% of their total annual working hours.*

*Pending receipt of the information requested, the Committee defers its conclusion.*

*Response to Question 7*

*Night workers are entitled to the same rest breaks as workers in general as provided for in section 12 of the Organisation of Working Time Act 1997 i.e. a break of 15 minutes after working for more than four and a half hours and a further break of 15 minutes after working for more than six hours. The break after working more than four and a half hours can be postponed and a break of 30 minutes can be taken after working more than six hours.*

*Ordinary night workers are entitled to the same daily and weekly rest as workers in general as provided for in sections 11 and 13 of the Organisation of Working Time Act 1997 i.e. eleven consecutive hours rest per day and 35 hours rest per week or failing that 59 hours rest in 14 days.*

*Night workers whose work involves special hazards or a heavy physical or mental strain can only work eight hours in a day and therefore would be entitled to a rest period of sixteen consecutive hours per day.*

*They would be entitled to at least the same weekly rest as workers in general.*

*Assignment of females to night work is not subject to rules requiring an authorization form or prior reporting to the Labour Inspectorate.*

Workers who do not fit the definition of “night worker” in section 16(1) of the Organisation of Working Time Act 1997 are subject to the same maximum average weekly working hours and same rest breaks and rest periods as workers in general.

**Question 8: Article 8. 4**

*Prohibition of the employment of women in certain dangerous, arduous or unhealthy types of work (Article 8 par. 4b)*

*In its previous conclusion the Committee noted that all the regulations on protection of the safety and health at work of women who were pregnant, had recently given birth or were breastfeeding complied with Council Directive 92/85/EEC of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding<sup>2</sup>, as well as the requirements of the Charter. However, in view of the fact that all women, in particular those of childbearing age, come within the scope of Article 8 para. 4, it asked what measures had been taken to protect them. Having received no reply from the Irish Government, the Committee reiterates its question.*

**Response to Question 8** Please see responses at paragraphs 8.5.2 to 8.5.9 above.

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<sup>2</sup> Official Journal N° L 348 of 28/11/1992 pp. 1-8.

## **Article 16 – The Right of the Family to Social, Legal and Economic Protection**

### **General Note :-**

All the questions asked and comments made by the European Committee of Social Rights (ECSR) are appended together at the end of this report on Article 16.

“With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties under-take to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

### **Information to be submitted**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) **Please provide pertinent figures, statistics or any other relevant information to show that Article 16 is applied in practice, including information on domestic violence, information on child care arrangements and housing for families, the level of family benefits, the number of recipients as a proportion of the total population, as well as information on tax benefits and other forms of financial assistance for families.**

### ***Scope of the provision as interpreted by the ECSR***

**Notion of "family" as defined in domestic law. States party are free to decide how they will provide social, legal and economic protection to their various types of families, particularly one-parent families and vulnerable families, including Roma.**

### ***a Social protection***

- there should be an adequate supply of family housing and families' needs should be taken into account in drawing up and implementing housing policies. Housing should be of an appropriate standard and with all the basic amenities. The destruction of accommodation and forced evictions are incompatible with Article 16. There should be effective means of appeal, arrangements for rehousing in decent accommodation and appropriate financial assistance. Vulnerable families should be offered proper protection, including suitable temporary and permanent housing, and evictions should be prohibited unless they comply with the relevant procedural safeguards.

- there should be financially affordable child care facilities of a suitable standard, measured in terms of the number of children aged 0-6 years covered, staff-child ratios, staff training, availability of suitable premises and the cost for parents.



- there should be appropriate family advice services and families' point of view should be taken into account when drawing up family policies.

***b Legal protection***

- **there must be full equality of rights and responsibilities between spouses, particularly with regard to marital authority, property and the use and administration of assets, and towards children, in terms of parental authority and management of children's property. There should be legal arrangements for settling disputes between spouses and concerning children, and mediation services.**
- there should be legal and practical protection from domestic violence (though violence against children is covered by Article 17).

***c Economic protection***

- family or child benefits must provide an adequate additional income for a significant number of families, in terms of median net monthly income, as calculated by Eurostat, and may be supplemented by other forms of economic protection.
- vulnerable families must be protected in accordance with the principle of equal treatment.

For a list of selected other international instruments in the same field, see [Appendix](#).

## Text of Ireland's Eighth Report in respect of Article 16

16.1 The Department of Social Protection (formerly the Department of Social & Family Affairs) has continued to administer the schemes outlined in the previous report, notably Child Benefit, Family Income Supplement, One Parent Family Payment, Carer's Allowance/Benefit, Orphan's Allowance/Pension, and Supplementary Welfare Allowance schemes.

16.2 Please see Article 16, sub-paragraphs 16.1.2 to 16.1.7 of the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. The position remains substantially the same. The updated position is on the following websites:-

<http://www.welfare.ie/EN/Pages/default.aspx> (Home Page of the Department of Social Protection's website)

<http://www.welfare.ie/EN/Schemes/BirthChildrenAndFamilies/Pages/default.aspx>  
(Children and families)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=family+support+agency>  
(Material on the Family Support Agency)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=public+consultation+on+the+family> (Material on Public Consultation on the Family)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=Strategic+Approach+to+Strengthen+families> (Strengthening Families)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=Special+Awards+Scheme> (Special Awards Scheme)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=EU+Presidency+Conference> (EU Presidency Conference)

<http://www.welfare.ie/en/Search/Pages/SearchResult.aspx?k=Longitudinal+Study> (Longitudinal Study)

16.3 Please see Article 16, sub-paragraphs 16.2.1 to 16.2.13 of the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. The updated position is given at the following websites:-

<http://www.revenue.ie/en/index.html> (Home Page of the Revenue Commissioners)

<http://www.revenue.ie/en/tax/it/leaflets/it1.html> (Tax Credits, Reliefs and Rates for the Tax Years, 2010 and 2011)

<http://www.revenue.ie/en/tax/it/leaflets/it1.html#section1> (Personal Tax Credits for 2010 and 2011)

<http://www.revenue.ie/revsearch/search.jsp> (Family Taxation)

<http://www.revenue.ie/en/personal/circumstances/separation-divorce.html> (Separation and Divorce in relation to Tax Relief)

<http://www.revenue.ie/en/tax/it/leaflets/it9.html> (One Parent Family Tax Credit)

<http://www.revenue.ie/en/tax/it/credits/widow-widower.html> (Widowed Parent Tax Credit)

<http://www.revenue.ie/revsearch/search.jsp> (Mortgage Interest Relief)

<http://www.revenue.ie/revsearch/search.jsp> (Stamp Duty Relief)

#### **Aid for Newly Married Couples:**

16.4 Newly married couples are not entitled to any specific benefit / assistance, unless they are unemployed, ill etc. Our Social Welfare system is contingency-based. There is, for example, no state “dowry” for newly married couples

16.5 Please see Article 16, sub-paragraphs 16.3.1 to 16.3.67 of the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. The updated position is given at the following websites:-

<http://www.dohc.ie/> (Home Page of the Website of the Department of Health and Children)

<http://www.hse.ie/eng/> (Home Page of the Health Service Executive Website)

### **HSE Child Care Services**

[http://www.hse.ie/searchGoogle.aspx?ID=200007&q=pre-school%20services%20&btnG=Google+Search&output=xml\\_no\\_dtd&oe=UTF-8&ie=UTF-8](http://www.hse.ie/searchGoogle.aspx?ID=200007&q=pre-school%20services%20&btnG=Google+Search&output=xml_no_dtd&oe=UTF-8&ie=UTF-8)

[http://www.hse.ie/searchGoogle.aspx?ID=200007&q=Child%20Care%20Act%20&btnG=Google+Search&output=xml\\_no\\_dtd&oe=UTF-8&ie=UTF-8&client=default\\_frontend&proxystylesheet=default\\_frontend&site=my\\_collection](http://www.hse.ie/searchGoogle.aspx?ID=200007&q=Child%20Care%20Act%20&btnG=Google+Search&output=xml_no_dtd&oe=UTF-8&ie=UTF-8&client=default_frontend&proxystylesheet=default_frontend&site=my_collection) (HSE and the Child Care Act 1991)

[http://www.hse.ie/searchGoogle.aspx?ID=200007&q=Children%20Act%202001&btnG=Google+Search&output=xml\\_no\\_dtd&oe=UTF-8&ie=UTF-8&client=default\\_frontend&proxystylesheet=default\\_frontend&site=my\\_collection](http://www.hse.ie/searchGoogle.aspx?ID=200007&q=Children%20Act%202001&btnG=Google+Search&output=xml_no_dtd&oe=UTF-8&ie=UTF-8&client=default_frontend&proxystylesheet=default_frontend&site=my_collection) (HSE and the Children Act 2001)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Family\\_Support/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Family_Support/) (HSE Family Support)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Family\\_Support/#Parent%20education%20programmes](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Family_Support/#Parent%20education%20programmes) (HSE Family Support / Parent Education)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Child\\_Welfare\\_and\\_Protection/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Child_Welfare_and_Protection/) (HSE – Child Welfare and Protection)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Child\\_Welfare\\_and\\_Protection/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Child_Welfare_and_Protection/) (HSE Child Welfare and Protection)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Adoption\\_and\\_Tracing/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Adoption_and_Tracing/) (HSE - Adoption )

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Fostering/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Fostering/) (HSE – Fostering )

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Residential\\_Care/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Residential_Care/) (HSE – Residential Care for Children)

### **HSE Elderly Care Services**

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/) (HSE Services for Older People in Ireland)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/nhss/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/nhss/)

(HSE Nursing Homes Support Scheme)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/PPPAccounts/PPPAccounts.html](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/PPPAccounts/PPPAccounts.html) (How the HSE manages Patients' Private Property Accounts)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Tips\\_for\\_Healthy\\_Living/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Tips_for_Healthy_Living/) (HSE Tips for Healthy Living)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Benefits\\_and\\_Entitlements/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Benefits_and_Entitlements/) (HSE Benefits and Entitlements for Older People including Home care packages, medical cards, respite care grants and more)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Services\\_in\\_your\\_Community/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Services_in_your_Community/) (A description of the services the HSE provides for people who live in their own homes but still need a little help)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Residential\\_Care/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Residential_Care/) (Information about respite care and public and private nursing and residential care services all over Ireland)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Carers\\_and\\_Relatives/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Carers_and_Relatives/) (Helpful information for those who are caring for a family member or loved one)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Elder\\_Abuse\\_Section/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Elder_Abuse_Section/) (How to spot elder abuse and what to do if you are worried)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/Useful\\_Contacts/](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/Useful_Contacts/) (Other organisations and services that are there to help older people)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/entitlements/Forms/Home\\_Improvement\\_Scheme\\_for\\_Older\\_Persons/](http://www.hse.ie/eng/services/Find_a_Service/entitlements/Forms/Home_Improvement_Scheme_for_Older_Persons/) (HSE Home Improvement for Older Persons)

[http://www.hse.ie/eng/services/Find\\_a\\_Service/Older\\_People\\_Services/mao\\_older.html](http://www.hse.ie/eng/services/Find_a_Service/Older_People_Services/mao_older.html) (A list of older people services provided in your local health office)

***FAMILY REPRESENTATION ON ADVISORY OR ADMINISTRATIVE BODIES WITH A VIEW TO DEFENDING FAMILY INTERESTS.***

- 16.6 There is no such legislation in Ireland, although the voluntary organisations that provides services for families are consulted on a range of issues that affect family interests. However, under the Constitution of Ireland, the State recognises the Family as the natural primary and fundamental unit group of society. All Government policy and activity must respect that obligation.
- 16.7 Newly married couples are not entitled to any specific benefit/assistance, unless they are unemployed, ill etc. Our Social Welfare system is contingency- based. There, is for example, no state “dowry” for newly married couples.
- 16.8 Please see Article 16, sub-paragraphs 16.5.1 to 16.5.27 of the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. The position remains substantially the same. The updated position is shown hereunder.
- 16.9 Please see response at 16.5.6 in Ireland’s Third Report submitted to the Council of Europe. The updated position is as follows:-
- 16.10 Please see also the references to the Criminal Law (Sexual Offences) Act 2006, the Criminal Justice Act 2006 and the Criminal Law (Human Trafficking) Act 2008 in Ireland’s contribution at Question 1 for Article 17, Paragraph 1 of the Revised European Social Charter.

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**Traveller Issues :-**

- 16.11 Ireland continues to uphold the rights of the Traveller Community as provided for in law, including provisions to guard against Discrimination and Incitement to Hatred. It is also significant that the new programme for Government 2011 includes a commitment to improve co-ordination and integration to delivery of services to the Traveller community across all Government departments, using available resources more effectively to deliver on principles of social inclusion. This is further reflected in a range of policy and implementation initiatives which are being pursued by the Government with the ongoing involvement of Traveller representatives and other stakeholders.
- 16.12 Travellers in Ireland have the same civil and political rights as other citizens under the Constitution and there is no restriction on any group to enjoy their own culture, to profess and practise their own religion or to use their own language. The Government is committed to challenging discrimination against Travellers and has defined membership of the Traveller community as a separate ground on which it is unlawful to discriminate under equality legislation. All the protections contained in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to those international instruments, such as the Equality Acts, the Unfair Dismissals Acts and

the Prohibition of Incitement to Hatred Act, explicitly protect Travellers.

- 16.13 The Government has recognised the need to address the situation of Travellers and, over the years, has implemented an ongoing programme of support and development. The Task Force on the Travelling Community was established in 1993. The report of the Task Force issued in July 1995 and contained 341 recommendations. In 1998, the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community (Traveller Monitoring Committee) was convened, with membership comprised of representatives from the social partners, Traveller organisations and relevant Government departments. The Traveller Monitoring Committee published two Progress Reports, in 2000 and 2005.
- 16.14 Despite the implementation of many of the 1995 Task Force recommendations (including Equality Legislation), as well as sustained investment in Traveller specific measures, progress in improving the general situation of Travellers has been slow. To help address the situation, and at the request of the Taoiseach a High Level Group on Traveller Issues was established in December 2003, under the aegis of the Cabinet Committee on Social Inclusion. Its remit is to ensure that the statutory agencies involved in providing the full range of services to Travellers, would focus on improving the integrated practical delivery of such services.
- 16.15 Continuing developments should be viewed in the context of the National Action Plan on Social Inclusion. The overall objective, in the NAP inclusion, in relation to Travellers is to improve the life experience of Travellers through the provision of appropriate education, health and housing services and to remove any remaining barriers to the full participation of members of the Traveller community in the work and social life of the country. The NAP inclusion contain a range of targets/actions in relation to Travellers.
- 16.16 Important Developments:  
In the last number of years, there has been a range of measures undertaken by the Government in to better coordinate the considerable range of services and support already provided in relation to the Traveller community
- 16.17 CDB Traveller Interagency Groups  
The Report of the High Level Group on Traveller Issues was approved by the Government in March 2006. A key aspect of the approach recommended by the High Level Group is developing effective coordination of actions among agencies operating under the 34 County and City Development Boards, coupled with effective consultation with Travellers and their representatives. Since 2006 Traveller Interagency Groups have been established under each CDB to coordinate the efforts of state agencies

and other stakeholders. The Department of Justice & Equality is monitoring progress and supporting the dissemination of good practices in implementing the interagency approach.

16.18 The interagency approach to improving local delivery, centred on the CDB Traveller Interagency Groups, has produced a number of benefits.

It has:

- established a dedicated local coordination mechanism
- established a more broad based local forum which can support engagement with Traveller representatives
- highlighted the contribution that all local agencies can make to the integrated approach
- established a means for developing best practices in Traveller related service delivery
- highlighted Employment as an area where particular progress can be made

#### 16.19 **Other Initiatives**

In addition to the local interagency approach other important developments arising for the work of the High Level Group include,

- publication of the Report and Recommendation for a Traveller Education Strategy (2006)
- publication of the All-Ireland Health Study (2010) which provides detailed data on Traveller Health and related matters

#### 16.20 **Employment and Training Initiatives for Travellers**

Some very significant initiatives have been undertaken in relation to employment opportunities for Travellers. Developing successful employment initiatives is a vital element in supporting Travellers who are trying to break out of cycles of dependency and poverty. Opening up

mainstream employment also helps create new role models for young Travellers and it demonstrates the practical value of educational achievement. Public service organisations have taken in lead and, working with Traveller representatives, have successfully provided a range of new employment opportunities. A further benefit of this work is

that it has highlighted the common ground for work between state agencies and Traveller representatives. Details of a number of employment initiatives involving Government departments and local authorities, as well as training and enterprise initiatives are given below. These measures have required a great deal of collaborative effort, flexibility and innovation. There has been a strong emphasis on mentoring and continuing support, before and after entry into relevant employment. Some of the principal initiatives include:

- i. FAS special initiatives which led to over 50 employment and enterprise positions and over 150 training positions
- ii. The Department of Finance initiated a Traveller Internship Programme in the Civil Service (2006 -2007) which provided work experience for 23 Travellers in a number of Government Departments
- iii. Local authorities (in particular South Dublin and Clare County Councils) have provided more than 40 full time positions and a similar number of part time positions over the last three years.

**Traveller                      Interagency                      Fund                      2006                      –                      2008**

16.21 The Department of Justice & Equality has a special fund to support Traveller inter-agency projects. The fund, administered by Pobal, was set up in 2006 to help develop best practices and the intention is that successful approaches can be replicated in other areas and integrated in mainstream provision. The funded projects are managed by a steering committee, which provides for input from all relevant community organisations and Traveller representatives. In 2006 projects to the value of €1 million were approved, with €600,000 being approved in 2007. In 2008 €300,000 has been approved with a further call for proposals for up to €1.4 million issuing in May. Of this amount, €1.3 million is being financed through the Dormant Accounts Fund.

**National Partnership Commitment and Traveller Representation**

16.22 In addition to the High Level Group, which focussed particularly on the effective functioning of state agencies, a National Traveller Monitoring and Advisory Committee (NTMAC) was established in March 2007. This committee replaced the Traveller Monitoring Committee which reported on implementation of the 1995 Task Force Report. The NTMAC provides a broadly based and inclusive forum for dialogue between the relevant social partners, and its establishment followed on a commitment in the national partnership agreement Towards 2016 to give concentrated attention to achieving greater progress for Travellers. The NTMAC, which includes four national Traveller organisations along with a number of prominent individual Traveller representatives, has a specific remit to advise on policy in relation to the Traveller Community. This committee presented its first report to the Minister in 2010. This group has an essential input to the ongoing process of improving and refining the effective delivery of supports and services to the Traveller Community.

**Communications**

16.23 As part of the continuing efforts to support Traveller participation in Irish society, and in the context of social partnership, the Department of Justice & Equality continues to support a number of positive communication measures including Mediation Services and in the printed media.



### **Note on Equality Legislation:-**

16.24 The Employment Equality Act 1998 and Equal Status Act 2000 were amended by the Equality Act 2004 to give full effect in national law to EU Directives 2000/43/EC (Race Directive), 2000/78/EC (Framework Employment Directive) and 2002/73/EC (Gender Equal Treatment Amendment Directive). These provisions came into effect on 18 July 2004.

Further amendments have been made to this legislation since 2004, as follows:-

- The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 amended Section 17 of the Employment Equality Act 1998, to ensure that, in relation to discrimination on the age ground, nothing in that Act would render unlawful any act done in compliance with the Protection of Young Persons (Employment) Act 1996, or the National Minimum Wage Act 2000.
- The Civil Law (Miscellaneous Provisions) Act 2008 amended both the Employment Equality Act 1998 to extend the membership of the Equality Authority and the Equal Status Act 2000 to complete the transposition into national law of the EU Gender Goods and Services Directive, 2004/113/EC, by restricting the range of financial and insurance products and services for which gender differentiation is permitted in pricing and benefits, and to provide the option of referral of complaints on the gender ground to the Circuit Court.
- The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 amended both the Employment Equality Act 1998 and the Equal Status Act 2000, to rename the ground of marital status to civil status, and extend the protection against discrimination on the ground of marital status to present and former civil partners.

Copies of this legislation are available on the website of the Oireachtas, at the following link, categorised by year of enactment:

<http://www.oireachtas.ie/ViewDoc.asp?DocId=-1&CatID=87&m=a>

### **Irish Youth Justice Service**

#### **16.25 A broader role for the Minister of State with Responsibility for children**

Since 2005 the Irish Youth Justice Service (IYJS) has operated in the strategic policy environment of the Office of the Minister for Children and Youth Affairs. With a change of Government in 2011 the Office of the Minister for Children and Youth Affairs has become an established Government Department and is now entitled the Department of Children and Youth Affairs with a Senior Minister. The IYJS is currently in the process of co-locating to that Department,

## **Garda Youth Diversion Projects**

### Background

- 16.26 Garda Youth Diversion Projects (GYDPs) are funded by the Irish Youth Justice Service (IYJS). These projects are community based, multi-agency youth crime prevention initiatives which primarily seek to divert young people who have been involved in anti-social and/or criminal behaviour by providing suitable activities to facilitate personal development, promote civic responsibility and improve long-term employability prospects. The projects may also work with young people who are significantly at risk of becoming involved in anti-social and/or criminal behaviour. By doing so, the projects contribute to improving the quality of life within communities and enhancing Garda/community relations. The role of the community and other locally based agencies as partners is vital in the implementation and delivery of the projects. The projects assist An Garda Síochána (the Irish Police) and Garda Juvenile Liaison Officers in particular, in the implementation of the Diversion Programme as set out in Part 4 of the Children Act, 2001(as amended).
- 16.27 The projects undertake a series of programmes and activities which are aimed at changing behaviours, attitudes and lifestyles of project participants to being about positive change and learning outcomes. The programmes offer opportunities for education, employment training, sport and other activities while providing a structured environment to add stability and support to a young person's life. This work is primarily carried out by two youth justice workers, who operate under the guidance of a project/management committee. Projects are managed by committees comprising representatives from An Garda Síochána, the community based organisation employing the workers and representatives from the Probation Service and other local agencies, community groups, schools, etc.
- 16.28 There are currently 100 such projects across the country and given the current economic climate there has been no opportunity to expand the number of such projects. The current focus of IYJS and An Garda Síochána is to improve the effectiveness of the projects by capacity-building and development of a change management programme. Projects have been facilitated in identifying local youth crime patterns and targeting interventions to impact on the young people committing these crimes. 15 projects have been selected as trial sites to help develop best practice approaches and the learning from these is being shared with the other 85 projects. A closed web-based on-line forum for staff and Gardaí to share organisational wisdom, facilitate on-line discussion and learning and provide access to the latest youth justice research has also been put in place in addition with a national programme of training for youth justice workers.
- 16.29 A review of the administration and operation of the projects has also led to revised procedures to improve their effectiveness. This has freed up

Garda management locally from financial administration to concentrate on effective project outcomes for children.

16.30 Garda Youth Diversion Projects are also undertaking a programme of work under the European Social Fund - Human Capital Investment Programme (2007 -2013). This programme enables projects to provide I.T./Personal Development courses to participants and also enables the employment of an additional youth justice worker in each project with a specific purpose to increase the capacity of participants to find employment.

#### 16.31 **Key Points**

- The age of optimum participation in youth crime prevention projects is 12 to 17 years, as this is consistent with the Garda Juvenile Diversion Programme and with the prospective age of criminal responsibility as prescribed in the Children Act 2001.
- The purpose of youth crime prevention work is to engage young people who have offended in a process of learning and development that will enable them to examine their own offending and to make positive lifestyle choices that will protect them from involvement in criminal, harmful or socially unacceptable behaviours.
- To implement this, the work involves linking young people with non-offending peer groups and the forming of stable and trusting relationships with adults in the community. The intended impact of this process is that those so engaged develop into responsible citizens and that they do not progress into the criminal justice system.
- Good youth crime prevention practice must be evidence based, i.e., it should draw on a range of practices, resources and techniques that have a demonstrable and measurable result in preventing either the onset of offending or re-offending.

#### 16.32 **Participation/Target Groups**

- Participation in Garda Youth Diversion Projects is voluntary.
- The primary project target group - which forms the majority of project participants, are young people who have entered the Garda Juvenile Diversion Programme, and who are considered to be at risk of remaining within the justice system.
- The secondary project target group are young people who, although they have not been officially cautioned, have come to the attention of the Gardaí, the community or local agencies as a result of their behaviour and are considered at risk of entering the justice system at a future date.

- The number of participants in each project differs according to local circumstances and resources. The focus is on the quality of the work/intervention with the participants rather than on the quantity of participants. It is estimated that the 100 projects cater for approx 5,000 participants per annum.

### **Research/Studies**

- 16.33 In 2009, the IYJS completed a baseline analysis of the 100 Garda Youth Diversion Projects (GYDPs) in the report 'Designing Effective Local Responses to Youth Crime'. The report's key recommendations to improve the operation of the GYDPs are currently being implemented, including –
- improved alignment of project activities with local youth crime patterns;
  - improved service design and development, implemented initially in five of the projects on a trial basis now with 15; and
  - improved training for staff across all Projects.

### **Funding of Existing Projects**

- 16.34 IYJS is responsible for the funding of 100 Garda Youth Diversion Projects (GYDPs) and 17 Young Persons Probation Projects across the country. The budget for 2011 is €16.757m.

### **Youth Diversion Programmes and Restorative Schemes**

#### **Garda Juvenile Diversion Programme**

- 16.35 The Garda (Police) Diversion Programme was first established in 1963 and was placed on a statutory basis under part 4 of the Children Act 2001. This section was commenced on 1 May 2002.
- 16.36 The Garda Diversion Programme enables child offenders to be dealt with by way of police caution rather than the formal prosecution/court system. The Act was amended by the Criminal Justice Act 2006 to enable the Diversion Programme to be available in the cases of 10 or 11 year olds; previously the minimum age was 12 years. These changes aim to strike a balance between the protection of the child from prosecution and necessary intervention in respect of his or her offending behaviour. It is important to note that admission to the Programme is voluntary and can only occur when the child accepts responsibility for the offending behaviour and agrees to be cautioned.
- 16.37 In 2007 the Government gave approval for an extra 28 Juvenile Liaison Officers and these posts have now being filled.
- 16.38 The Children Act 2001 introduced the concept of restorative justice to the diversion programme in the form of restorative cautions and restorative family conferences. A caution under the programme is not recorded as a

conviction; however information on cautions may be given in a court at the point of conviction for a subsequent offence.

16.39 Part 13 of the Criminal Justice Act 2006 relating to anti-social behaviour by children was commenced on 1 March, 2007. These provisions set out an incremental procedure for addressing anti-social behaviour. With regard to children, these range from a warning from a member of An Garda Síochána, to a good behaviour contract involving the child and his or her parents or guardian, to referral to the Garda Diversion Programme and to the making of a behaviour order by the Children's Court.

16.40 In the period 1 March 2007- 31 December 2009, 1080 behaviour warnings were issued to children and 13 formal good behaviour contracts agreed with children. In the same period, only three behaviour orders were issued by the Children Courts. The operation of anti-social behaviour procedures with regard to children is monitored by the National Youth Justice Strategy Oversight Group.

16.41 The table below\* gives details of the operation of the Diversion Programme for the years 2007-2009:

	2007		2008		2009	
Children referred	21,941		21,412		18,510	
Children cautioned	16,753	76.4%	15,754	73.6%	14,040	75.9%
Children deemed not suitable (returned for possible prosecution)	3,208	14.6%	3,417	15.96%	2,966	16.01%
Restorative events	378		422		416	

***MEASURES WHICH HAVE BEEN TAKEN TO PROMOTE THE CONSTRUCTION OF FAMILY HOUSING, AND STATISTICS OF THE WORK ACCOMPLISHED.***

16.42 Please see Article 16, sub-paragraph 16.6.1 of the Third Report of the Government of Ireland on the Implementation of the Revised European Social Charter, which was submitted to the Council of Europe in 2006. The position remains substantially the same. The updated position is shown hereunder.

<http://www.environ.ie/en/> (The home page of the Department of Environment, Community and Local government)

<http://www.environ.ie/en/DevelopmentHousing/Housing/> (Department's Housing Policy – Introduction)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HousingPolicy/> (Housing Policy)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HousingLegislation/> (Housing Legislation)

<http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/> (Housing Statistics)

### **Annual Housing Statistics**

[2008 Annual Housing Statistics Bulletin](#) (pdf, 1,257 kb) 14/08/2009

[2007 Annual Housing Statistics Bulletin](#) (pdf, 467 kb)

[2006 Annual Housing Statistics Bulletin](#) (pdf, 918 kb)

[2005 Annual Housing Statistics Bulletin](#) (pdf, 753 kb)

[2004 Annual Housing Statistics Bulletin](#) (pdf, 605 kb)

[2003 Annual Housing Statistics Bulletin Part 1](#) (pdf, 2,018 kb)

[2003 Annual Housing Statistics Bulletin Part 2](#) (pdf, 179 kb)

[2003 Annual Housing Statistics Bulletin Part 3](#) (pdf, 339 kb)

[2002 Annual Housing Statistics Bulletin](#) (pdf, 359 kb)

[2001 Annual Housing Statistics Bulletin](#) (pdf, 1,571 kb)

[2000 Annual Housing Statistics](#)

### **Quarterly House Prices Bulletin**

[2010 4th Qtr House Prices Bulletin](#) (pdf, 129 kb)

[2010 3rd Qtr House Prices Bulletin](#) (pdf, 143 kb)

[2010 2nd Qtr House Prices Bulletin](#) (pdf, 165 kb)

[2010 - 1st Qtr House Prices Bulletin](#) (pdf, 148 kb)

[2009 4th Qtr House Prices Bulletin](#) (pdf, 270 kb)

[2009 3rd Qtr House Prices Bulletin](#) (pdf, 1,789 kb)

[2009 2nd Qtr House Prices Bulletin](#) (pdf, 119 kb)

[2009 1st Qtr House Price Statistics Bulletin](#) (pdf

### **Quarterly Social & Affordable Housing Statistics Bulletin**

[2009 Quarter 4 Social and Affordable Housing Bulletin](#) (pdf, 155 kb)

[2009 Quarter 3 Social and Affordable Housing Statistics Bulletin](#) (pdf, 410 kb)

[2009 Quarter 2 Social and Affordable Housing Statistics Bulletin](#) (pdf, 1,749 kb)

[2009 1st Quarter Social & Affordable Housing Statistics Bulletin](#) (pdf, 1,968 kb)

### **Allocations**

[Housing Allocations 2010](#) (xls, 48 kb)

[Housing Allocations 2009](#) (xls, 53 kb)

[Housing Allocations 2008](#) (xls, 31 kb)

[Housing Allocations 2007](#) (xls, 70 kb)

<http://www.environ.ie/en/DevelopmentHousing/Housing/UnfinishedHousingDevelopments/> (Unfinished Housing Developments)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/> (Home Ownership)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/AffordableHousing/> (Home Ownership – Affordable Housing)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/TenantPurchase/> (Home Ownership – Tenant Purchase)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/FirstTimeBuyers/> (Home Ownership – First Time Buyers)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/IncrementalPurchaseScheme/> (Home Ownership – Incremental Purchase Scheme)

<http://www.environ.ie/en/DevelopmentHousing/Housing/HomeOwnership/ImprovementWorksInLieuofLocalAuthorityHousing/> (Improvement Works in lieu of Local Authority Housing)

<http://www.environ.ie/en/DevelopmentHousing/Housing/PrivateRentedHousing/>  
(Private Rental)

<http://www.environ.ie/en/DevelopmentHousing/Housing/SocialHousingSupport/>  
(Social Housing Support)

## **Statistical Information on the Composition of the Family and Its Economic and Social Position :-**

RESPONSE: STATISTICS FROM THE CENTRAL STATISTICS OFFICE

16.43 The Irish Government, through its Central Statistics Office (CSO), publishes official statistics concerning the composition of the family and its economic and social position. The information required plus the explanation of the classification/definitions concerned are published in the following CSO documents listed on the CSO websites:

[www.cso.ie](http://www.cso.ie) (Home Page of the Central Statistics Office website)

<http://www.cso.ie/statistics/>

<http://www.cso.ie/statistics/Population.htm>

<http://www.cso.ie/statistics/numprivhseholds.htm>

[http://www.cso.ie/Quicktables/GetQuickTables.aspx?FileName=CNA15.asp&TableName=Population+by+Age+2006&StatisticalProduct=DB\\_CN](http://www.cso.ie/Quicktables/GetQuickTables.aspx?FileName=CNA15.asp&TableName=Population+by+Age+2006&StatisticalProduct=DB_CN)

(Population of Ireland by Age in 2006)

<http://www.cso.ie/statistics/HousingandHouseholds.htm>

(Statistics on Housing and Household)

<http://www.cso.ie/statistics/placebirthagegroup.htm> (Census 2006)

Statistics on Population showing Place of Birth)

<http://www.cso.ie/statistics/BirthsDeathsandMarriages.htm> (2009)

Statistics on Births, Deaths and Marriages)

<http://www.cso.ie/Quicktables/GetQuickTables.aspx?FileName=VSA30.as>

[p&TableName=Life+Expectancy&StatisticalProduct=DB\\_VS](http://www.cso.ie/Quicktables/GetQuickTables.aspx?FileName=VSA30.asp&TableName=Life+Expectancy&StatisticalProduct=DB_VS) (2010)

Statistics on Life Expectancy)

<http://www.cso.ie/statistics/HealthandSocialConditions.htm> (Health and

Social Conditions)

<http://www.cso.ie/statistics/education.htm> (Education)

<http://www.cso.ie/statistics/crimeandjustice.htm> (Crime and Justice)

<http://www.cso.ie/releasespublications/documents/industry/current/issp>

[df](http://www.cso.ie/releasespublications/documents/industry/current/issp) (Information Society Statistics, Households, First Results, 2008)

<http://www.cso.ie/releasespublications/documents/industry/current/isse>

[df](http://www.cso.ie/releasespublications/documents/industry/current/isse) (Information Society Statistics, Enterprise, 2010)

<http://www.cso.ie/statistics/LabourForce.htm> (Labour Market Statistics,

2010)

<http://www.cso.ie/statistics/earnings.htm> (Earnings)

<http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=QEA01.as>

[p&TableName=Average+Weekly+Earnings+for+Full+time+Employees+i](http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=QEA01.asp&TableName=Average+Weekly+Earnings+for+Full+time+Employees+i)

[n+Distribution+and+Business+Services&StatisticalProduct=DB\\_QE](http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=QEA01.asp&TableName=Average+Weekly+Earnings+for+Full+time+Employees+i)



[http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=BICAC3.asp&TableName=Average+Weekly+Earnings+for+All+Employees+in+Banking+Insurance+and+Building+Societies&StatisticalProduct=DB\\_BI](http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=BICAC3.asp&TableName=Average+Weekly+Earnings+for+All+Employees+in+Banking+Insurance+and+Building+Societies&StatisticalProduct=DB_BI)

[http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=PSA01.asp&TableName=Public+Sector+Average+Weekly+Earnings&StatisticalProduct=DB\\_PS](http://www.cso.ie/quicktables/GetQuickTables.aspx?FileName=PSA01.asp&TableName=Public+Sector+Average+Weekly+Earnings&StatisticalProduct=DB_PS)

<http://www.cso.ie/releasespublications/documents/earnings/current/earnlabcosts.pdf> (Earnings and Labour Costs, Preliminary Findings, 2010)

<http://www.cso.ie/releasespublications/documents/economy/enviracc.pdf>  
(Environmental Accounts)

[http://www.cso.ie/releasespublications/documents/environment/2008/material\\_flow\\_accounts08.pdf](http://www.cso.ie/releasespublications/documents/environment/2008/material_flow_accounts08.pdf) (Environmental Accounts Material Flow, 2008)

<http://www.cso.ie/statistics/Climate.htm> (CSO Statistics on Climate)

Responses to the Questions asked by the European Committee of Social Rights (ECSR) in relation to Article 16

Question 1.

Childcare facilities

**In its previous conclusion (Conclusions 2004, p. 283), the Committee asked for information on the overall coverage of public and private childcare facilities, on whether parents are required to pay fees and on staff qualifications.**

Response 1.

Unfortunately the information requested by the Committee is not currently available.

Question 2.

### **Childcare facilities**

The Committee notes that average childcare costs are 105.36 €per week for families with children in childcare centres or with home-based child-minders, 75.54 € per week for families with children at nursery or primary school (aged 4 to 12) and 107.37 €per week for families with both. The Committee would like to know whether financial support is provided for the parents of children placed in such facilities.

**Response 2.**

No such financial assistance is provided.

Question 3

### **Childcare facilities**

**The Committee would emphasise that, for the situation to be in conformity with Article 16 of the Revised Charter, staff employed by childcare centres should be adequately qualified. Accordingly, it wishes to know whether it is planned to take steps to fill this gap and/or monitor the quality of services provided.**

Response 3

The Information required maybe accessed at the following website:

[http://www.citizensinformation.ie/en/education/pre\\_school\\_education\\_and\\_childcare/early\\_childhood\\_education.html](http://www.citizensinformation.ie/en/education/pre_school_education_and_childcare/early_childhood_education.html)

Question 4

### **Domestic violence against women**

**A new five-year plan to review current structures has been launched by the Department of Justice, Equality and Law Reform for the Steering Committee. The project, which was based on the consultation and involvement of a wide range of organisations, was due for completion in 2006. The Committee wishes to be informed of developments in this area.**

## Response 4

### **Development of a Strategic Plan on Domestic and Sexual Violence and other developments relating to domestic violence.**

The National Women's Strategy was launched by the Government in April 2007.

Objective 12 of the Strategy undertakes to combat violence against women through improved services for victims together with effective prevention and prosecution. The objective includes thirteen actions aimed at combating such violence. That objective aims to combat violence against women through improved services for victims together with effective prevention and prosecution. These actions included the establishment of a dedicated office to co-ordinate government activity in this area.

Three of the actions have been completed and the remainder have been incorporated into the National Strategy on Domestic Sexual and Gender-based Violence for implementation.

Monitoring of progress under the NWS is undertaken through the National Women's Strategy Monitoring Committee, composed of all Government departments and social partnership organisations including the National Women's Council of Ireland.

Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence, was established in June 2007 as an executive office of the Department of Justice and Equality. It is responsible for ensuring the delivery of a well co-ordinated "whole of Government" response to domestic, sexual and gender-based violence.

Cosc developed the National Strategy on Domestic Sexual and Gender-based Violence 2010 to 2014 in the period from its establishment in June, 2007 to December, 2009. The Strategy was the result of extensive consultation with a broad range of stakeholders including government and non-governmental organisations and also included regional consultation. The Strategy aims to provide a strong framework for sustainable intervention to prevent and effectively respond to domestic, sexual and gender-based violence.

The Strategy was launched in March, 2010 following Government approval. Implementation of the strategy is driven by Cosc and is monitored by a high-level inter-departmental oversight committee which is chaired by the Secretary General of the Department of Justice and Equality. There is ongoing involvement and consultation with key NGOs in the implementation of the strategy.

The strategy focuses on actions to address domestic, sexual and gender-based violence perpetrated against adult men and women, including older people.

The four High-Level Goals of the strategy are as follows:

1. To promote a culture of prevention and recognition through increased understanding of domestic, sexual and gender-based violence
2. To deliver an effective and consistent service to those affected
3. To ensure greater effectiveness of policy and service planning
4. To ensure efficient and effective implementation of the strategy.

The High-Level Goals cascade down into detailed ‘on the ground’ activity through 14 key objectives, 23 actions and 59 activities. Progress indicators and structures for implementation are also set out by the Strategy. A mid-term review of the Strategy is scheduled to take place in mid 2012 with a further review in early 2014 to inform future strategic developments.

The website of Cosc ([www.cosc.ie](http://www.cosc.ie)) contains comprehensive information on the Strategy including the bi-yearly monitoring reports. Up-to-date information on all support services for women and men victims of domestic and sexual violence is also contained on the site.

- The National Steering Committee on Violence against Women (NSC) is composed of representatives of state organisations and NGOs.

All national NGOs dealing with violence against women are represented on the NSC which advises Cosc on issues around violence against women. In addition, Regional Advisory Committees comprising of locally based government and non-government support services feed the regional input into the NSC. These committees were re-constituted from the previous regional planning committees following the establishment of Cosc. Both the regional bodies and the NSC input into the monitoring of the National Strategy.

### **An Garda Síochána:**

An Garda Síochána (the Irish police force) drew up a policy designed to set out processes and procedures for operational police officers on the ground to implement best practice and ensure uniformity of the implementation of the Domestic Violence Act, 1996. The Garda Síochána Domestic Violence Intervention Policy was updated in 2007 and is available on the Garda website ([www.garda.ie](http://www.garda.ie)) for access by the general public.

An information sheet on personal safety in relation to Domestic Violence, presented in a practical and accessible format, is also available on the Garda website and in Garda stations.

The Garda policy on the investigation of sexual crimes was published on the Garda website in March 2010.

Both policies emphasise the need to respect the human right of the victim and to provide accurate information on the support services available. The provision of the contact details of the investigating officer and follow up on the complaint is also emphasised in Garda training.

The Domestic Violence and Sexual Assault Investigation Unit (DVSAIU) is a unit within An Garda Síochána tasked with the strategic overview of domestic violence and sexual crimes investigation. This unit is part of the National Bureau of Criminal Investigation, which is tasked with the investigation of all forms of serious crime. Development of policy and procedures in relation to domestic violence is a function of the DVSAIU as well as the strategic implementation of the Domestic Violence Acts and the Garda Domestic Violence Intervention Policy. In that respect a Garda

Inspector has been appointed in each Garda Division to oversee the implementation of the policy regarding best practice and adherence to the guidelines. Training is provided to all operational staff on the implementation and compliance with the policy regarding domestic violence. The unit provides a nucleus of expertise to other Garda units in the investigation of crimes of a sexual nature, including child abuse and exploitation. The unit has a similar brief in relation to domestic violence. The DVSAIU cooperates closely with Cosc and represents the Gardaí on all national forums addressing domestic or sexual violence.

### **Office of the Director of Public Prosecutions (ODPP)**

The Prosecution Policy Unit was formed within the Office of the Director of Public Prosecutions (ODPP) in the 1st quarter of 2008. Domestic, sexual and gender based violence have been identified as priority areas of prosecution policy. The development of policy guidelines providing detailed advice to Prosecutors on how to implement legislation on violence against women is on-going.

The ODPP has appointed a solicitor within the District Court Section (where the majority of domestic violence cases are dealt with) to have special responsibility for all matters relating to domestic violence. The ODPP has also made available on its website ([www.dppireland.ie](http://www.dppireland.ie)) information on both the role of that office and on going to court as a witness. This information is provided in a number of languages.

### **Victim Support**

The Victims of Crime Office was established as an executive office of the Department of Justice, Equality and Law Reform in September, 2008. The core mandate of the office is to improve the continuity and quality of services to victims of crime. The office promotes awareness of, and adherence to, the Victims' Charter. This Charter and guide to the criminal justice system provides a non-statutory written framework of rights and entitlements against which crime victims, including victims of violence against women, can measure the level and standard of treatment received in their dealings across all sections of the criminal justice system. It is available on the website of the Victims of Crime Office - [www.victimsofcrimeoffice.ie](http://www.victimsofcrimeoffice.ie) – in a number of languages.

A Commission for the Support of Victims of Crime has been in existence under the aegis of the Department of Justice and Equality since March 2005 and has provided for continuity of services from the Non-Governmental Organisations (NGOs) working in the area of supporting victims of crime. A large proportion of these organisations address violence against women, particularly domestic violence. The Commission:

- disburses funding to victims' organisations, particularly towards court accompaniment
- promotes co-operation among NGOs and between the NGOs and the State sector to ensure that the victim has a central place in the criminal justice system.
- engages with NGOs through a Victims of Crime Consultative Forum.

Facilities for victim support services are included as a matter of course in the design of new courthouses, and in the refurbishment of existing courthouses, where space and planning restrictions allow. For some types of violent crime, the Gardaí may

assign an officer to support a victim.

A victim may be entitled to legal aid in civil proceedings, e.g. an application for relief pursuant to the Domestic Violence Act. Potential cases are subject to means testing and merit-testing. In general, separate representation is not available to a victim in any criminal proceeding. The State prosecutes the case on behalf of its citizens. However, where a victim's sexual history is raised as an issue for cross-examination, representation can be granted by the trial Judge in relation to that specific issue and legal aid is available in all such cases without the need for means testing.

### **Health Service Executive**

The Health Service Executive (HSE) has also developed a policy on domestic and sexual violence which includes action on training, service standards and data collection. The policy was finalised at the end of 2009 and published in 2010. Its principal actions have been incorporated into the National Strategy on Domestic, Sexual and Gender-based Violence.

The HSE has Designated Officers in each region to promote and coordinate services and training for Health Care Professionals in relation to the policy. The HSE employs a training and development officer for the prevention of violence against women.

This officer has developed and delivered workshops for health professionals on recognising and responding to violence against women.

### **Support services**

Cosc undertook a mapping of domestic and sexual violence services in Ireland in 2009 in order to describe the availability and accessibility of services to victims and to examine the extent of co-ordination involved among the services in the sector (both NGO and State). The report, Domestic and Sexual Violence Services in Ireland: Service Provision and Co-ordination was finalised in 2011 and is available on the Cosc website :

(<http://www.cosc.ie/en/COSC/Domestic%20and%20Sexual%20Violence%20Services%20in%20Ireland%20-%202011.pdf/Files/Domestic%20and%20Sexual%20Violence%20Services%20in%20Ireland%20-%202011.pdf> ).

The data sets utilised in the survey were for 2007, which was the latest year for which full data sets were available at the fieldwork stage of the study.

The second phase adopted a qualitative research methodology and examined the development of co-ordination among State and non-State organisations and agencies involved in domestic and sexual violence related service provision.

### **Domestic violence support services**

There are a wide range of domestic violence services available in Ireland and since 2000 the numbers of dedicated service providers offering these services has increased.

As a consequence of this, the level of service density has also increased with the effect that activity levels in the domestic violence sector satisfy most of the guidelines set out by the Council of Europe.

In 2007 a total of 49 domestic violence support services were available to those who

have experienced domestic violence in Ireland.

In 2007, 44 of the 49 support services provided a helpline facility and 18 of these operated on a 24/7 basis. There is one national helpline which operates a service from 10a.m. to 10p.m.

A total of 37 organisations provided support on an outreach basis.

A total of 20 organisations provided dedicated counselling services for domestic violence victims in Ireland.

There were 19 domestic violence services in Ireland providing crisis/emergency accommodation at refuge facilities in Ireland.

### **Domestic Violence Perpetrator Intervention Programmes**

One of Cosc's key tasks is to ensure that there is a system of appropriate interventions to endeavour to change the attitudes and behaviour of perpetrators of domestic violence in conjunction with measures to support the victims of their violence while the interventions are taking place. At present there are 13 intervention programmes which deal with clients referred in a variety of ways, including self-referral, by health and social services, as well as by court mandate. These programmes, which receive funding from Cosc, are run by three different organisations throughout the country.

### **Sexual violence support services**

There is a wide range of sexual violence services available in Ireland.

In 2007, a total of 17 sexual violence support services provided support, information and advocacy for both male and female victims of sexual violence in Ireland. This represents a total of 1 sexual violence support service for every 102,380 women in Ireland.

Nine services were involved in providing support on an outreach basis.

A 24 hour National helpline was operated from the Dublin Rape Crisis Centre (DRCC) and referred callers to all the local services where appropriate. Other than this, all remaining (16) regionally located sexual violence support services provided free-phone helplines operating at varying times. All sexual violence support services provided counselling services for both men and women. Accompaniment to the Gardaí, court, hospital or Sexual Assault Treatment Units for victims of sexual violence was a key support offered by all 17 sexual violence support services in 2007.

### **Awareness raising campaigns**

Ireland has run national campaigns every year from 2005, targeting both domestic and sexual violence, often run in conjunction with national voluntary support services.

Cosc undertook an attitudinal survey in 2008 to determine the perceptions of the

seriousness of domestic abuse, the respondents' understanding of the phenomenon and the perceptions of impact on men and women. The study also covered the most likely responses and the rationale underpinning these when people are asked to consider what they would do if they were to witness domestic abuse. The study **Attitudes to Domestic Abuse in Ireland** - Report of a survey on perceptions and beliefs of domestic abuse among the general population of Ireland - was published in January 2009 and informed the national awareness campaign for 2009.

In January, 2009 Cosc began its most recent national awareness campaign titled 'Your Silence Feeds the Violence'. The campaign strongly encourages the public to take an active role in supporting people who are experiencing domestic abuse. The campaign message illustrates that inaction in the face of domestic violence allows the abuse to continue. It challenges the public to understand, to be informed and to know where to go to get expert help. A comprehensive list of all services is provided on the Cosc website ([www.cosc.ie](http://www.cosc.ie)). The campaign began with national coverage on television, radio, on-line and on billboards. It continues through the display of campaign advertisements in state offices, Garda stations, public offices and NGO services. Cosc also supports NGOs at local level in promoting their victim support services and in raising awareness of domestic and sexual violence every year by way of a grant scheme. A number of these grants are awarded to promote activities around the UN 16 Days of Activism on Violence against Women.

Under the National Strategy a five year information plan has been developed and is being implemented. This plan is strongly based on the advice and input of NGOs and those informed about particular target audiences. Each year the general public, a particular high-risk victim group and a professional group are targeted for enhanced knowledge of this violence and services available.

### **Legislation**

Legislation relating to domestic violence remains in the main as reported in Ireland's third report, submitted in March 2006. However, **The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010** extended the availability of domestic violence orders to civil partners as defined by that Act.

Under the **Domestic Violence Acts 1996 and 2002** a District Court Judge may, on an application of a domestic violence victim, issue a civil order to protect a victim from a domestic violence perpetrator. There are four types of orders: a safety order, barring order, interim barring order and protection order. A breach of any such order is a criminal offence.

Further amendments to the Domestic Violence Act, 1996 are planned. Proposed amendments will remove the qualifying period for an application for a Safety Order and will allow persons with a child in common to apply for a Safety Order even if they have never lived together. Other proposed amendments to legislation relevant to domestic violence will provide for

- criminal court proceedings for a breach of a domestic violence order to be heard in camera in order to ensure the anonymity of the victim and
- a rebuttable presumption of notification in relation to the making of safety and protection orders.



In addition, the Law Reform Commission of Ireland has included a project to review domestic violence legislation in its **Third Programme of Law Reform 2008-2104**. The Programme for Government 2011 also includes a specific commitment to reviewing domestic violence legislation.

## Question 5

### Economic protection of the family

The Committee does not consider that the habitual residence condition as explained above amounts to a length of residence requirement in the strict sense (see also its conclusion in respect of the United Kingdom, Article 13§1) and is therefore not necessarily a breach of the Revised Charter. However, in order to assess the situation properly, the Committee asks that the next report contain detailed information on how the condition and the above-mentioned criteria are applied in practice, including on the number of foreign nationals who have been refused social assistance on the ground that they do not satisfy the habitual residence condition.

## Response 5

Please see the following websites:

<http://www.newtotown.ie/living-ireland/handbook-immigrants-rights-entitlements-ireland-67.html> (*Handbook on migrants rights in Ireland*)

<http://www.mrci.ie/Social-Welfare/> (*Information- Migrant Rights Council of Ireland*)

[http://www.tcd.ie/immigration/css/downloads/MCA\\_Newsletter\\_No\\_3.pdf](http://www.tcd.ie/immigration/css/downloads/MCA_Newsletter_No_3.pdf) (*Newsletter on migrants rights*)

[http://www.nesc.ie/dynamic/docs/NESC%20IOM+MP%20Highlight\\_RZrev.pdf](http://www.nesc.ie/dynamic/docs/NESC%20IOM+MP%20Highlight_RZrev.pdf) (*Migration policy highlights*)

<http://www.deti.ie/trade/marketaccess/singlemarket/06serv638.pdf>

## **Article 17 – The right of children and young persons to appropriate social, legal and economic protection**

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1.
  - a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b. to protect children and young persons against negligence, violence or exploitation;
  - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### **A) Article 17§1**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on the number of public and private schools, their geographical distribution in urban and rural areas, average class sizes and the ratio teacher per pupil; figures on primary and secondary school enrolment; on the number of children in the care of the State, the number placed with foster families and in institutions, the number of children per unit in child welfare institutions; on the number and age of minors in pre-trial detention or imprisoned or placed in a disciplinary institution.

17.1.1 The following provides detailed information on the legal framework in which protection is afforded to vulnerable children and young persons such as those that are the focus of Article 17. This Report comprises, in effect, a first Report from Ireland in respect of Article 17, of the revised Charter, on the basis that the previous report on this Article (i.e. included in Ireland's Second Periodic Report) being submitted late, was not examined by the Committee. This Report includes a full update on reforms and new developments and enhancements in respect of the legal framework, which helps underpin delivery in respect of the right of children and young persons to social, legal and economic protection. It also sets out key aspects of the institutional

framework, the policy orientation and action plans and measures which underpin the framework. It is complemented with relevant data as appropriate.

### **Legislative Framework**

#### **Child Care Act 1991**

17.1.2 The Child Care Act 1991 sets out the statutory framework within which child welfare and protection services are provided in Ireland. The Act places statutory responsibility for the provision of child welfare and protection services on the Health Service Executive (HSE) having regard to the principle that it is generally in the best interests of the child to be brought up in his/her own family. All sections of the Child Care Act 1991 have been commenced and are in force.

17.1.3 While the emphasis of child welfare and protection services is increasingly on early intervention and family support services (with the aim of preventing the need for children being taken into care), where children are taken into care by the HSE this is done either on a voluntary basis (i.e. with the consent of the parents of the child) or under a Court Order.

17.1.4 The Child Care Regulations, 1995, are in respect of placement of children in residential care, foster care or the placement of children with relatives, are concerned with, inter alia, the promotion of the welfare of the child, standards in residential centres, pre-placement procedures, the monitoring of placements and reviews.

#### ***Types of Care***

17.1.5 If a child is in need of care and protection and is unlikely to receive it at home, then the HSE has a duty to ensure they receive appropriate care. In cases where parents are unable to cope due to illness or other problems they may agree to their child(ren) being taken into the care of the HSE on a voluntary basis. In these cases while the HSE has care of the child(ren) it must consider the parents' wishes as to how that care is provided. The HSE is obliged to provide care for these children for as long as their welfare requirements demand.

17.1.6 In cases where the HSE has concerns for the care and wellbeing of a child it may apply to the courts for a care order. These orders give the HSE a range of powers regarding care planning and care placements. Children in the care of the HSE may be accommodated in a range of settings as detailed in the following table.

<b>Children in Care as at December 2010</b>	
<b>Care Setting</b>	<b>No. of Children</b>
Foster Care	3447
Foster Care with relatives	1674
Residential Care	437
Other Residential Care Placements	169
<b>TOTAL</b>	<b>5,727</b>

17.1.7 The following provide further detail on the range of care options available:

***Fostering***

The HSE where possible will place a child in foster care. Many children living in foster care have been living with their foster families for most of their lives. Others have shorter placements. The majority of separated children seeking asylum are now placed in foster care.

***Relative Foster Care***

Relative carers go through an assessment and approval process, in a similar way to general foster carers. The child is allocated a social worker who visits regularly and a Care Plan is developed and reviewed regularly.

***Residential Care***

For young people that are unable to live at home or in an alternative family environment residential, care may be considered suitable. Residential care can be in a home run by the HSE or by a voluntary or private company. It is the policy and practice of the HSE not to place children aged twelve years and under in residential care unless for exceptional reasons.

***Special Care/High Support***

Special Care involves the detention on an exceptional basis of a non-offending child for his or her own welfare and protection in a special care unit with educational and therapeutic supports. The child's behaviour, and the risk of harm it poses to his or her life, health, safety, development or welfare is addressed in the care setting. Future care requirements are also explored. The Child Care (Amendment) Bill, 2009, when enacted, will create a statutory framework for the High Court to deal with Special Care cases, instead of the High Court employing its inherent jurisdiction. The Bill also allows Special Care Units to be registered and inspected by HIQA. Thirty children were admitted to Special Care during 2010.

**Allocated Social Workers**

17.1.8 The following table details the allocation of social workers to children in care and existence of care plans at end Q3 2010:

Percentage of \children in care with allocated social workers	<b>92%</b>
Target for 2011 for allocated social workers	<b>100%</b>
Percentage of children in care with Care Plans	<b>88%</b>
Target for 2011 for Care Plans	<b>100%</b>

### **Health Information and Quality Authority / Inspection of Foster Care**

17.1.9 Standards for children in residential care are governed by the National Standards for Residential Care (DoHC 2001). The HSE centres are currently subject to inspection by the Health Information and Quality Authority (HIQA) and the non-statutory centres are currently registered and inspected by the HSE. The HIQA also inspects the HSE's provision of foster care services. Pursuant to a Government decision of July 2010, discussions are under way with a view to expanding the functions of HIQA to inspect the area of health-funded child protection services.

### **The Children Act 2001**

17.1.10 The Children Act 2001, as amended, was fully commenced in March 2007. The Children Act, 2001, constituted a fundamental revision of legislation governing the treatment of children in conflict with the law and non-offending children in need of special care or protection. The considerations behind the Act were that:

- prevention, through early intervention, is desirable and in the medium to long term likely to produce positive results;
- where a child is apprehended for committing an offence, diversion should, where possible and where the interests of society would not be adversely affected, be the preferred option;
- where it is necessary to bring a child before the courts on a criminal charge, a wide range of community sanctions should be available to the court;
- detention should be a last resort, but where it is unavoidable it should be in institutions where the ethos is educational rather than penal.

Among other things, the Children Act, 2001 provided the framework for the development of the juvenile justice system. It reflected the thinking that young offenders, by reason of their age and level of maturity, deserve to be dealt with differently than adult offenders. The philosophy underpinning the juvenile justice aspects of the Act is that there should be a suitable intervention for every child who commits an offence, no matter what the offence or the circumstances of the child who commits it.

The central principle that governs the Children Act, 2001 is that children should be brought up in their own communities and families. Where intervention occurs, it should aim to support and maintain children within these relationships and networks because it is clear that this is where children do best.

### **Diversion Programme**

17.1.11 The Garda Diversion Programme operates under Part 4 of the Children Act, 2001 and provides a package of measures for dealing with children aged 12-17 who commit an offence or offences. This programme enables child offenders to be dealt with by way of caution rather than the formal court system. These measures include

an informal (unsupervised) caution and a formal (supervised caution). To be considered for admission to the Diversion Programme a child must accept responsibility for the offence(s) committed and consent to be cautioned and supervised. In addition to this, the Children Act, 2001 has introduced the concept of 'restorative justice' to the juvenile justice system in the form of restorative cautions and restorative family conferences.

### **Young Persons Probation**

17.1.12 Recognising that working with young people who offend is different to working with adults who offend Young Persons Probation (YPP), as a specialised division of the Probation Service, was established to work with children and young people aged 12-18 years who come before the Courts or who are in St. Patrick's Institution or the Children Detention Schools. Change is possible for young people but they need and require the interest, positive support and commitment of adults. Officers in YPP assist in breaking the negative spiral that some young offenders find themselves in. Initial contact with young offenders is when they come before the Courts. YPP has a Court liaison role, Probation Officers deliver a service to Court through the presentation of reports and taking referrals. Furthermore, they provide appropriate guidance and information relating to management of offenders under community sanction orders.

17.1.13 The requirement to have a range of community based sanctions available to the Courts is an essential component of the Children Act if effect is to be given to the policy of detention being an absolute last resort.

The Act makes provision for ten community sanctions; nine of these involve the Probation Service. Young Persons Probation develops and provides the infrastructure for the implementation of community sanctions.

These sanctions offer a menu of options to the Court in the making of their Orders. Many of the community sanctions seek to maintain an educational ethos and to empower parents and families by giving them a role and responsibility in the Court process. Young Persons Probation staff work in conjunction with voluntary and statutory organisations, particularly with community based projects that are funded through the Irish Youth Justice Service but probation managed and which support the engagement of Probation Officers with young people. Sanctions available to the Courts include:-

#### **(a) Community Service Order (1983 Act Section 3)**

This Order is imposed on young persons age 16+. It specifies the number of hours of community service to be completed in lieu of a specified custodial sentence. A maximum of 240hrs in any 12 month period is permitted.

#### **(b) Day Centre Order (Section 118-123 of the Children Act)**

This Probation Order should not exceed 90 days, and not interfere with attendance at school or employment. The young person is under Probation supervision and required to attend a day centre for a specified period of time each week. Each young person will have a personalised plan that includes an activity, occupation or instruction. Attendance times at day centres can incorporate weekday evenings and Saturday.

**(c) Probation Supervision Order (Section 2 of 1907 Act)**

This Order states that a young person is under the supervision of a Probation officer for a specific period of time, up to a maximum of three years and is widely used. The conditions of the order can vary between individuals and are generally set down in a Probation Officers Report. Conditions are mostly task orientated with a focus on education/employment, addressing offending behaviour and may include undergoing treatment for an addiction.

**(d) Probation (Training or Activities Programme) Order (Section 124 of the Children Act)**

This is a Probation Order with a specified training programme of activities, for example, completion of a music/sports course. Suitable for a child's development and is time bound.

**(e) Probation (Intensive Supervision) Order (Section 125 of the Children Act)**

This is a Probation Order, with intensive supervision whereby a young person must undergo an education programme or course of treatment. This order is suitable for high risk cases and is considered a robust community alternative to detention. A proposal for specific programmes to deliver this model of intensive supervision is being developed.

**(f) Probation (Residential Supervision) Order (Section 126 of the Children Act)**

This is a Probation Order, detailing a specific place of residence as a condition of the Order. Implementation at present is on a case by case basis through individual placements sourced through approved providers. In addition developments around supported lodgings with partner agencies are under discussion at present.

**(g) Suitable Person (Care and Supervision) Order (Section 129 of the Children Act)**

This Order assigns a suitable person (either relative/foster parent) to care for a child. This suitable person must be approved by the Probation Service. Parents or Guardians must consent in writing to this, and can withdraw their consent at anytime. This Order can not exceed two years, and the child is under supervision of a Probation Officer while the Order is in force.

**(h) Mentor (Family Support) Order (Section 131 of the Children Act)**

This Order assigns a person either a relative or mentor (sourced through Le Chéile Mentoring Project, a Department of Justice and Law Reform fully funded initiative) to help support a family in its efforts to prevent a child from committing further offences. The Mentor will gently challenge behaviour and promote pro-social values. In many cases of adjourned supervision, still before the Courts, and standard Probation Orders the mentoring relationship has been a feature.

**(i) A Restriction on Movement Order (Section 133 of the Children Act)**

This Order enables a court to require a child to be at a specified residence between specific times during the period 7.00 p.m. to 6.00 a.m. and/or to stay away from any specified premises, place or locality between certain times. Supervision of this Order is a matter for An Garda Síochána.

**(j) Dual Order (Section 137 of the Children Act)**

The Court can combine Probation Supervision, Day Centre Orders and Restriction On Movement Orders in one Order for up to six months. Part of this Order is available nationwide (restriction of movement and probation supervision).

**Other Interventions**

17.1.14 In addition to these community sanctions there are other intervention formats:

***Parental Supervision Orders***

In any proceedings in which a child is found guilty of an offence, the Court may make an Order for the supervision of the child's parents. Before making an order the Court shall obtain and consider information about the family and social circumstances and the likely effect of an Order on these circumstances. In addition parents must be given an opportunity to be heard.

A Parental Supervision Order may order parents to do any or all of the following:

- undergo treatment for alcohol or substance abuse;
- participate in a parenting course;
- control or supervise the child;
- comply with other instructions.

***Deferment of Detention***

A Court may under section 142 impose a detention order. However, under section 144 a Court may order deferment of a detention order if there is no place available in a children detention school or for any other sufficient reason; for example a 'last chance' to comply with a community sanction.

If the deferment is for any reason other than lack of available places in a detention school, the Court may adjourn the matter for up to one year. The child will be placed under the supervision of a Probation Officer during the deferment period.

The resumed Court hearing shall take place not later than one year after the adjournment hearing and a probation report will be required. The Court can then impose the period of detention, suspend all or part of the period of detention or impose a community sanction.

***Detention and supervision***

This Order allows for a period in detention followed by supervision in the community. Half of the period shall be spent in detention and half in the community. The supervision shall commence on the young person's release.

***Supervision in the community***

This refers to the 'placing out' of a child from a Children Detention School after consultation with the Director of the Probation Service. The child will be under the supervision of a Probation Officer.

***Voluntary Aftercare***



This makes provision for voluntary supervision by the Probation Service after discharge from the school.

#### Institutional Arrangements

### Office of the Minister for Children (OMC)

17.1.15 The key role of the Office of Minister for Children (OMC) which was established in December 2005, is to support the Minister for Children in:

- implementing the National Children's Strategy (2000 – 2010);
- implementing the National Childcare Investment Programme (2006 – 2010);
- developing policy and legislation on child welfare and child protection;
- implementing the Children Act 2001;
- implementing *Towards 2016* commitments in relation to children's services.

Core aspects of the strategies and policies pursued under each of the above headings can be gained by accessing the website of the Ministry at [www.omc.gov.ie](http://www.omc.gov.ie)

17.1.16 Units which are co-located within the OMC, but continue to report to their parent Departments include:

- Irish Youth Justice Service (Department of Justice and Defence); and
- Early Years Education Policy unit (Department of Education and Skills).

This co-location allows officials to work side by side and provide a more joined-up and coherent approach to the development of policy and delivery of services to children.

### **Irish Youth Justice Service**

17.1.17 In December 2005, following an examination and review of the scope for restructuring and rationalising the youth justice system, the Government agreed a programme of youth justice reforms including legislative changes to the Children Act, 2001 and the establishment of the Irish Youth Justice Service. The new service, which is an executive office of the Department of Justice, Equality and Law Reform, leads and co-ordinates all aspects of youth justice. It is headed up by a National Director and operates within the strategic environment of the Office of the Minister for Children.

17.1.18 The Irish Youth Justice Service has a remit to:

- develop a unified youth justice policy;
- devise and implement a national youth justice strategy;
- establish and administer a national youth oversight group and local youth justice teams;
- manage all youth detention facilities;
- manage the implementation of the criminal justice provisions only of the Children Act 2001 as amended by the Criminal Justice Act 2006.

## **Ombudsman for Children**

17.1.19 The Ombudsman for Children's Office (OCO) is here to make sure that the government and other people who make decisions about young people really think about what is best for young people. The things that the OCO can do are set out in a law called the Ombudsman for Children Act 2002. The main areas of work of the OCO are:

- Independent complaints handling
- Communication & Participation
- Research & Policy

This means that the OCO can:

- Support people, including children and young people, to find out more about children's and young people's rights;
- Find out what's important to young people and let the Government and others know what matters to young people themselves;
- Carry out research to get a better understanding about things that are really important in children's and young people's lives;
- Give advice to the Government and others about doing what's best for children and young people;
- Receive and, where possible, look into complaints made by young people or by adults on young people's behalf.

17.1.20 OCOs Youth Advisory Panel's (YAP) two year term has just come to an end. Over the last two years they have worked on several different projects with various members of OCO staff. They have been involved in: the Big Ballot, including the national count event and bringing the results to the Oireachtas; YSI 2008 and 2009; [the European Network of Ombudspersons for Children](#) conference that the OCO hosted in Dublin; Connecting Communities as well as projects such as the transition year programme and our Children and [Young People's Annual Report](#).

**Annual Reports of the Ombudsman for Children can be obtained from the following weblink:**

**<http://www.oco.ie/assets/files/annual-report/Annual-Report2010.pdf>**

The National Youth Justice Strategy

17.1.21 The National Youth Justice Strategy 2008-2010 was launched in March 2008. The purpose of the strategy is to develop a co-ordinated partnership approach over the next three years among agencies working in the youth justice system, to improve service delivery in the system through diversion, restorative justice, rehabilitation and detention as a last resort.

The strategy outlines the actions to be taken by IYJS and other Government Departments and agencies to create a safer society by working together to reduce youth offending through appropriate interventions and linkages into services. It includes the following high-level goals:

1. To provide leadership and build public confidence in the youth justice system;
2. To work to reduce offending by diverting young people from offending behaviour;
3. To promote the greater use of community sanctions and initiatives to deal with young people who offend;
4. To provide a safe and secure environment for detained children which will assist their early re-integration into the community;
5. To strengthen and develop information and data sources in the youth justice system to support more effective policies and services.

A number of objectives and targets were set for each goal to help measure progress, to assess where available resources should be targeted and to identify key tasks for the various Government Departments and Agencies involved.

For further details please log on to the following

Weblink:[http://www.iyjs.ie/en/IYJS/IYJS\\_NYST\\_2008\\_10.pdf/Files/IYJS\\_NYST\\_2008\\_10.pdf](http://www.iyjs.ie/en/IYJS/IYJS_NYST_2008_10.pdf/Files/IYJS_NYST_2008_10.pdf)

## **B) Children's Referendum**

17.1.23 The Minister for Children and Youth Affairs previously presented a copy of the third and final report of the Joint Committee on the Constitutional Amendment on Children to Cabinet. The Cabinet decided that, in view of the complex nature of the issues involved, all Ministers and Government Departments as well as the Attorney General should consider the report and examine the implications of the proposed wording for their individual areas of responsibility.

In view of concerns expressed, the then Minister for Children and Youth Affairs presented to Government the policy objectives for the Referendum and was granted Government approval to develop revised wording for an amendment, in co-operation with the office of the Attorney General.

New wording, which took into account the proposals put forward by the Committee, was drafted by the Attorney General's Office with policy support provided by the Office of the Minister for Children and Youth Affairs. On January 12<sup>th</sup> 2011 the then Government approved:

- 16 the policy objectives then proposed for the amendment of the Constitution in relation to children's rights
- 17 the wording for the Referendum
- 18 the drafting of a Referendum Bill

The then Minister began seeking to develop consensus among the political parties and the NGOs on the wording of the amendment and the holding of a referendum.

The Programme for Government 2011 prioritises the holding of a Referendum. The present Minister for Children and Youth Affairs is currently considering the wording, with a view to making a submission to Government for approval to draft a bill and hold a referendum.

### **C) Ryan Report Implementation**

17.1.24 The Report of the Commission to Inquire into Child Abuse (the Ryan Report) was published in May 2009. The then Minister for Children and Youth Affairs was tasked with producing an Implementation Plan for the Report's recommendations. The Implementation Plan was accepted by Government and was published in July, 2009. In drawing up this Implementation Plan, key stakeholders with particular knowledge and expertise in the area of child welfare and protection were consulted.

The Implementation Plan sets out 99 proposals to address each of the 20 recommendations in the Ryan Report, and includes proposals considered essential to further improve services to children in care, in detention and at risk. An amount of €15m was allocated by Government in 2010 to progress the implementation of Ryan actions. A further €m is being provided in the current year.

The Minister for Children and Youth Affairs is required to chair a high level group to monitor the implementation of the actions specified in this Plan. The group includes representatives from the Office of the Minister for Children and Youth Affairs (OMCYA), the HSE, HIQA, the Irish Youth Justice Service (IYJS), the Department of Education and Science and An Garda Síochána. The group meets twice a year and a progress report is presented to Government each year. The first progress report was laid before both Houses of the Oireachtas in July 2010. The second progress report is currently being prepared for presentation to the Oireachtas in the current Dáil term.

### **D) Corporal Punishment**

17.1.25 There have been a number of important legislative changes in the area of corporal punishment in recent years. These include:

- Section 12 of the Criminal Law Act, 1997, which abolished the power of a court to impose a sentence of corporal punishment;
- Section 246 of the Children Act, 2001, which makes it an offence for a person who has the custody, charge or care of a child to wilfully assault, ill-treat, neglect, abandon or expose the child or to cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her well-being;
- Section 24 of the Non-Fatal Offences against the Person Act, 1997, which abolishes the common law rule under which teachers had immunity from criminal liability for physically punishing pupils.

A prohibition in legislation of corporal punishment within the family has not been brought forward to date however the matter is under continuous review. It is the Government's view that there is a balance to be found in trying to dissuade parents from using physical chastisement, supporting them in effective parenting *versus* criminalising parents who smack their children. The policy focus to date has been on changing parent's attitudes and understanding of the problems associated with physical punishment and offering them alternatives as the most appropriate course. The National Children's Strategy specifically commented on the need to change public attitudes to physical punishment in the home. Actions supporting this are focused on the provision of quality parenting programmes with a focus on alternative approaches to managing difficult behaviour in children. In addition to this the state has undertaken specific research in relation to parenting styles and disciplines which demonstrate a significant decline in the use of physical punishment by parents.

Any further changes or clarifications of the operation of the existing act will be considered in the wider evolving general corporal punishment policy context.

### Other Measures

7.1 26 Children First, the National Guidelines for the Protection and Welfare of Children were first published in 1999. Over the last twelve years they have operated as the over-arching national Guidelines for individuals and agencies that come into contact with children. The aim of Children First is to direct the identification, investigation, assessment, reporting, treatment and management of child abuse.

The Children First Guidelines have been updated and revised in light of a detailed review and to reflect policy and legislative changes since 1999. The revised guidance will shortly be published alongside a HSE produced Consistent Practice Guide to assist the delivery of effective consistent practice. The two documents will be closely linked, with the practice guide making references to the more detailed Children First document.

Legislation will be introduced to ensure compliance with the requirements of *Children First*. The Minister for Children and Youth Affairs will be bringing proposals to Government in this regard in consultation with the Minister for Justice and Law Reform. The objective will be to ensure the greater protection of children by strengthening the existing system for reporting and responding to suspected child abuse;

17.1.27 As regards specific measures in place in support of the protection of the child, please see Ireland's 2<sup>nd</sup>. National Report to the United Nation's Convention on the Rights of the Child. This Report is now being updated with latest developments from a, legislative, regulatory and administrative perspective to include, also, specific measures which are focussed on the protection of the child.

## Questions Raised by the Committee

### *Establishment of Parentage and Adoption*

As regards the establishment of parentage, the Committee notes from other sources<sup>3</sup> “that there is no procedure for naming the father in the birth registration of a child born of unmarried parents” and that this may disadvantage such children.

*Question 1:*

*The Committee wishes to know whether this situation has been amended.*

**Response:**

There has been no change in the situation since the last Report on this Article.

### *Children in Public Care*

The Committee notes with interest the Report of Findings Relating to Inspection of Children’s Residential Centres.<sup>4</sup> Residential care centres run by the voluntary sector for the Health Boards must be registered and inspected by the Health Boards. In 1999 there were 106 children’s residential homes, 49 run by the Health Boards and 57 by the voluntary sector. They provide places for just over 700 children and young people.<sup>5</sup> There are other various residential establishments for young people, such as industrial schools, reformatory schools, centres for children with disabilities, which are not subject to inspections by the Social Services Inspectorate.

*Question 2:*

*The Committee wishes to know whether there is any body charged with monitoring care in these institutions, and to receive information on any specific procedure for complaining about the care and treatment in all institutions. It also wishes to be informed for all institutions and residential establishments, on the conditions under which a child’s property, mail, personal integrity and right to meet with persons close to him may be subject to restriction; and*

**Response**

**Please refer to recent developments as described at paragraphs 17.1.10 and subsequent sub-paragraphs, above.**

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<sup>3</sup> Concluding observations of the Committee on the Rights of the Child: Ireland 04/02/98. CRC/C/15/Add.85.

<sup>4</sup> [www.issi.ie](http://www.issi.ie)

<sup>5</sup> *ibid.*

### Question 3

*The Committee wishes to receive information on measures taken to assist homeless children.*

#### E) Response

**As regards information on measures taken to assist homeless children, please see the policy response as described at paragraphs 17.1.10 and subsequent sub-paragraphs, above.**

### *Protection of children from ill-treatment*

As noted (from Ireland's 2<sup>nd</sup> periodic report), the Health Boards are under a statutory duty to promote the welfare of children who are not receiving adequate care and protection. Each Health Board is required under the Child Care Act 1991 to establish a Child Care Advisory Committee to advise the Health Board on the provision of child and family support services in its area and to monitor the provisions of child-care services at the local level. According to Ireland's first report submitted under the UN Convention on the Rights of the Child,<sup>6</sup> child abuse in Ireland is recognised as a significant social problem. The Health Boards now receive almost 5,000 reports of alleged abuse each year, of which about 1,500 are confirmed. The Child Care Act 1991 was introduced to improve protection for children and was due to be fully implemented by 1996.

### Question 4:

*The Committee asks whether the legislation is in fact fully operational.*

#### F) Response

**Please refer to recent developments as described at paragraphs 17.1.10 and subsequent sub-paragraphs, above.**

Child Abuse Prevention Guidelines have been in force since 1987. Additional procedures have been developed in order to clarify the circumstances in which suspected cases of child abuse should be notified between the Health Boards and the police and to provide a uniform framework for dealing with such cases. Child Abuse Prevention Programmes have also been established in schools. The Committee notes that there is presently no mandatory reporting of child abuse, but that the issue is under consideration. It notes that in 1998 the Protection for Persons reporting Child Abuse Act was enacted, which provides protection from civil liability to persons who report child abuse in certain circumstances, and provides protection to such persons from penalisation by their employer. The corporal punishment of children in schools is prohibited.

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<sup>6</sup> [www.unhcr.ch/tbs/doc.nsf](http://www.unhcr.ch/tbs/doc.nsf) CRC/C/11/Add.12

**Question 5:**

*The Committee wishes to know whether corporal punishment is prohibited in institutions caring for children.*

**Response**

The spirit of Section 246 of the Children Act, 2001, which makes it an offence for a person who has the custody, charge or care of a child to wilfully assault, ill-treat, neglect, abandon or expose the child or to cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her well-being; applies to residential centres.

There is a common law immunity, which permits parents and other persons *in loco parentis* to use reasonable and moderate chastisement in the correction of their children. The Committee refers to its general observations on Article 17 in the General introduction on this issue.

**Question 6:**

*The Committee decides to defer its conclusion on this point pending information as to whether the Government intends to remove this immunity and prohibit all corporal punishment of children.*

**Response:**

Please refer to paragraph 17.1.25 above.

**Children and the law – young offenders**

There is a rebuttable presumption that a child between 7 and 14 years of age is incapable of committing an offence, i.e. it must be proved not only that the child committed the offence but also that he knew it was wrong. The Committee considers that the age of 7 is very young for criminal responsibility to be imposed. It notes however that the Children Bill 1999, currently under consideration by the legislature, proposes to raise the age of criminal responsibility from 7 to 12 years of age, and to provide a rebuttable presumption that a child between 12 and 14 years is incapable of committing a criminal offence.

**Question 7**

*The Committee wishes to be informed when the Bill becomes law.*

**G) Response**

Please refer to sub-paragraph 17.1.10 and subsequent sub-paragraphs, above.

Children under 17 years of age have their cases dealt with by a special sitting of the District Court known as the Children's Court, unless the offence is serious enough to be heard by a court of higher jurisdiction. A Juvenile Liaison Officer Scheme exists to divert offenders from the judicial system. It provides for the cautioning and supervising as an alternative to prosecuting juveniles who commit minor criminal offences.



**Question 8**

*The Committee wishes to receive details of any changes made to the scheme by the Children Bill 1999 when it becomes law.*

**H) Response**

Please refer to sub-paragraph 17.1.10 and subsequent sub-paragraphs, above.

Young offenders convicted of a criminal offence may be fined, subject to a probation order, and, for 16 and 17 year-old offenders, subject to a community service order.

**Question 9:**

*The Committee wishes to be informed of any increase in the range of community sanctions available to the courts.*

**I) Response**

Please refer to paragraphs 17.1.10 to 17.1.14 above.

Males under 16 years of age and females under 17 years of age cannot, unless there are exceptional circumstances, be sent to prisons or places of detention operated by the Department of Justice. Young offenders below these ages are detained in special schools operated by the Department of Education; industrial schools which cater for children between the ages of 10 and 14 years and reformatory schools which cater for children between the ages of 14 and 16 years (female offenders up to 17 years of age). According to the report, the average length of detention is between one and two years. The Committee notes from the report that the total capacity of these institutions is well under two hundred places.

*Question 10:*

*The Committee asks whether the number of places that exist is adequate, in particular for females. It further asks whether these institutions are closed institutions.*

**J) Response**

Please refer to response provided at Question 11 under.

Male young offenders aged 16 years and over and female offenders aged 17 years and over are the responsibility of the Department of Justice. Special provision is made for young offenders in the Rules for the Government of Prisons. Male offenders serve their sentences either in one of the regular prisons or in a special institution for young offenders. Female offenders serve their sentence in one of the two regular female prisons. The Committee notes that in June 1995 there were 2,317 young offenders in custody in institutions run by the Department of Justice.<sup>7</sup>

*Question 11:*

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<sup>7</sup> *ibid.*

*The Committee wishes to be informed whether young offenders are always held separately from adult offenders. It also wishes to receive further information on the following points; can young persons be remanded in custody pending trial? If so, the maximum length of any such remand, the maximum sentence of imprisonment that may be imposed on a young offender, and the circumstances in which a male offender under 16 years of age or female offender under 17 years of age may be sent to the places of detention operated by the Department of Justice.*

## **Response**

### **Children Detention Schools**

The Children Act 2001 as amended establishes children detention schools for all persons under 18 sentenced to detention by the Courts.

The amendment of the Children Act also included the transfer of responsibility for the management of children detention school facilities from the Department of Education and Science to the Irish Youth Justice Service. This transfer occurred on the 1<sup>st</sup> March, 2007. Work is currently underway to transfer responsibility for the Children Detention Schools to the newly created Department of Children and Youth Affairs.

The places where a child can be ordered to be detained by the Courts are:

- Trinity House, Lusk.
- Oberstown Boys School, Lusk.
- Oberstown Girls School, Lusk.
- St. Patrick's Institution (for 16 and 17 year old boys for a transitional period).

The Finglas Child and Adolescent Centre closed on 31 March 2010 on foot of the recommendations of the Working Group which was established to look at the future of the Centre in light of the Expert Group's recommendation for the development of a new children detention facility in Oberstown. All children, staff and services were subsequently redeployed to the remaining three schools in Oberstown, Lusk, Co. Dublin. These are closed detention schools and sufficient places exist for children remanded or committed by the courts.

The Irish Youth Justice Service is responsible for the existing 3 children detention schools and is taking steps to develop children detention school places for 16 and 17 year olds. Until these places are available, St. Patrick's Institution will continue to be used for 16 and 17 year old boys.

The IYJS continues to work with the Board of Management and the management of the 3 children detention schools towards a number of improvements in their operation including measures to integrate them and standardise procedures. A number of integrated policies have been rolled out, including reviewing the bed management process (i.e. making beds available to the courts), the educational framework, financial procedures and administrative policies. Progress has also been made in relation to the centralisation of services in the schools – payroll transferred to Financial Shared Services, Department of Justice in January 2011, catering and

laundry services centralised in December 2010 and proposals are to hand regarding rationalising future staffing (rosters etc) and centralising domestic, laundry, maintenance and administrative services.

### **St. Patrick's Institution**

St. Patrick's Institution is managed by the Irish Prison Service. At the moment it is a closed institution for offenders aged 16 to 21 years. Pending the development of new National Children detention facilities, St. Patrick's Institution will continue to be used to accommodate 16 and 17 year old boys, who are separated from other inmates (aged 18-21) in so far as possible. A "positive sentence management" approach has been developed for their care in St. Patrick's.

In line with the Children's Act 2001, section 158 states:

"...the principal object of children schools is to provide appropriate educational training and other programmes and facilities for children referred to them by a court and, by

- (a) having regard to their health, safety, welfare and interests including their physical, psychological and emotional wellbeing'
- (b) providing proper care, guidance and supervision for them,
- (c) preserving and developing satisfactory relationships between them and their families,
- (d) exercising proper moral and disciplinary influences on them,
- (e) recognising the personal cultural and linguistic identity of each of them,

To promote their reintegration into society and prepare them to take their place in the community as persons who observe the law and are capable of making a positive and productive contribution to society".

### **Article 17§2**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on the number of children failing to complete compulsory schooling dropping out of education without qualifications and on measures to combat absenteeism.

17.2.1 Please see developments as reported under related Article 7.

**Article 19 – The right of migrant workers and their families to protection and assistance**

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
  - a. remuneration and other employment and working conditions;
  - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
  - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

## Article 19§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.

19.1.1 The following developments have taken place since the third report

### **K) National Action Plan Against Racism**

19.1.2 The National Action Plan Against Racism (NAPR) ran from 2005 to 2008.

Under the plan support was provided towards a number of national strategies promoting greater integration in workplaces, in the police service (An Garda Síochána), the health service, in the education system, in the arts and sports sectors and within local authorities. National research was carried out with the support of the Plan and awareness-raising campaigns were also carried out to highlight the important contribution made by migrants to Irish society. More information about the plan is at this link:

<http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-npar-en>,

The Strategic Monitoring Group which oversaw the development and progression of the plan compiled a [final](#) report in 2009. It conceded that, while the Plan was ambitious and not everything was achieved, “*there has been a substantial penetration of anti –racist policies, programmes and activities and awareness raising initiatives*”. [http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/\\$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/PCHK-7PNHH41312727-en/$File/NPAR%20Final%20Report%20Not%20an%20End%20Just%20a%20Beginning.pdf),

Many of the initiatives which were instigated through the National Action Plan Against Racism continue to be developed and progressed through the support and work of the Office for the Promotion of Migrant Integration. For example, an Arts and Culture Strategy and an Intercultural Education Strategy were launched in September 2010 and implementation of the Workplace Diversity Strategy, the Garda (Police) Diversity Strategy and Intercultural Health Strategy is ongoing.

The Office for the Promotion of Migrant Integration (formerly the Office of the Minister for Integration) maintains the Government commitment and focus on anti-racism as a key aspect of integration and broader national social policy. The Office for the Promotion of Migrant Integration continues to work with many sectors including the Gardaí (Police), Local Authorities, Sporting Bodies, Government Departments, the social partners and broader civil society including cultural and

ethnic minorities, to further progress the integration and diversity management agenda.

In May 2008, the then Minister of State for Integration launched ‘*Migration Nation*’ *Statement on Integration and Diversity Management*. This document is a Ministerial statement on the future direction of integration policy in Ireland. This document is heavily influenced by the EU Common Basic Principles (11) on Immigrant Integration. The document contains four key principles which will inform and underpin State policy in this area i.e. a partnership approach, a mainstream approach to service delivery, a strong link between integration policy and wider state social inclusion measures and a commitment to effective local delivery mechanisms. Irish integration policy focuses particularly on the role of local authorities, sporting bodies and faith based groups in building integrated communities. It also looks at the way in which integration is of necessity a two-way process with responsibilities and rights for both newcomers and the current population. See: <http://www.integration.ie/website/omi/omiwebv6.nsf/page/aboutus-migrationnation-en>,

While primary core funding for integration is spent by mainline Departments who provide services on a mainstream basis, the Office for the Promotion of Migrant Integration provides seed funding in key areas to facilitate integration and to address racism.

#### **L) Information and Service Provision**

19.1.3 Ireland adopts a policy of mainstream service provision in the integration area while recognising the need for targeted initiatives for specific short-term needs. Such an approach sees the planning and delivery of services and policies for immigrants as part of the normal planning of services for all members of society. This policy applies to all migrant groups. However certain distinctions apply in relation to access to services depending on legal status.

A range of Government Departments and agencies have compiled information about the rights, entitlements and services available for immigrant clients in a range of different languages. The Office for the Promotion of Migrant Integration website ([www.integration.ie](http://www.integration.ie)) has links to many of these information resources: <http://www.integration.ie/website/omi/omiwebv6.nsf/page/infoformigrants-accessinginformation-multilingualinformationresources-en>

#### **Steps taken against misleading propaganda relating to immigration**

19.1.4 A number of national media and publicity campaigns were funded under the National Action Plan Against Racism 2005-2008. For example:

- A major national media awareness campaign took place in March and April 2006, emphasising the benefits of diversity. The campaign consisted of a series of five 40-second radio commercials and ran for a six week period across all national and local radio stations including RTE Radio 1, RTE’s 2FM, Today FM, Lyric FM, Newstalk, FM104, 98FM and a host of others nationwide.

- In February 2007, the National Action Plan Against Racism launched a major public awareness campaign to highlight the important contribution made by members of minority ethnic groups to Irish society. This campaign used real-life case studies showing new Irish citizens working in key areas of Irish life.

In recent times, more targeted initiatives are being pursued to raise awareness of the dangers of racism and the importance of integration.

Substantial funding is provided to Local Authorities around the country and they support local programmes that educate the public on issues such as immigration, integration and antiracism. For example, Dublin City Council ran an anti-racism campaign on the Dublin transport system using funding provided by the Office for the Promotion of Migrant Integration. Similarly, an NGO called Show Racism the Red Card was supported to run a creative competition for school children in 2010 and 2011.

The Office for the Promotion of Migrant Integration also provides funding to the Holocaust Education Trust in Ireland, the organisers of the Government's Holocaust Memorial Day held each year on the Sunday closest to 27 January. The Commemoration serves as a constant reminder of the dangers of racism and to provide lessons from the past that are relevant today. The Office for the Promotion of Migrant Integration also provided grants to the Holocaust Education Trust in Ireland (HETI) towards the further development of education materials and awareness raising activities.

### **Workplace Diversity Initiative**

19.1.5 The Workplace Diversity Initiative (a follow-on project to the Action Strategy for Integrated Workplaces) includes a range of actions around training, awareness raising, networking and mentoring carried out by representatives of trade union, business and employer organisations. The initiative is aimed at highlighting the benefits of integrated workplaces and providing supports to prevent workplace conflict. The initiative is supported by the Equality Authority and the Office for the Promotion of Migrant Integration. See the following link for more information: <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalworkplaces>,

### **Article 19§2**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.

19.2.1 No new developments since our last report on this sub-paragraph of Article 19.

### **Article 19§3**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.

19.3.1 No new developments since our last report on this sub-paragraph of Article 19.

### **Article 19§4**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular concerning the number of migrant workers, if possible, which have had access to subsidised housing.

19.4.1 As indicated in previous Reports, all legislation which applies to employers, employees and the self-employed, applies equally to persons legally resident in the State regardless of nationality, class, creed etc. The Employment Equality Act, 1998 provides an entitlement to equal pay for work of equal value and protection against discrimination on nine discriminatory grounds including race (i.e. colour, nationality or ethnic or national origins). The Act also prohibits discrimination by an organisation of workers on any of the discriminatory grounds provided in the Act, in relation to membership of that organisation or any benefits, other than pension rights, provided by it. The Equality Act 2004, which was enacted on 18 July, 2004, amended the Employment Equality Act 1998 (both referred to as the Employment Equality Acts 1998 and 2004) to implement three EU Equality Directives namely - the Race Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC) and the Gender Equal Treatment in Employment Directive (2002/73/EC). The Equality Act 2004 brought self-employed people within the general scope of the Employment Equality Act.



19.4.2 The Employment Equality Acts 1998 to 2008, as amended, outlaw discrimination on *inter alia* the race ground in all areas relevant to employment as follows:

- Discrimination by employers with regard to access to employment, conditions of employment, training and promotion (*section 8 of the 1998 Act*)
- Discrimination in collective agreements with regard to access to and conditions of employment and equal pay (*section 9 of the 1998 Act*)
- Discriminatory advertising or advertising that might reasonably be understood as indicating an intention to discriminate (*section 10 of the 1998 Act, as amended by section 5 of the Equality Act 2004*)
- Discrimination by employment agencies against any person seeking employment or other services of the agency (e.g. career guidance or training) (*section 11 of the 1998 Act*)
- Discrimination in the provision of vocational training or any instruction needed to carry on an occupational activity (*section 12 of the 1998 Act, as amended by section 6 of the Equality Act 2004*)
- Discrimination by trades unions, professional and trade associations as regards membership and other benefits (*section 13 of the 1998 Act, as amended by section 7 of the Equality Act 2004*).

19.4.3 Section 29 of the Employment Equality Act 1998, which provides for the entitlement to equal remuneration for like work, was amended by section 19 of the Equality Act 2004. The new provision replaces the basis on which indirect discrimination is determined to take account of the definition of indirect discrimination in the EU directives.

#### Equal Status Acts 2000 to 2008

19.4.4 The Equal Status Act 2000, which was initiated by the Minister for Justice, Equality and Law Reform in 1999 and enacted in April 2000, was brought into operation from 25 October 2000. This Act gives protection against discrimination in non-workplace areas and thus complements the Employment Equality Act 1998. The Act prohibits direct and indirect discrimination on the grounds of gender, marital status (extended and renamed 'civil status' in 2010), family status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origin and membership of the Traveller community and "victimisation", where an individual is treated less favourably as a result of having participated in processes under the legislation.

19.4.5 The Act covers all goods and services that are available to the public, whether on payment or not and irrespective of whether provided by the public sector or private sector. "Services" are defined broadly to include access to public places, banking and insurance services, entertainment, travel, transport, professional services, education, disposal of premises and provision of accommodation and private registered clubs. The provisions of the Act are subject to some exemptions. Under the Act, the Equality Authority and the Office of the Director of Equality Investigations (renamed the Equality Tribunal) had their remit broadened to include equal status matters, with effect from the above commencement date.

19.4.6 The Equal Status Act was amended by the Intoxicating Liquor Act 2003, to transfer jurisdiction for cases occurring in licensed premises to the District and Circuit

Courts, which deal with the generality of legislation about conduct of persons in licensed premises.

19.4.7 The Equality Act 2004, which was enacted on the 18th of July, 2004 amends the Employment Equality Act 1998 and the Equal Status Act 2000 to transpose into Irish Law three EU Equality Directives; the Race Directive (2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), the Framework Employment Directive (2000/78/EC establishing a general framework for equal treatment in employment) and the Gender Equal Treatment in Employment Directive (2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions).

19.4.8 Further minor amendments have been made by the Disability Act 2005 which repealed of sections 17 and 18 of the Equal Status Act 2000, concerning accessibility of vehicles and public transport. These issues are now dealt with more comprehensively in the Disability Act. The Civil Law (Miscellaneous Provisions) Act 2008, completed the transposition into national law of the EU Gender Goods and Services Directive (2004/113/EC), while the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 extended and renamed the marital status ground, now the civil status ground, to prohibit discrimination on the basis of same-sex civil partnership.

#### **Article 19§5**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

19.5.1 No new developments since our last report on this sub-paragraph of Article 19.

#### **Article 19§6**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on the number of applications for family reunion, and the percentage of

applications which were granted and turned down, respectively.

*Accommodation:*

19.6.1 While in general terms, it is the responsibility of individuals to make their own accommodation arrangements, migrants often seek and get assistance from the public authorities in the form of social housing or financial assistance towards the cost of renting accommodation.

19.6.2 With regard to accommodation, nationals and legally resident migrants are treated equally under the law.

*Family Reunion:*

19.6.3 Sub-paragraphs 19.6.3 to 19.6.10, Article 19, Paragraph 6 of our Third Report under the Revised Charter, which was submitted to the Council of Europe in 2006, refer. The position remains the same.

[http://www.livinginireland.ie/en/work/working\\_in\\_ireland/](http://www.livinginireland.ie/en/work/working_in_ireland/)

[http://www.mrci.ie/media/128689809363\\_MRCI%20PP%20Work%20Permits%20and%20Exploitation.%20Time%20for%20Reform.pdf](http://www.mrci.ie/media/128689809363_MRCI%20PP%20Work%20Permits%20and%20Exploitation.%20Time%20for%20Reform.pdf)

*Public Health:*

19.6.4 Sub-paragraph 19.6.11, Article 19, Paragraph 6 of our Third Report under the Revised Charter, which was submitted to the Council of Europe in 2006, refers. The position remains the same.

**Article 19§7**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

19.7.1 The forms of legal assistance available to migrants and their families are the same as those available to indigent nationals. There are no obstacles in practice to the exercise of this right by migrants and their families. Details of legal assistance available to indigent nationals and migrants may be found at the following web sites

<http://www.justice.ie/> (Home Page of the Department of Justice and Equality website)

[http://www.justice.ie/en/JELR/Pages/Equality\\_disability](http://www.justice.ie/en/JELR/Pages/Equality_disability) (Equality and Disability)

<http://www.justice.ie/en/JELR/qsearch> (Legal Assistance)

[http://www.justice.ie/en/JELR/Pages/Legal\\_aid](http://www.justice.ie/en/JELR/Pages/Legal_aid) (more on Legal Aid)

<http://www.legalaidboard.ie/LAB/Publishing.nsf/Content/Home> (Home Page of the Legal Aid Board)

19.7.2 In respect to the redress mechanisms provided under equality legislation, migrant workers are treated no differently than nationals.

19.7.3 The Equality Authority provides information on its website in 12 languages (Russian, Lithuanian, Serbian, Czech, French, Portuguese, Polish, Arabic, Croatian, Romanian, Spanish and Chinese) in addition to English and Irish. The Equality Tribunal provides standard information in French, Russian and Polish as well as in English and Irish and provides language interpretation at hearings when sought.

### **Article 19§8**

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the number of migrant workers nationals of States party served with an expulsion order.

19.8.1 No new developments since our last report on this Article - see Ireland's Third Report sub-paragraphs 19.8.1 to 19.8.8.

### **Article 19§9**

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

19.9.1 There are no taxation provisions, which limit the right of migrant workers to transfer their earnings and savings. The Revenue Commissioners do not impose such provisions and commercial banks and money transfer services facilitate the transfer of earnings and savings.

### **Article 19§10**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

19.10.1 No new developments since our last report on this Article - see Ireland's Third Report.

### **Article 19§11**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or factual information, in particular on how migrants are being taught the national language of the receiving State.

19.11.1 No new developments since our last report on this Article - see Ireland's Third Report.

### **Article 19§12**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or factual information, in particular on how migrants are being taught the mother tongue of their parents.

19.12.1 No new developments since our last report on this Article - see Ireland's Third Report.

## Negative Conclusions of the European Committee of Social Rights (ECSR)

### **Article 19.8**

*1. The Committee concludes that the situation in Ireland is not in conformity with Article 19§8 of the Revised Charter on grounds that migrant workers have no appropriate means of appeal against a deportation order.*

## **Response**

The contention by the Committee in respect of Art 19 (8) is inaccurate in that it suggests that the worker the subject of deportation proceedings lacks legal redress. On the contrary persons in this situation are fully entitled to the protection of the Courts. Where a person is proposed to be subject to a deportation order they are invited to make application to the Minister for leave to remain, This application is made in accordance with Section 3 of the 1999 Immigration Act. If the Minister rejects this application his decision is open to judicial review.

The position in relation to judicial review is set out in more detail below.

As regards the issue of judicial redress in Ireland the High Court, and on appeal the Supreme Court, have the right to exercise a supervisory function by virtue of Article 34.3.1 of the Irish Constitution. Also, Article 40.3 of the Constitution introduces the concept of constitutional justice and, taken together, with Article 34 provides for the judicial review of administrative or public decisions by the Irish courts.

Order 84 of the Rules of the Superior Courts allows an applicant before the High Court to instigate judicial review proceedings where they can satisfy the court that, to some extent, they have been affected personally by a decision of a public body. In this regard, judicial review proceedings allow the High Court to scrutinise and supervise the exercise of powers by a broad range of public bodies or servants including the Minister exercising the powers conferred on him by the Immigration Acts.

All administrative or public decisions in Ireland must conform with the Irish Constitution. In this regard judicial review provides for a wide range of grounds on which a decision may be challenged in the courts. These can be summarised as follows:-

Legality – This would examine whether the relevant powers exist and the limits within which they must be exercised.

Vires – which would examine whether the decision maker in whom a power was vested acted within the limits of that power.

Procedural fairness – which is concerned with the elimination of bias and ensuring impartiality and the right to a fair hearing.

Reasonableness – which examines whether the decision makers have addressed themselves to all the relevant facts.

Compatibility with human rights – under Irish law the European Convention on Human Rights Act 2003 places an obligation on decision makers to consider relevant principles of the European Convention on Human Rights and the Charter of Fundamental Rights of the EU.

Proportionality – which, bearing in mind that important principles have been laid down in Community law in this regard, the court will examine whether a particular measure or action was proportionate in the context of the particular case.

Legitimate expectation – which is an important concept in both European and Irish law to the effect that a person has the expectation or interest in relying on a public body to maintain a long standing practice or to keep a commitment to which that public body had entered into, either expressly or otherwise, unless it can be shown not to be in the public interest to do so.

The remedies available to the High Court in judicial review proceedings are discretionary and very broad. These would include, in particular, the following:-

- An order quashing or setting aside the decision (in such circumstances a decision maker would be expected to arrive at any new determination in line with any guidance provided by the court).
- An order prohibiting a public body from carrying out a particular act (such as enforcing an expulsion order for instance).
- An order compelling a public body to perform a certain duty (such as issuing a registration card for instance).
- A declaration of the existence of an obligation or that an action or decision was unlawful.
- An injunction as an interim measure.
- Damages; these would be awarded where the parties can demonstrate that they have suffered a financial loss (such as the loss of earnings as a result of being denied access to the labour market for instance) or punitive damages in circumstances where there has been maladministration by the public body concerned.

When deciding on the most appropriate remedy in the circumstances of a particular case the High Court will usually consider the following factors:-

- Any delay in bringing proceedings.
- Whether the applicant has suffered hardship.
- Any impact there may be on a third party.
- The merits of the particular case.

- Whether or not the decision would be in the interests of good administration.
- Whether the decision was “unreasonable, irrational, unfair, disproportionate, or otherwise flawed”

### **Article 19.10**

2. On the basis of the information contained in the report and previous reports under the European Social Charter of 1961, the Committee notes that there continues to be no discrimination between migrant employees and self-employed migrant workers. However, in the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 9 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs applies to self-employed workers.

*The Committee has concluded that the situation in Ireland is not in conformity with the Revised Charter.*

## **Response**

The situation has not changed since Ireland’s last Report.

### Questions raised by the Committee

## **Article 19.1**

### ***Measures to combat racism and xenophobia***

1. Despite the overall positive programme and measures taken with a view to preventing racial discrimination, no information is provided on the specific question of whether law enforcement officials who are first in contact with migrant workers are specially trained. The Committee therefore repeats its request for information on this point.

## **Response**

Please refer to Ireland's Combined Third and Fourth Report to the United Nations Committee on the Elimination of Racial Discrimination in December 2009. There is



useful information in this report in relation to Garda training in human rights and other matters (pp.32-34 and also pp. 78-82), at the following weblink:

[http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7ZLJ9Z13515711-en/\\$File/Combined Third and Fourth Report to the UNCERD Committee latest.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7ZLJ9Z13515711-en/$File/Combined%20Third%20and%20Fourth%20Report%20to%20the%20UNCERD%20Committee%20latest.pdf)

## Article 19.4

**2. The Committee considers that the legal framework, which aims at ensuring equality in Ireland in the areas covered under this provision is in conformity with Article 19§4. The Committee asks that the next report contain information on the situation in practice.**

### **Response**

The extent to which the redress mechanism provided by the Employment Equality and Equal Status legislation, is used to address complaints of discrimination by migrant workers is not available directly. However, a review of complaints referred on the ground of race, which in the definition in national law includes nationality and national origin, gives a useful indication of its use by the migrant community.

The Equality Tribunal, which both investigates and hears complaints of discrimination under this legislation, provides a statistical overview of referred complaints and closed cases (including mediated settlements, decisions issued and cases withdrawn or otherwise closed) in its annual reports. All decisions are published in full on its website, generally on a monthly basis<sup>8</sup> and significant decisions are widely reported in the media. This is supplemented by the publication of annual legal reviews and mediation reviews to highlight the key legal developments for practitioners, employers and employees, civil society and the wider public.

In 2009, race accounted for 35% of employment cases referred, a slight reduction on the previous year. In the decisions issued overall, Equality Officers found in favour of the complainant in approximately 33% of employment equality cases, and in approximately 28% of equal status cases. In employment equality complaints, awards totalling €17,500 were awarded in compensation where discrimination was found, with individual awards ranging from €500 to €189,000. In equal status cases, amounts totalling €1,548 were awarded in compensation for discrimination, with €2,198 as the average award.

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<sup>8</sup> <http://www.equalitytribunal.ie/Press-Releases-1/>

The service provided by the Equality Tribunal is demand driven. There has been a shift in the trend of case referrals in recent years with a large increase in employment equality cases, now accounting for 84% of referrals. Several years of significant increases in the level of new claims referred to the Equality Tribunal have resulted in a backlog of 1,745 lead cases on hand at 01/01/2011. The rate of new referrals now appears to have levelled off at approximately 850-900 per year. At present, the average waiting time for closure of equal status cases is 18 months, with cases referred in 2009 now being scheduled for hearing. The corresponding average waiting time for closure of the more numerous employment equality cases is approximately 3 years, with cases referred in 2008 now being scheduled for hearing. Initiatives being taken by the Equality Tribunal this year are expected to see the number of lead cases closed in the year increase to 1,200. This level of throughput, maintained to end 2013, would see the current backlog reduce to 845 on hand by 31/12/2013. By end 2013, therefore, and assuming no significant change in the rate of new referrals, the Tribunal aims to have reduced the average time from receipt to closing a case to 12 months.

Data collection exercises included the National Census of 2006 and 2011, a special Equality Module<sup>9</sup> in the Quarterly National Household Survey in 2004, which was repeated in 2010 and is currently being analysed and the ESRI Survey of Migrant Experiences of Racism and Discrimination in Ireland<sup>10</sup> in 2005. A series of studies have been undertaken over the past decade, based on this and related data, to monitor the experience of perceived discrimination in Irish society. "Immigrants at Work - Ethnicity and Nationality in the Irish Labour Market", commissioned by the Equality Authority and published in 2008, investigates both objective labour market outcomes such as occupational status and wages, and respondents own subjective assessment of their experiences. The key finding of the report is that migrants to Ireland fare less well than Irish nationals in the Irish labour market across a range of dimensions - in terms of unemployment levels, of access to privileged occupations in the occupational structure, and of experiences of discrimination at work and in looking for work, with English language skills identified in the report as an important factor in determining the quality of the migrants' experience.

Strategic goals identified by the Equality Authority in its Strategic Plan for 2009-2011 included promoting a proactive approach by employers and service providers in key sectors to promote equality and achieve compliance with equality legislation. The Authority set an objective of supporting employers to develop integrated workplaces<sup>11</sup> in a context of a culturally diverse workforce, with is being progressed with the Office for the Promotion of Migrant Integration.

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<sup>9</sup> [QNHS Equality Module 2004. http://www.cso.ie/releasespublications/documents/labour\\_market/current/equality.pdf](http://www.cso.ie/releasespublications/documents/labour_market/current/equality.pdf)

<sup>10</sup> [http://www.esri.ie/news\\_events/press\\_releases\\_archive/2006/migrants\\_experience\\_of\\_ra\\_2/index.xml](http://www.esri.ie/news_events/press_releases_archive/2006/migrants_experience_of_ra_2/index.xml)

<sup>11</sup> [Workplace Diversity Strategy. http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalworkplaces-en](http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalworkplaces-en)

The Equality Mainstreaming Unit<sup>12</sup> (EMU), based in the Equality Authority, is a 7 year activity set up under the Human Capital Investment Operational Programme 2007-2013, a plan to address Ireland's labour market and human capital development needs for the period 2007-2013. The Unit's main objective is to contribute to addressing labour market gaps in Ireland for specific groups that are experiencing barriers to participation and employment, including those created by gender inequality and wider inequalities. The programme consists of a set of measures that seeks to improve labour market access and participation of groups experiencing inequality across the nine grounds covered by national equality legislation. The EMU is supporting a set of partnership projects between an employers' body in the field of agriculture and a trade union organisation with a specific focus on migrant women working in the mushroom industry in Ireland. The employers' existing employment policies and procedures will be reviewed to ensure compliance with equality legislation, an accessible information resource for workers will be provided by the translation of key documents, policies and procedures and equality-related training will be provided to frontline management and workers.

## Article 19.6

### **Family reunion - Refusal on grounds of dependence on public funds**

3. The Committee asks the next report to explain what is understood and included under the notion of 'public funds' for the purposes of exercising family reunion. The Committee in particular wishes to know if a migrant worker who is receiving, for instance, a housing benefit, a family benefit (if one or more of the family members are already with him/her) or any type of social assistance benefit, will be precluded from the right of family reunion.

### **Response**

It is not clear what particular area the question is focussed on. For instance, in the case of economic migrants to Ireland, in relation, for example, to employment permit or Green Card holders such migrants are catered for in structured family reunification procedures.

## Article 19.11

### ***Teaching language of host state***

*4. The report also indicates that there has been a major increase in entrants to Ireland from non-European Union countries. To help address the English language needs of the newcomers, a number of actions have been put in place across the*

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<sup>12</sup> Equality Mainstreaming Unit.  
<http://www.equality.ie/index.asp?locID=322&docID=-1>

*education sector, for instance, adult literary services or the programme “English as a second language” provided by VEC’s. The Committee asks if all migrant workers can benefit from these measures (not just certain categories such as refugees). Moreover, it wishes to know if adult literary services are free of charge for all migrant workers, or if they are only free for refugees and asylum seekers.*

### **Response**

In relation to the teaching of the language of the host state, all such services and programmes provided by VECs are available to all migrant workers who can benefit from such measures. All such services, which are usually provided free, are provided free to all migrant workers.

### **Article 19.12**

#### **Teaching mother tongue of migrant**

*5. The authorities indicate in the report that they have no information on the teaching of migrants’ mother tongue in Irish schools. The Committee therefore asks for the next report to clarify whether or not any measures or projects have been put in place in the framework of the school system or other structures to provide education of migrants’ mother tongue. In the negative, the authorities should explain why no steps have been taken to enable children of migrant workers to learn the language of their country of origin.*

### **Response**

In respect of EU nationals all such nationals can present, at secondary school level, in an EU language and in relation to examinations, in an EU language if it is their mother tongue.

## **ARTICLE 27: THE RIGHT OF WORKERS WITH FAMILY RESPONSIBILITIES TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT**

### **General Note :-**

All the questions asked and comments made by the European Committee of Social Rights (ECSR) are appended together at the end of this report on Article 27.

**ARTICLE 27.1:**

*“With a view to ensuring the exercise of the right to equal opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake: to take appropriate measures:*

*a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;*

*b. to take account of their needs in terms of conditions of employment and social security;*

*c. to develop or promote services, public or private in particular child daycare services and other childcare arrangements;”*

**Appendix to Article 27**

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms “dependent children” and “other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.

**Information to be submitted**

**Article 27§1**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

***Scope of the provisions as interpreted by the ECSR***

***Paragraph 1:***

- a. Persons with family responsibilities must be provided with equal opportunities in respect of entering, remaining and re-entering employment, in particular in the field of vocational guidance, training and re-training.
- b. The needs of workers with family responsibilities must be taken into account

in terms of conditions of employment and social security. Legislation or collective agreements shall regulate the length and organisation of working time, as well as how non-working periods due to family responsibilities are taken into account for pension rights.

- c. Child day care services and other childcare arrangements must be available and accessible to workers with family responsibilities.

Text of Our Eighth Report on Article 27. 1

**27.1.1 Please see Article 27, Paragraph 1 of the Second Report of the Government of Ireland under the Revised European Social Charter, which was submitted to the Council of Europe in August 2006. The position remains substantially the same, but the following material gives an update on the situation in Ireland in relation to this provision of the Revised Charter.**

27.1.2 In relation to the right of workers with family responsibilities to equal opportunities and to equal treatment, the Employment Equality Acts 1998 to 2008, as amended, which prohibit discrimination in employment (including access to employment and vocational training) on nine grounds including civil status and family status. Civil status includes marital status and civil partnership status. The Acts also permit positive action measures to promote equal opportunities for women and men, particularly those geared towards removing existing inequalities which affect women's opportunities in access to employment, vocational training and promotion.

**27.1.3 The full text of the Employment Equality Act 1998 may be accessed from the Irish Statute Book online, at website <http://www.irishstatutebook.ie>, along with the later amendments made to this Act by the Parental Leave Act, 1998, the Equal Status Act 2000, the Redundancy Payments Act 2003, the Equality Act 2004, the Public Service Management (Recruitment and Appointments) Act 2004, the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007, the Civil Law (Miscellaneous Provisions) Act 2008 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.**

27.1.4 Parental Leave of 14 weeks unpaid leave is available to both parents per child. It can be taken in separate blocks of a minimum of 6 continuous weeks or more favourable terms with the employers' agreement. It is unpaid. The leave is transferable if both parents work for the same employer and the employer is amenable. The leave may be taken at any time up to the child's 8<sup>th</sup> birthday or 16 years in the case of a disabled child.

**27.1.5 There is a statutory entitlement to "force majeure" leave for people caring for dependents. This is 3 days paid leave in any consecutive 12 months but not more than 5 days in 36 consecutive months. The definition of a "dependent" has been extended under the Parental Leave (Amendment) Act to now include "persons in a relationship of domestic dependency, including same-sex partners".**

27.1.6 Under the Adoptive Leave Acts 2005, adoptive mothers or sole male adopters may avail of 40 weeks leave, with 24 paid and the remaining 16 unpaid.

27.1.7 Advancing gender equality in Ireland involves the dual goals of (i) maximising women's contribution to economic growth through increased female employment in accordance with **EU Europe 2020 Strategy** (sustainable growth and employment) and (ii) realising greater economic empowerment and gender equality for women.

27.1.8 The European Union adopted its **Europe 2020 Strategy** in 2010 and Member States were tasked to prepare and deliver their action plans to achieve economic growth and make Europe competitive.

27.1.9 The key targets which relate to women include:

- The achievement of an employment rate of 75 per cent for men and for women aged 20 to 64 by 2020. (Ireland is currently at about 69.3 per cent for men and 60.3 per cent for women, giving 65 per cent across both genders. Source: CSO).
- Increases in research and development, including increasing percentages of women engaged in research and scientific employment.
- A reduction in early school leaving to under 10 per cent by 2020.
- An increase in higher education with a target that 40 per cent of the age group from 30 - 34 having at least a tertiary degree.

27.1.10 Ireland finalised its National Reform Programme for submission to the European Commission in April 2011.

27.1.11 A development strategy for gender equality is also contained in the National Women's Strategy 2007-2016 and the Equality for Women Measure.

27.1.12 **National Women's Strategy 2007-2016**

- The National Women's Strategy is the Irish Government's policy document for the advancement of women in all areas of Irish society for the ten year period, 2007-2016. The Strategy has as its vision:

*“An Ireland where all women enjoy equality with men and can achieve their full potential, while enjoying a safe and fulfilling life”.*

- The Strategy contains 20 Key Objectives and over 200 planned actions, grouped under the three Key Themes of:
  - Equalising socio-economic opportunity for women;
  - Ensuring the wellbeing of women; and
  - Engaging women as equal and active citizens.
- Theme One of the Strategy is most pertinent to the goals of Article 27 (1).

It contains 10 objectives/sub-objectives and 64 planned actions, focusing on women's employment and women in poverty.

<b>Equalising Socio-Economic Opportunity for Women</b>
<b>Objective 1-A: To increase the participation of women in the labour market</b>
<b>Objective 1-B: To decrease the gender pay gap</b>
<b>Objective 2: To promote the advancement of women in the labour force</b>
<b>Objective 3: To support more women as entrepreneurs</b>
<b>Objective 4: To seek to ensure that girls and women achieve their full potential in the education system</b>
<b>Objective 5-A: To ensure that childcare services are optimised to meet the needs of parents and children alike</b>
<b>Objective 5-B: To ensure that the care infrastructure supports women's socio-economic engagement</b>
<b>Objective 6-A: To reduce the numbers of women experiencing poverty</b>
<b>Objective 6-B: To reduce the numbers of female lone parents who experience poverty</b>
<b>Objective 6-C: To reduce the numbers of women experiencing poverty by increasing pension cover</b>

- The National Women's Strategy provides for a funding measure to undertake positive actions aimed at fostering better gender equality and the achievement of the objectives of the Strategy. The Equality for Women measure has been established, with support from the European Social Fund, to undertake this role.

#### 27.1.13 Equality for Women Measure

- The purpose of the Equality for Women Measure is to make funding available to foster the engagement and advancement of women and gender equality in a number of economic sectors by focusing on four main Strands:

**TABLE 1**

**FOUR STRANDS OF THE EQUALITY FOR WOMEN MEASURE**

<b>STRAND</b>	<b>TARGET GROUP</b>
1. Access to Employment	Women, largely experiencing disadvantage and outside the labour market
2. Developing Female Entrepreneurship	Women who are either budding entrepreneurs or early stage entrepreneurs
3. Career Development for Women in Employment	Women in employment who might want to advance their careers
4. Fostering Women as Decision-Makers	Women who have the capacity to become decision-makers, including in executive management, boards (state and executive), politics, etc.

- The Measure is supported by European Social Funding under the Human Capital Investment Operational Programme (HCIOP) 2007-2013. The Measure is administered by Pobal Ltd. on behalf of the Department of Justice and Equality.

- In late 2009, thirty-six projects received funding of €30,000 each, under Strand 1 "Access to Employment" of the EWM to provide women (currently outside the labour



market and in areas of socio-economic disadvantage) with the social skills, education and training to enable them to enter or return to the labour market. In 2010, these projects were afforded the opportunity to renew this funding for a further phase, subject to their having achieved their targets. In total, thirty-two of the original projects availed of this second tranche of funding, which ended in October 2010, as a new phase of the Measure commenced.

- Total expenditure on this initial phase of the Equality for Women Measure was €1.839 million (excluding administration). These projects provided initial developmental training for over 4,700 women who will now proceed to employment, further or mainstream education or training.

- A new phase of the Equality for Women Measure 2010-2013 was launched in May 2010 with an open call for applications for funding of up to €50,000 each per annum (renewable for one or more years) under Strands 1, 2 and 3 (see Table 1 above).

- Over 200 applications were received under this phase with each application appraised by Pobal Ltd. in accordance with the criteria set out for the Measure. The outcome was announced in Autumn 2010 and by year end forty-two new projects had entered into contracts to deliver projects with the possibility (subject to conditions being met) of a renewal. The total funding commitment exceeds €1.9 million per annum.

- The Measure also provides funding for a number of innovative projects supporting female entrepreneurship.

## ARTICLE 27.2

*“With a view to ensuring the exercise of the right to equal opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:  
to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;”*

### **Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment**

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake

1. to take appropriate measures:
  - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
  - b. to take account of their needs in terms of conditions of employment and social security;

- c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

### **Appendix to Article 27**

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms “dependent children” and “other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.

### **Information to be submitted**

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

#### ***Scope of the provisions as interpreted by the ECSR***

*Paragraph 2:* Legislation, collective agreements or the practice shall regulate the possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child.

27.2.1 The Parental Leave Act 1998, gives effect to the EU Directive on Parental Leave (96/34/EEC) and has been in operation since 3 December 1998. This text of this Act (Act No. 30 of 1998) may be accessed at website <http://www.irishstatutebook.ie/front.html>. The Act provides an individual entitlement for both men and women to avail of 14 weeks of unpaid leave from employment to enable them to take care of their young children. This entitlement applies to parents born or adopted on or after 3<sup>rd</sup> June 1996 and leave must be taken before the child reaches the age of five years. In addition, the Act provides for limited paid leave from employment (force majeure leave) to enable employees to deal with family emergencies resulting from injury or illness of a family member.

### **ARTICLE 27. 3**

*“With a view to ensuring the exercise of the right to equal opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake: to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment”.*

27.3.1 The Employment Equality Acts 1998 to 2008, as amended, prohibit discrimination on nine grounds, namely gender, civil status, family status, sexual orientation, religious belief, race and membership of the Traveller community. The legislation covers employees in both the public and private sectors as well for employment and training, who are legally entitled to work in the State.

Family status for the purpose of this legislation means having parental responsibility in relation to a person under 18 (including being in loco parentis), or being a parent or resident primary carer in relation to a person with a disability in need of care or support on an ongoing basis. Civil status means being single, married, separated, divorced, widowed, in a civil partnership or being a former civil partner in a civil partnership that has ended by death or been dissolved.

27.3.2 The Employment Equality Acts provide that it shall constitute discrimination on any discriminatory grounds (gender, civil status, sexual orientation, religion, age, disability, race and membership of the Traveller community) if an employer does not afford to an employee the same treatment as regards dismissal as the employer affords to another employee, in circumstances where the employment is not materially different.

27.3.3 If dismissed from employment an employee may, under certain conditions, bring a claim for unfair dismissal against his or her employer. Apart from a case involving constructive dismissal, a dismissal is presumed to be unfair unless the employer can show substantial grounds to justify it. Certain reasons for dismissal are considered to be automatically unfair under the Unfair Dismissals Act, and these include pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth, and availing of rights under legislation such as maternity leave, adoptive leave, carer's leave, parental or force majeure leave.

27.3.4 Information material on the above legislation for employees was consolidated into an Employment Rights Rule Book<sup>13</sup>, published in 2010. This and further guidance for members of the public, employees and employers, is publicised

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<sup>13</sup> [The Employment Rights Rule Book.  
http://www.equality.ie/index.asp?locID=338&docID=-1](http://www.equality.ie/index.asp?locID=338&docID=-1)

widely through the Equality Authority, the Citizens Information Service<sup>14</sup> network, the National Employment Rights Authority<sup>15</sup> and through social partner and civil society networks.

**Responses to the Questions asked by the European Committee of Social Rights (ECSR) in relation to Article 27**

## **(1) Negative Conclusions of the European Committee of Social Rights (ECSR)**

### **Question 1**

#### **Article 27. 3**

The Committee recalls that Article 27§3 of the Revised Charter requires that courts or other competent bodies are able to award a level of compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim. Therefore, limits to levels of compensation that may be awarded are not in conformity with the Revised Charter (Conclusions 2005, Estonia, Article 27§3). The Committee therefore finds that the cap on compensations to be paid under the Unfair Dismissals Act as well as under the Employment Equality Act 1998 are not in conformity with the requirements of the Revised Charter.

### **Response 1**

The Employment Equality Acts provide a comprehensive and effective system for redress for victims of discrimination which can be tailored to the circumstances of the case and offers remedies proportionate to the harm suffered. It also provides for effective, proportionate and dissuasive penalties for breaches of the legislation.

The redress awarded to victims of discrimination may include orders for equal treatment, for re-instatement or re-engagement by the employer. Redress may include orders for equal pay and payment of arrears of pay of up to 3 years. It may also include orders for compensation for the effects of discrimination occurring up to 6 years prior to the date of referral, entirely separate from the matter of equal pay. This compensation is limited to the greater of €12,697 (IR£10,000) or 2 years' remuneration, where the case has been taken before the Equality Tribunal.

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<sup>14</sup> Citizens Information Public Service Information.  
<http://www.citizensinformation.ie/en/>

<sup>15</sup> National Employment Rights Authority. <http://www.employmentrights.ie/en/>

To provide for greater redress in situations of low-paid employment, a proposal is currently under consideration to increase this maximum amount of compensation (separate from equal pay or arrears) that may be awarded in Employment Equality cases to 2 years' remuneration or €40,000, whichever is greater,

However, if a complainant so wishes, cases of discrimination on the ground of gender under employment equality legislation may be taken in the first instance before the Circuit Court, where in such instances, the normal limits of the Circuit Court do not apply and no prior upper limit applies to the amount of compensation or remuneration which may be ordered by the Court.

The Acts also provide for a range of dissuasive penalties for those responsible for the discriminatory treatment, which may include the payment of monetary compensation to the victim. Penalties also include compliance with orders that a course of action is taken as specified. The Equality Tribunal in its decisions has made extensive use of this particular provision, having, for example, required employers to develop and implement equality plans and codes of practice and to train their staff and management appropriately.

This system operates in the context of the limitations on the jurisdictions of the Courts of Law. An overview of these limitations is as follows:

- The District Court<sup>16</sup> is a court of local and summary jurisdiction. The civil jurisdiction of the District Court in contract and most other matters is where the claim or award does not exceed €6,348.69.
- The Circuit Court<sup>17</sup> is also a court of limited and local jurisdiction. The civil jurisdiction of the Circuit Court is a limited one unless all parties to an action consent, in which event the jurisdiction is unlimited. The limit of the Court's jurisdiction relates mainly to actions where the claim does not exceed €8,092.14 and the rateable valuation of land does not exceed €252.95.
- The High Court<sup>18</sup> has full jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. Its jurisdiction also extends to the question of the validity of any law having regard to the Constitution. The High Court acts as an appeal court from the Circuit Court in civil matters. It has power to review the decisions of certain tribunals.

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<sup>16</sup> [The District Court.](http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/E110997F0240362D80256D8700505112)

<sup>17</sup> [The Circuit Court.](http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/A5FB67B6CEAE18780256D87005050CE?opendocument&l=en)

<sup>18</sup> [The High Court.](http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/A02C9A68910CAE7280256D870050500C?opendocument&l=en)

<sup>1</sup> The District Court.

<http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/E110997F0240362D80256D8700505112>

<sup>1</sup> The Circuit Court.

<http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/A5FB67B6CEAE18780256D87005050CE?opendocument&l=en>

<sup>1</sup> The High Court.

<http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/A02C9A68910CAE7280256D870050500C?opendocument&l=en>

**Information on the Unfair Dismissals Act may be accessed at the following websites :-**

<http://www.employmentrights.ie/en/media/2007%20Labour%20Guide%20Text.pdf>

***(Guide to Labour published by NERA – the National Employment Rights Authority)***

[http://www.employmentrights.ie/en/media/unfair\\_dismissals.pdf](http://www.employmentrights.ie/en/media/unfair_dismissals.pdf) ***(Unfair Dismissals Acts 1977 to 2005, published by NERA)***

## **Question 2**

### **Article 27.3**

The Committee concludes that the situation in Ireland is not in conformity with Article 27§3 of the Revised Charter on the ground that the compensation to be awarded to an employee unlawfully dismissed on the grounds of his/her family responsibilities is subject to a ceiling.

### **Response 2**

Response to Question 1 is relevant here also.

Other Questions raised by the Committee:-

### **Question 3**

#### **Article 27.1**

##### ***Employment, vocational guidance and training***

The Committee asks that the next report provide information how it is ensured in practice that employers observe their obligation to treat workers with family responsibilities equally as regards employment, vocational guidance and training.

### Response 3

An individual redress mechanism is provided by equality and family leaves legislation to address breaches of the legislation by employers and prospective employers, It should be noted in this regard that all decisions of the Equality Tribunal are published on its website and publicised<sup>19</sup>, prompting debate in the media and raising general awareness of rights and obligations under equality legislation and of the penalties applicable to breaches of the legislation.

In addition, the Equality Authority's general functions include working towards the elimination of discrimination and promoting equality of opportunity within the scope of equality legislation, providing information to the public and keeping under review the working of equality and maternity protection legislation.

A significant component of the work of the Equality Authority since its establishment has been to raise awareness among employers and employees of rights and obligations under equality legislation, including matters involving family responsibilities, and developing the competence in businesses and among trades unions and civil society to identify and respond appropriately to equality matters. A series of initiatives have been undertaken over the past decade in partnership with other State agencies, the social partners and civil society.

One such initiative is the Equality Mainstreaming Unit<sup>20</sup>, based in the Equality Authority, set up under the Human Capital Investment Operational Programme 2007-2013, a plan to address Ireland's labour market and human capital development needs for the period 2007-2013. The Unit's main objective is to contribute to addressing labour market gaps in Ireland for specific groups that are experiencing barriers to participation and employment, including those created by gender inequality and wider inequalities. The programme consists of a set of measures that seeks to improve labour market access and participation of groups experiencing inequality across the nine grounds covered by national equality legislation. Examples of activities undertaken are:

- An online diversity audit tool for businesses<sup>21</sup>, to review company policies, practices, systems and procedures for compliance with equality legislation, developed by the employer network, IBEC. This tool is being promoted by IBEC within the manufacturing sector, a sector identified in research by the ESRI in 2009 as having a significant adjusted wage gap, of 13.9%,

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<sup>19</sup> Decisions of the Equality Tribunal. <http://www.equalitytribunal.ie/Press-Releases-1/>

<sup>20</sup> [Equality Mainstreaming Unit.  
http://www.equality.ie/index.asp?locID=322&docID=-1](http://www.equality.ie/index.asp?locID=322&docID=-1)

<sup>21</sup> [IBEC online diversity audit tool for businesses.  
http://www.ibec.ie/IBEC/ES.nsf/vPages/HR\\_best\\_practice-diversity-audit-services?OpenDocument](http://www.ibec.ie/IBEC/ES.nsf/vPages/HR_best_practice-diversity-audit-services?OpenDocument)

- A civil society organisation representing lone parents has been funded to work with 3 major retailers and with Retail Ireland (the national representative body for the retail sector) to develop a best practice tool-kit for employing lone parents, to be disseminated using the train-the-trainer model, delivered with city centre retailer associations in Cork and Limerick.

The Equality Authority has a wide range of additional powers and functions. It may in its own right refer complaints to the Equality Tribunal where it appears to the Authority that discrimination is being generally practiced against persons. The Authority may conduct inquiries for any purpose connected with the performance of its functions. It may also seek injunctions from the High Court or the Circuit Court in certain circumstances to prevent persons from continuing specific conduct.

Updated information on the whole issue of Work – Life Balance can be found at the following websites:

<http://www.justice.ie/en/JELR/qsearch> (Department of Justice website on Work – Life Balance)

<http://www.equality.ie/> (Equality Authority home page)

<http://www.worklifebalance.ie/> (Equality Authority’s website on Work - Life Balance)

## **Question 4**

### **Article 27.1**

The Committee asks for further information on specific measures taken in the field of vocational guidance and training for persons with family responsibilities and any other measures taken to assist them to enter, remain in and re-enter employment.

### **Response 4**

The Equality Mainstreaming Unit (EMU, see above) includes an activity stream to facilitate and support institutional change within providers of vocational education and training, labour market programmes and that reflects a capacity to combat discrimination, to promote equality and accommodate diversity. The primary focus of this activity has been on providing equal status reviews, change management type funds and training modules for staff. These will be used to reduce the contextual, institutional, informational, situational and dispositional barriers to participation by persons who experience inequality across the nine discriminatory grounds in Irish equality legislation, including certain persons with family responsibilities such as lone parents and persons returning to the workforce.

The IVEA with the Further Education Support Service (FESS) of the Department of Education and Skills and the EMU, have trained staff in the use of an Equality Mainstreaming resource pack. This pack, which includes equality tools developed by the a number of the IVEA's Vocational Education Committees (VECs), the FESS Equality Action Planning Framework, the Equality



**Conditions of employment, social security**

**Question 5**

**Article 27.1**

The Committee asks the next report to provide information what are the measures ensuring that these targets are implemented, especially measures concerning the length and organisation of working time and as regards the possibility for workers with family responsibilities to work part-time or to return to full time employment.

**Response 5**

Council Directive 2010/18/EU will offer employees returning from parental leave may request changes to their working hours for a set period of time. Employers shall consider and respond to such requests taking into account both employers and workers needs. Ireland is required to transpose this Directive by March 2012.

The Labour Relations Commission has developed a Code of Practice on Access to Part-time Working. See that document at:

<http://www.lrc.ie/documents/publications/codes/9ParttimeWorking.pdf>

**Question 6**

**Article 27.1**

The Committee asks in particular whether workers with family responsibilities are guaranteed equal treatment as regards benefits paid by the employer to his employees. It also wishes to know whether periods of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension.

**Response 6**

When an individual is on Parental Leave, this is not taken into account in the calculation of pension service.

Updated information on pensions and the National Pensions Framework may be found at the following websites :

<http://www.welfare.ie/EN/Schemes/Pension/Pages/default.aspx> (Department of Social Protection / Pensions)

<http://www.welfare.ie/EN/Policy/PolicyPublications/Pensions/Pages/nationalpensionsframework.aspx> (National Pensions Framework)

<http://www.nationalpensionsframework.ie/> (National Pensions Framework website)

### **Question 7**

#### Article 27.2

The Committee observes that apart from the loss of wages, an employee's position does not change as a result of having taken parental leave. While on parental leave, an employee shall be treated as still working with respect to employment rights purposes such as, *inter alia*, leave entitlement etc. The employee is entitled to return to his/her job after expiry of the parental leave unless this is not reasonably practicable for the employer. The Committee asks the next report to specify what are the cases in which such an exception applies.

#### **Response 7**

An example may be that, due to changes in work practices or market conditions, the job no longer exists.

### **Question 8**

#### Article 27.2

The Committee observes that apart from the loss of wages, an employee's position does not change as a result of having taken parental leave. While on parental leave, an employee shall be treated as still working with respect to employment rights purposes such as, *inter alia*, leave entitlement etc. The employee is entitled to return to his/her job after expiry of the parental leave unless this is not reasonably practicable for the employer. The Committee asks the next report to specify what are the cases in which such an exception applies. It however notes that in this event the employee must be offered a suitable alternative position on terms no less favourable compared with the previous job including any improvement in pay or other conditions which occurred while the employee was on parental leave.

The Committee asks whether the aforementioned rules apply to all categories of workers such as e.g. part-time workers and workers on fixed-term contracts.

#### **M) Response 8**

This applies to all workers be they part-time workers, fixed-term contracts or fulltime workers.



## ARTICLE 31: THE RIGHT TO HOUSING

### Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1 to promote access to housing of an adequate standard;
- 2 to prevent and reduce homelessness with a view to its gradual elimination;
- 3 to make the price of housing accessible to those without adequate resources.

The Government of Ireland signed and ratified the Revised European Social Charter on 4<sup>th</sup> November 2000. Ireland accepted most of the Revised European Social Charter, but did not accept some provisions such as Article 31 - the Right to Housing.

That situation remains unchanged. Accordingly no report is provided under Article 31.