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## **EUROPEAN SOCIAL CHARTER**

16<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF IRELAND**

Article 7, 8, 16, 17, 19, 27 and 31

for the period 01/01/2014 - 31/12/2017

Report registered by the Secretariat on

31 October 2018

**CYCLE 2019**



**IRELAND**

**REPORT ON THE IMPLEMENTATION  
OF THE  
REVISED EUROPEAN SOCIAL CHARTER  
OF THE  
COUNCIL OF EUROPE.**

**SUBMITTED BY THE GOVERNMENT OF IRELAND**

**On 30 October, 2018**

**IN RESPECT OF THE ACCEPTED PROVISIONS OF**

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

**FOR THE PERIOD FROM  
1 JANUARY 2010 to 31 DECEMBER 2017.**

## **CONFIRMATION OF COMMUNICATION OF COPIES**

Copies of this report will be 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.

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## **Introduction**

This is Ireland's 16<sup>th</sup> National Report on the implementation of the European Social Charter (Revised). As invited, Ireland submits its report for the accepted provisions concerning thematic Group 4 "*Children, Families and Migrants*" which includes the following articles:

Article 7 – Right of children and young persons to protection

Article 8 – Right of employed women to protection of maternity

Article 16 – Right of the family to social legal and economic protection

Article 17 – Right of children and young persons to social, legal and economic protection

Article 19 – Right of migrant workers and their families to protection and assistance

Article 27 – Right of workers with family responsibilities to equal opportunity and treatment

Article 31 – Right to housing

Ireland has accepted all of these Articles with the exception of Articles 8.3, 27.1(c) and 31.

In its 2011 Conclusions on Ireland, the European Committee of Social Rights (ESCR) listed 14 conclusions of conformity, 13 conclusions of non-conformity and deferred its conclusion, pending the provision of additional information, in five other cases. The ESCR Conclusions also raised a number of specific questions in relation to a variety of Articles.

As requested by the Council of Europe, this report includes:

- replies to the ESCR conclusions of non-conformity;
- responses to the specific queries raised in the ESCR conclusions; and
- details of the changes which have occurred with respect to each Article during the reference period of 1 January 2010 to 31 December 2018.

The report is structured such that there is a chapter for each of the relevant Articles.

## **Article 7**

## **The right of children and young persons to protection**

### **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;"*

### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 7§1 of the Charter on the ground that the minimum age of 15 years for employment does not apply to children employed by a close relative.

### **Ireland's update on this Article.**

#### **The employment of children by a close relative**

In August 2014, Regulations to revoke and replace [S.I. No. 1 of 1997](#) — the Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing or Shipping Sectors) Regulations 1997 were made by the Minister for Jobs, Enterprise and Innovation. The 1997 Regulations had permitted certain exemptions for young persons (i.e. 16 and 17-year olds) in both the Fishing and Shipping sectors from certain working hours rules and night-time working rules contained in the [Protection of Young Persons \(Employment\) Act 1996](#) . The new Regulations continue most of the exemptions contained in the 1997 Regulations but do not continue the exemption from the rules on night time working for young persons in the shipping sector. Separate provisions in relation to exemptions from

night-time working rules for young persons in the shipping sector, where training programmes are involved, are contained in [S.I. No. 245 of 2014](#) made by the Minister for Transport, Tourism and Sport in line with the ILO Maritime Labour Convention 2006.

Other than the revocation and replacement of S.I No 1 of 1997, there have been no substantive changes to the provisions of the main legislative framework, (i.e. the Protection of Young Persons (Employment) Act 1996), since the Government of Ireland reported in the 8<sup>th</sup> National Report CYCLE 2011 status Report to the Council.

The general legal framework for the Protection of Young Persons (Employment) Act 1996 is as follows:

The Protection of Young Persons (Employment) Act, 1996 (PYP) gave effect to European Council Directive No 94/33/EC of 22 June 1994 on the Protection of Young People at Work.

The PYP Act 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.

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. In order to do so permission must be obtained by way of a licence issued on behalf of the Minister for Business, 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.

Number of licenses issued from Jan 2010 to December 2017

Year	No. of Licences Issued	No. of Children covered by Licences
2010	146	229
2011	153	358
2012	190	368
2013	205	384
2014	224	616
2015	364	879
2016	532	1,322
2017	509	1,282

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 five 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.

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, endeavouring 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,(see Article7.10). 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 issues. Ireland is of the view that our existing legislation has won broad public support and is appropriate to this society.

Inspection activity and outcomes in respect of PYP 2010 to 2017 \*

Year	Inspections Total	Number of inspections at night	Incidence of Breach Under PYP	No. Referred for Prosecution
2010	7,164	3,535	0%	0
2011	5,591	2,777	0%	0
2012	4,689	2,266	0%	0
2013	5,546	2,865	0%	0
2014	5,591	3,066	0%	0
2015	5,185	2,811	0%	1
2016	4,830	2,877	0%	0
2017	4,747	2,741	0%	2

\*The WRC inspectorate conducts inspections under a broad suite of employment rights legislation; in every inspection undertaken, the WRC inspect under all legislations under which they are empowered, including PYP.

#### **PYP Prosecutions 2010 to 2017**

Year	No. of Cases Prosecuted
2010	0
2011	0
2012	0
2013	0
2014	0
2015	1
2016	0
2017	2

#### Children First Act 2015

In accordance with the Children First Act 2015, which falls under the remit of the Department of

Children and Youth Affairs (DCYA), all Inspectors of the WRC have undergone an e-learning training programme called “Introduction to Children First.” The programme has been designed to support people of all backgrounds and experience to ensure that they can manage situations where they suspect a child is being abused or in danger of abuse and how to report it to the appropriate authorities.

## **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;"*

### **The Committee's conclusion.**

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

### **Ireland's update on this Article.**

Chapter 1 of Part 6 “Sensitive Risk Groups of the Safety, Health and Welfare at Work” (General Application) Regulations, 2007 (S.I.299 of 2007) commenced on 1 November 2007. Young persons are prohibited from being employed for work which is likely to entail specific risks for young people including work involving harmful exposure to physical, biological and chemical agent. These Regulations apply to children and young persons employed by a close relative and there is a prohibition on their employment in dangerous activities specified in the Regulations. Therefore, they cannot be exposed to such risks if employed by a close relative.

### **Measures taken to implement the legal framework**

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.

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.

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.
- Trilogy of primary school children's publications (5-12 years)
  - Farming: [Only a Giant Can Lift a Bull](#)
  - Fishing: [Too Cold for Sharks](#)
  - Construction: [Grandad Built My House](#)
- Farm Safety online resource: [On the Farm](#)

- Chemical Safety online resource: [Under the Sink](#)
- Elearning Courses for primary school children: <https://hsalearning.ie>
  - [Keep Safe on the farm](#)
  - [Keep Safe in school](#)
  - [Keep Safe: Screens and Keypads](#)
  - [Keep Safe around electricity](#)
- Post-primary/further education: (Young Persons)
  - [Choose Safety 20 hour Programme](#)
- [Get Safe – Work Safe](#) online course for young person's

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.

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](#) (Revised 2016)
- [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 \(2010\)](#)

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

## Statistical Information

The following table shows a sectoral breakdown of reported non-fatal injuries (NACE) in the 0-17 age band from 2011 – 2017

<b>Non-fatal injuries involving 0-17 year olds (HSA)</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Agriculture, forestry and fishing	0	1	1	3	1	1	1	8
Manufacturing	1	0	4	3	2	2	4	16
Electricity, gas, steam and air conditioning supply	0	0	0	0	0	0	0	0
Construction	3	3	1	2	4	1	3	17
Wholesale and retail trade; repair of motor vehicles and motorcycles	13	20	19	52	32	40	41	217
Transportation and storage	2	0	1	0	0	3	6	12
Accommodation and food service activities	4	8	4	8	7	3	4	38
Information and communication	1	0	0	1	0	2	0	4
Financial and insurance activities	4	3	5	1	2	2	0	17
Real estate activities	1	0	0	0	0	0	0	1
Professional, scientific and technical activities	0	0	0	0	0	0	1	1
Administrative and support service activities	0	1	0	0	0	0	0	1
Public administration and defence; compulsory social security	2	2	3	2	2	3	3	17
Education	14	14	11	27	34	48	33	181
Human health and social work activities	8	6	7	17	8	9	3	58
Arts, entertainment and recreation	6	3	3	4	5	2	0	23
Other service activities	2	1	1	1	1	1	3	10
<b>Total</b>	<b>61</b>	<b>62</b>	<b>60</b>	<b>121</b>	<b>98</b>	<b>117</b>	<b>102</b>	<b>621</b>



The following table shows a sectoral breakdown of reported fatalities (sub-NACE) in the 0-17 age band from 2011 – 2017

<b>Fatalities involving 0-17 year olds (HSA)</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Crop and animal production, hunting and related service activities	0	1	4	4	3	1	1	14
Construction of buildings	1	1	0	0	1	0	0	3
Specialised construction activities	0	0	0	0	0	0	0	0
Waste collection, treatment and disposal activities; materials recovery	0	0	0	0	0	0	0	0
Wholesale and retail trade and repair of motor vehicles and motorcycles	0	0	0	0	0	0	0	0
Warehousing and support activities for transportation	0	0	0	0	0	0	0	0
<b>Total</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>17</b>

The following table shows the total number of inspections from 2011 – 2017

<b>Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Total number of inspections and investigations	15,404	13,882	12,244	10,719	10,880	10,453	9,940

Further information is shown in the [Summary of workplace Injury, Illness and Fatality Statistics 2010-2011](#), [Summary of Workplace Injury, Illness and Fatality Statistics 2011 – 2012](#), [Summary of Workplace Injury, Illness and Fatality Statistics 2012 – 2013](#), [Summary of Workplace Injury, Illness and Fatality Statistics 2013 – 2014](#), [Summary of Workplace Injury, Illness and Fatality Statistics 2014 – 2015](#), and the [Summary of Workplace Injury, Illness and Fatality Statistics 2015 - 2016](#) 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;"*

#### **The Committee's conclusion of non-conformity.**

The Committee concludes that the situation in Ireland is not in conformity with Article 7§3 of the Charter on the ground that the rules applying to the employment children still subject to compulsory education do not apply to children employed by a close relative.

#### **Ireland's update on this Article.**

##### The employment children who are still subject to compulsory education

The Protection of Young Persons (Employment) Act, 1996 sets out the main rules on employing people under age 18. Under the Act there are two categories of persons:

- The first category is a 'child', which under the Act, means a person who has not reached the age of 16 years.
- The second category is a 'young person' which means a person who has reached the age of 16 years but has not reached the age of 18 years.

Insofar as the Committee's interpretative statement relates to children, i.e. a person who has not reached the age of 16 years, the legislation provides, subject to certain exceptions, that an employer may employ a "child" who is over the age of 14 years to do light work during any period outside the school term provided that during the period of the summer holidays, the child does not do any work for

a period of at least 21 days (section 3 (4) of the PYP Act refers).

As a general rule, the minimum age for employment is 16. Employers, however, can take on 14 and 15 year olds on light work. This work has to be:

- part-time during the school term (over 15 years only),
- as part of an approved work experience or educational programme,
- or during the school holidays, provided there is a minimum three week break from work in the summer.

### Maximum Hours of Work per Week

Under 18s may not be employed for more than 40 hours a week or 8 hours a day. The maximum weekly working hours for 14 and 15 year olds are:

	14 year olds	15 year olds
Term-time	not permitted	8 hours
Holiday work	35 hours	35 hours
Work experience	40 hours	40 hours

### Early morning and night work

The hours permitted are:

Age	Under 16s	16 and 17s
Early morning	After 8 a.m.	After 6 a.m.
Night work		
- with school next morning	up to 8 p.m.	up to 10 p.m.
- no school next morning e.g. holidays, weekends	up to 8 pm.	up to 10 p.m. (and not before 7 a.m. next morning)

During school holidays, and on weekend nights where the young person has not school the next day, 16 and 17 year olds may work up to 11 p.m. at night (however, please note that night work beyond 10 p.m. requires Ministerial approval by regulation). The ban on early morning work then moves forward to 7 a.m.

Rest Breaks are regulated as follows:

	Under 16s	16 and 17s
30 minutes break after working	4 hours	4½ hours
Every 24 hours	14 hours off	12 hours off
Every 7 days	2 days off	2 days off

Exceptions

The full provisions of the Act do not apply to employment of close relatives, employment in fishing, shipping, or the Defence Forces. The relevant regulations are as follows:

- Protection of Young Persons (Employment)(Exclusion of Workers in the Fishing and Shipping Sectors) Regulations 2014 (S.I. No. 357 of 2014);
- Protection of Young Persons (Employment) Act, 1996 (Bar Apprentices) Regulations 2001 (S.I. No. 351 of 2001);
- Protection of Young Persons (Employment) Act, 1996 (Employment in Licensed Premises) Regulations 2001 (S.I. No. 350 of 2001)
- S. 9 Protection of Young Persons (Employment of Close Relatives) Regulations 1997 (S.I. No.

2 of 1997)

[http://www.irishstatutebook.ie/eli/isbc/1996\\_16.html#associatedsecondary](http://www.irishstatutebook.ie/eli/isbc/1996_16.html#associatedsecondary)

There has been no change to the legislative framework provisions with regard to the exemption of close relatives from certain provisions of the legislation since the last time the Irish Government reported to the Committee.

#### Children's Holiday/Rest Periods while subject to Compulsory Education

Young Persons (Employment) Act, 1996, which provides the following in terms of provision for a rest period free of work of at least two consecutive weeks during the summer holidays. During the period of the summer holidays, the child does not do any work for a period of at least 21 days.

Furthermore, 1997 Regulations set out a requirement on employers of young people under 18 years of age to display an abstract of the [Protection of Young Persons \(Employment\) Act, 1996](#) at the principal entrances to his/her work premises. This abstract sets out information for the young person in terms of mandatory rest periods etc. and outlines the duties of employers employing young persons. Full copy of the regulations can be accessed at the following link:

<http://www.irishstatutebook.ie/eli/1997/si/3/made/en/print>

The following are the rest periods that must be provided by all employers for all young people in their employ:

- Under 16s must be given a 30 minute break after working 4 hours. They must be given a break of 14 hours in every 24 hours, and 2 days off in every 7 day period.
- Young persons aged 16 and 17 years must be given a 30 minute break after working 4½ hours. They are entitled to 12 hours off in every 24 hours and 2 days off in every 7 day period.

#### **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;"*

#### **The Committee's conclusion.**

The Committee concludes that the situation is not in conformity with Article 7§4 of the Charter on the ground that the Committee is unable to assess whether the working hours of the great majority of persons under 18 are limited in accordance with the needs of their development.

#### **Ireland's update on this Article.**

##### **The working hours of persons under 18 years of age shall be limited**

In Ireland, the Central Statistics Office (CSO) conducts a survey called the Labour Force Survey (LFS). The LFS is a large-scale, nationwide survey of households in Ireland. It is designed to produce quarterly labour force estimates that include the official measure of employment and unemployment in the state (ILO basis). In all, 26,000 households are surveyed each quarter. The survey meets the requirements of Council Regulation (EC) No. 577/98 (PDF 42KB) adopted in March 1998, which requires the introduction of quarterly labour force surveys in EU member states.

Each quarter the LFS produces data on numbers unemployed, persons in employment, labour force participation rates, Inactive population (not in the labour force), sectoral breakdown (NaceCode Rev.

2<sup>1</sup>) of those in employment etc. The LFS most recent survey results may be accessed at <https://www.cso.ie/en/csolatestnews/presspages/2018/labourforcesurveyq22018/>

The Department of Business, Enterprise and Innovation has contacted the CSO with regard to the provision of the data sought by the Committee. The data identified by the CSO as possibly being relevant to the Committee's request can be found at Table 5 in the latest LFS release (Q2 2018), and the "assisting relatives" classification, at the link below.

<https://www.cso.ie/en/releasesandpublications/er/lfs/labourforcesurveyquarter22018/>

The CSO has indicated that the total number of 11,700 persons that responded in the survey may be too small to categorise or analyse any further. Furthermore, it appears from preliminary information provided by the CSO that the cohort are not actually employed by close relatives but responded to the survey as having been "assisting relatives". The CSO has yet to come back with their final analysis and also will provide us with the questions asked of persons to which the "assisting relatives" response was yielded.

In light of the foregoing it is unlikely that the CSO's efforts will yield the statistics sought by the Committee, however, we will inform DEASP as soon as we are notified of the outcome of the CSO's efforts. Further research of Eurofound's database did not yield any data as requested by the Committee.

[https://www.eurofound.europa.eu/sites/default/files/ef\\_files/docs/ewco/tn1306013s/tn1306013s.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_files/docs/ewco/tn1306013s/tn1306013s.pdf)

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<sup>1</sup> NaceCoder. A new version of the European industrial activity classification

## **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;"*

### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 7§5 of the Charter on the grounds that:

- the minimum net wage is manifestly inadequate;
- the rate paid to young workers between 16 and 18 years is too low; and
- young person's working for close relatives are not covered by the Minimum Wage Act.

### **Ireland's update on this Article.**

#### **The National Minimum Wage rate in Ireland**

Ireland, along with twenty two other countries among the EU's 28 Member States, has national legislation setting a minimum wage.

According to Eurostat figures published in august 2018, the 22 EU member states that have national minimum wages (NMW) can be divided into three groups based on the payment level in euros. Ireland is in the group of seven Member States with the highest national minimum wage rates. All of these states are located in the west and north of the EU and have minimum wages above €1,400 per month: the United Kingdom (€1,401), Germany and France (both €1,498), Belgium (€1,563), the Netherlands (€1,594), Ireland (€1,614) and Luxembourg (€1,999).



As of 1 July 2018, Ireland has the second highest national minimum wage rate in the EU. After purchasing power standards are applied, Ireland drops to sixth place, but still remains in the group with the highest minimum wage rates in the EU. Budget 2019 provides for an increase to €9.80 per hour.

#### Establishment of the Low Pay Commission

The Low Pay Commission (LPC) was established under the National Minimum Wage (Low Pay Commission) Act 2015.

Its main functions are to make evidence based recommendations to the Irish Government on the appropriate rate of the National Minimum Wage (NMW) and on related matters referred to it by the Minister for Employment Affairs and Social Protection.

The Commission submitted its fourth annual report in July 2018. Its recommendation to increase the minimum wage from €9.55 to €9.80 per hour was accepted in principle by Government and was increased in the context of Budget 2019. The NMW rate has increased by 10.4% over the lifetime of the LPC (2015-2018) to its present level of €9.55 per hour.

The 2016 Programme for Government provides that the Government supports an increase in the minimum wage to €10.50 over a five year period, relying on the evidence-based recommendations of the Low Pay Commission when considering the annual adjustment to the minimum wage level.

#### Examination by the Low Pay Commission of Sub-minimum rates under the National Minimum Wage Act 2000

The LPC was requested, as part of its 2016 work programme, to examine the sub-minima (special training and youth rates) of the National Minimum Wage and to report its recommendations to the

Minister for Employment Affairs and Social Protection.

The Commission's report in December 2017 recommended

- The abolition of the trainee rates, and
- The retention and simplification of the age-related rates.

These recommendations were supported by all 9 members of the Commission.

#### Rationale for LPC recommendations

The 2017 LPC report on sub-minimum rates sets out a clear evidence base and rationale for its recommendations. The LPC commissioned research by the Economic and Social Research Institute (ESRI), which examined international practices in relation to the NMW and sub-minima rates. The ESRI research found that of the 26 OECD countries (out of 34) that have a statutory NMW, just over half include sub-minima rates for young people.

The LPC considered abolishing youth rates but concluded that the minimum wage rate would then no longer offer any recognition of the difference between a young inexperienced worker and a more experienced colleague, which could lead to employers no longer seeing a value in hiring young people (and potentially impact on youth employment rates). The LPC also concluded that abolishing youth rates could potentially act as an incentive for young people to leave education and take up employment, which could have a negative impact on their long-term prospects.

The number of people on age-based rates is very low in Ireland. In 2017, just 1.5% of all employees reported earning less than the 'adult rate' of the NMW, and around a quarter to one-third of these reported being on age-based rates (Central Statistics Office, Labour Force Survey, 2017). The Commission also took into consideration that there is little evidence of any significant abuse of the

sub-minima rates.

The OECD, in its recent Jobs Strategy (published 28 January 2018), specifically recognises the use of sub-minima wages for young people: "*Governments should also ensure that the cost of hiring youth reflects their productivity through the use of wage-subsidies, the design of non-wage labour costs or a sub-minimum wage*" (Good Jobs For All In A Changing World Of Work: The OECD Jobs Strategy, p.35).

Ultimately, the LRC recommended that the youth rates should be simplified and be changed to an age-based system. The LRC also recommended that the trainee rates should be abolished.

The Minister for Employment Affairs and Social Protection accepted the recommendations of the Commission, and Government gave its approval to the Minister's proposal to amend the legislation on 12 February 2018.

Amendments to the National Minimum Wage (NMW) Act 2000 were brought forward at Committee stage of the Employment (Miscellaneous Provisions) Bill and accepted on the 17 May 2018 in the Dáil Éireann<sup>2</sup>. The Bill passed Report Stage on the 26 June 2018.

The Bill is currently awaiting passage through Seanad Éireann<sup>3</sup>. These amendments to the NMW Act 2000, when enacted, will make provision for the following;

- Training rates will be abolished
- Employees under 18 will receive a minimum of 70% of the NMW
- Employees aged 18 will receive a minimum of 80% of the NMW

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<sup>2</sup> Dáil Éireann - the Irish Parliament.

<sup>3</sup>Seanad Éireann - Upper House of the Irish Parliament.

- Employees aged 19 will receive a minimum of 90% of the NMW
- Employees aged 20 and over will receive the full NMW

The Minister will also be able to vary these rates by regulations, having regard to the labour market, employment costs, youth employment and youth unemployment rates. Such regulations shall not vary the percentages so as to reduce the national minimum hourly rate of pay for the relevant employees, below the minimum percentages set down in the primary legislation.

Position of Young Persons working for a close relative, from certain employment rights legislation was established prior to the National Minimum Wage Act 2000. The Protection of Young Persons (Employment) (Exclusion of Close Relatives) Regulations 1997 (S. I. No. 2 of 1997), provided for the exclusion of close relatives from certain provisions of the Protection of Young Persons Act.

By their nature and scope, flexible working arrangements involving close relatives, including evenings, weekend and summer work, or assistance at critical times, are a practical option for all concerned in a family situation. Such arrangements reflect national custom and practice in Ireland and the State does not consider it desirable to deem such arrangements as constituting a criminal offence if the minimum wage was not paid for work undertaken by a close relative in these circumstances.

However there are protections in place for Young People employed by close relatives as set out in the responses outlined under Article 7.1 to 7.4.

## **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;"*

### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is in conformity with this Article of the Charter.

### **Ireland's update on this Article.**

Any time spent with the consent of the employer by a young person working under any combined work/training scheme is deemed to be working time.

## **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;"*

### **The Committee's conclusion.**

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

### **Ireland's update on this Article.**

The Organisation of Working Time Act 1997 (as amended) derives from the Working Time Directive which allows for derogations for agriculture and family members (2003/88/EC). This derogation was

negotiated at EU level and is enjoyed by all Member States.

The presumed reason to avoid the necessity of parents giving a compulsory rest break for an older child looking after his younger brothers and sisters or subjecting a small farmer to maintain working times records when his partner and children help out on the family farm. All households should be able to enjoy some derogations from working time obligations or else they would not be able to function.

Given that the Act excludes this category of employee, the leave provisions would not apply other than the breaks referred to above in response at Article 7.3.

#### **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;"*

#### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 7§8 of the Charter on the grounds that it is unable to assess whether the great majority of persons under 18 are prohibited from working at night.

#### **Ireland's update on this Article.**

Please see the responses outlined under Article 7.4. particularly in relation to contact with the Central statistics office (CSO).

## **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;"*

### **The Committee's conclusion.**

Pending receipt of the information requested the Committee concludes that the situation in Ireland is in conformity with Article 7§9 of the Charter.

### **Ireland's update on this Article.**

#### **Frequency of Health Visits**

The Regulations, Schedule 7 to the Safety, Health and Welfare at Work (S.I. No. 299/2007), do not stipulate the frequency of health surveillance and health assessments. Neither is it outlined in the guide to the Regulations. Therefore the employer would take the advice of the doctor carrying out the health surveillance or health assessment regarding the required frequency. The Health and Safety Authority is not aware of any situations in Ireland which warrant health surveillance or health assessments for children and young workers under the Regulations.

## **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."*

### **The Committee's conclusion.**

Pending receipt of the information requested the Committee concludes that the situation in Ireland is in conformity with Article 7§10 of the Charter.

### **Ireland's update on this Article.**

#### **Protection against sexual exploitation and other forms of exploitation**

The Child and Family Agency (Tusla) which was established in 2014 is responsible for the protection and welfare of children and for the reception into care and provision of care to all separated children/unaccompanied minors. Tusla makes all the necessary provisions for any unaccompanied child identified as a potential or suspected victim of trafficking. The services provided include accommodation, counselling, debriefing and full medical screening. Each child is allocated a social worker to oversee and implement their care plan.

The Criminal Law (Human Trafficking) (Amendment) Act 2013, amended existing law, to bring forced begging and forcing a person to engage in criminal activities, within the scope of existing human trafficking offences.

The Criminal Law (Sexual Offences) Act 2017, enhances and updates laws to combat the sexual



exploitation and sexual abuse of children. It widens the range of offences associated with child pornography to cover any person involved in the creation, distribution, viewing or sharing of such material. The Act contains new criminal offences to protect children against grooming, from online predators and in relation to child pornography. It also introduces new provisions regarding evidence by victims, particularly children.

The anti-human trafficking team of the Irish Health Service Executive (HSE) have a role in assessing victims (irrespective of the age of the victim), supporting victims, developing care plans, referring people to appropriate health and personal social services, and delivering training for the Gardaí and other State agencies. Victims of human trafficking have the same rights as any Irish citizen in relation to access to accommodation, health care; education; and material assistance. The HSE has recently commissioned a piece of research titled, *Collating, reviewing and analysing the health, social and legal impacts of sexual exploitation on service users of the HSE Anti Human Trafficking Team/Women's Health Service*. The outcomes of this work will inform further efforts in this area.

#### The number of street children and children forced into begging

The Anti-Human Trafficking Unit of the Department of Justice and Equality produces Annual Reports, which include data on victims of trafficking recognised by NGOs and/or coming to the attention of State Authorities. One suspected child victim of human trafficking for the purposes of forced begging was identified in 2014. Suspected child victims of human trafficking for the purposes of forced criminality were identified in 2014 (1) and in 2017 (1).

#### Measures taken to prevent the abuse and exploitation of children in institutional settings

Oberstown Children Detention Campus has published their Child Safeguarding Statement. Which was developed in line with legislative requirements under the Children Act 2001 and the Children First Act

2015, and national policy including Children First: National Guidance for the Protection and Welfare of Children (2017), and Tusla's Child Safeguarding: A Guide for Policy, Procedure and Practice. Section 180 of Children Act 2001 obliges Oberstown to have regard to young people's health, safety, welfare, interests. In addition to the procedures listed in the Oberstown risk assessment, a range of other policies and procedures support Oberstown's intention to safeguard children in detention. Children and young persons in Oberstown also have access to Empowering People in Care (EPIC) advocacy service and the Ombudsman for Children, both of whom visit the campus regularly.

### Safeguarding and Protection

The Health Service Executive (HSE) is committed to safeguarding people who may be vulnerable and at risk from abuse and launched its safeguarding policy - *Safeguarding Vulnerable Persons at Risk of Abuse - National Policy and Procedures* - in December 2014.

This document provides one overarching policy to which all Social Care Services, including those provided directly or funded by the HSE, have subscribed and implemented in their place of work ensuring a consistent approach to protecting vulnerable people; a "No Tolerance" approach to any form of abuse and neglect; and a culture which supports this ethos.

As part of the implementation of this policy nationwide the following steps have been taken:

- A National Safeguarding Office has been established, which will ensure implementation of the policy, data collection and the development of training programmes.
- Nine Safeguarding and Protection teams have been established. Each team,
- is led by a Principal Social Worker and supported by Social Work Team Leaders and Social Workers.
- A substantial number of units / group homes have identified a Designated Officer assigned to

deal with complaints and concerns of abuse and will continue to train Designated Officers throughout 2018.

- Additional social work posts including 9 Principal Social Workers dedicated to supporting services and professionals respond to concerns of abuse have been developed.
- A national database of nominated Designated Officers – Each service (HSE and funded agencies) providing services to people who may be vulnerable is required to nominate a Designated Officer. These Designated Officers are required in both Disabilities and Older Persons' Care Groups, in residential (including district hospitals), respite, group community facilities and stand-alone day and rehabilitation services. The Designated Officer fulfils a critical role in receiving information on concerns of abuse, screening and notification to the HSE Safeguarding & Protection Teams. The National Safeguarding Office has established and maintains a national database for Designated Officers.
- Local Interagency Safeguarding Committees have been set up in all 9 Community Health Care Areas. These Committees are chaired by the Head of Social Care. They have an oversight role and support effective interagency co-operation and collaboration.
- A national safeguarding vulnerable person's awareness programme has been devised for all social care staff. This 3.5 hour standardised programme is delivered currently by 168 approved safeguarding facilitators based in HSE and HSE funded agencies.
- A Quality Improvement Team was established in 2015 to implement an evaluation and quality improvement programme in disability residential centres. The Team will act as a resource to providers of residential services and will complete an audit of all existing safeguarding practices and arrangements in residential settings. A key focus of the Quality Improvement Team will be to support the centres in improving the response in terms of action plans etc. to HIQA following receipt of compliance notices.
- Quality and Safety Committees have been established and staff appointed to further embed

standards for effective person-centered care in CHOs, including the strengthening of governance.

- A Confidential Recipient was put in place.

#### National Safeguarding Data from 2017

The National Safeguarding Office has established a national database of all safeguarding concerns received from both community and service settings which is notified to the HSE through the Safeguarding and Protection Teams.

2017 is the second year that the HSE has published data and recorded outputs on adult safeguarding activity. Prior to 2016 the HSE published an annual Elder Abuse Services Report. The data in this Report is made up of the preliminary screenings undertaken by Designated Officers (DOs) operating in service settings as well as direct community referrals to the HSE Safeguarding and Protection Teams (SPTs). The future development of a web based IT system should make the system for data collection more efficient and comprehensive. The picture emerging from the 2017 data is that whilst the reported types of alleged abuse has remained consistent in percentage terms, there is a significant overall increase in overall reported notifications to the HSE.

The significant messages are:

- Figures show a 28% overall increase in concerns being raised to the HSE in 2017, with the largest increase evident in the under 18-64 year age category.
- The breakdown in reported categories of alleged abuse type has remained consistent with 2016 figures.
- For persons aged under 65, the most significant category of alleged abuse remains physical abuse at 46 % (compared with 47% in 2016).

- For persons aged over 65, the most significant category of alleged abuse is psychological abuse and financial abuse at 31% and 22% respectively.
- Alleged financial abuse and neglect increase with age with the highest level of reporting in those over 80 years.
- Analysis of the reporting rate per 1,000 populations over 65 illustrates that the rate increases with age. Concerns relating to females are higher in all age categories, however, male reporting increases three fold in the over age 80 category.
- The alleged person causing concern is most likely a service user for those 18-64 and a son/daughter for those over 65 years.
- The overall percentage of cases with an outcome agreed with the Safeguarding and Protection Team of ‘reasonable grounds’ for concern has remained similar at 50% in 2017 compared with 47% in 2016.
- The provision of training and public awareness has increased the level of concerns being notified to the safeguarding service.

### Review of the Safeguarding Policy

At the time of the launch of “*Safeguarding Vulnerable Persons at Risk of Abuse - National Policy and Procedures*” in December 2014, the HSE committed to an early review of the policy. The HSE has set up a Review Development Group and consultation is on-going with key stakeholders. The policy is being reviewed on a cross divisional basis, having regard to the emerging legislation on Assisted Decision Making. The review process has shown that the current safeguarding policy and the introduction of the HSE SPTs has made a significant positive difference especially with regard to ensuring safe standards and assisting staff to recognise and respond to concerns of abuse and neglect. Other areas needing improvement and change were highlighted in the process and it is planned that the revised policy will address these shortcomings.

Standards on Safeguarding are also in development by Health Information and Quality Authority/ Mental Health Commission and expected to be completed in Q4 2018.

#### National Independent Review Panel

The HSE regularly needs to undertake reviews, investigations, inquiries and audits into a range of issues relating to the quality and safety of its services, risks and individual safety incidents which result in serious harm to patients or users of health and social services.

The HSE has put in place a National Independent Review Panel with an independent Chair and Review Team, modelled on the National Review Panel which reviews cases where children who are in the care of the State, die or experience serious incidents. Given the size of the health service and the number of potential investigations to be undertaken, it is intended that in the first instance, the Review Panel will focus on serious incidents that occur in disability services across the HSE and HSE funded services.

Consideration will be given to extending the scope of National Independent Review Panel, if required based on its capacity to undertake these investigations.

#### Health Information and Quality Authority (HIQA) Regulations

The introduction of national standards for children and adults with disabilities, requires all centres providing residential (including respite) services to children and adults, with disabilities, to be registered with HIQA and that those centres are visited by HIQA inspectors to ensure they are providing an appropriate standard of care.

A key focus across the disability sector is on improving compliance with national residential standards as regulated by HIQA. The HSE Service Plan 2018 target for compliance with inspected

outcomes following HIQA inspection of disability residential units is 80%. There is an ongoing focus on key outcome measures for improvements to meet the 80% target.

### Children First

Children First refers to *Children First: National Guidance for the Protection and Welfare of Children 2017* and the Children First Act 2015. It is a generic term used to encompass the guidance, the legislation and the implementation of both.

*Children First: National Guidance for the Protection and Welfare of Children (2017)* is a national policy document which assists people in identifying and reporting child abuse. It describes the four main types of abuse and sets out the steps which should be taken to ensure that the child or young person is protected from harm. It is intended to assist, whether a member of the public, a professional, employee or volunteer in identifying and reporting child abuse and neglect, and to deal effectively with these concerns. It also sets out the statutory responsibilities for mandated persons and organisations under the Children First Act 2015 and provides information about how the statutory agencies respond to reports of concerns made about children.

As outlined above the Child and Family Agency Tusla became the agency responsible for child welfare and protection services. Prior to 2014, concerns would have been reported to HSE social work child protection and welfare teams.

Children First sets out specific protocols for social workers who work in Tusla, Gardaí, and other front-line staff in dealing with suspected abuse and neglect. It emphasises the importance of multidisciplinary and inter-agency working in the management of concerns about children's safety and welfare.

Key to this is the sharing of information between agencies and disciplines in the best interests of children and the need for full co-operation to ensure better outcomes. It also highlights procedures and practices that should be in place within organisations working with children to safeguard them from abuse.

The Children First Act 2015 was signed into law by the President on the 19th November 2015 and all parts of the Act have been commenced. It provides a legal basis for elements of the Children First: National Guidance for the Protection and Welfare of Children. The Act provides a number of key child protection measures which include:

- A requirement on organisations providing services to children to keep children safe and to produce a Child Safeguarding Statement;
- A requirement on defined categories of persons (mandated persons) to report child protection concerns over a defined threshold to the Child and Family Agency (Tusla);
- A requirement on mandated persons to assist the Child and Family Agency and “to give to the Agency such information and assistance as it may reasonably require” in the assessment of a child protection risk;
- The removal of the defence of reasonable chastisement from the Non-Fatal Offences against the Person Act 1997. This means that a person who administers corporal punishment to a child will no longer be able to rely on the defence of reasonable chastisement.
- Placing the Children First Interdepartmental Group on a statutory footing.
- The legislation operates in tandem with the existing Children First: National Guidance for the Protection and Welfare of Children.

The focus of Children First: National Guidance for the Protection and Welfare of Children 2017 “is to help a general audience recognise child abuse and report a reasonable concern about a child’s welfare



or protection. It also contains specific information about the statutory responsibilities of individuals who are mandated to report child protection concerns and of organisations that provide relevant services to children.

The Guidance describes the non-statutory obligations for all people which already existed under the previous guidance. It also sets out the statutory obligations for certain professionals, and for organisations under the Children First Act.

Additional information for Tusla staff is available in the Child Protection and Welfare Practice Handbook, (HSE 2011). This is also a useful resource for HSE staff as it provides additional information about recognising and responding to child abuse and provides information in chapter 2 for all allied professionals and volunteers whose work brings them into direct contact with children, young people and their families.

It is a HSE policy that all staff irrespective of role, grade or position must promote the welfare of children and protect them from harm, and particularly if staff have any information that a child has been, is being or is at risk of being abused or neglected.

The HSE Children First National Office has a team of Training and Development Officers who provide advice and guidance regarding Children First.

## **Article 8**

### **The right of employed women to protection of maternity**

#### **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;"*

#### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 8§1 of the Charter on the grounds that the amount of maternity benefit is manifestly too low.

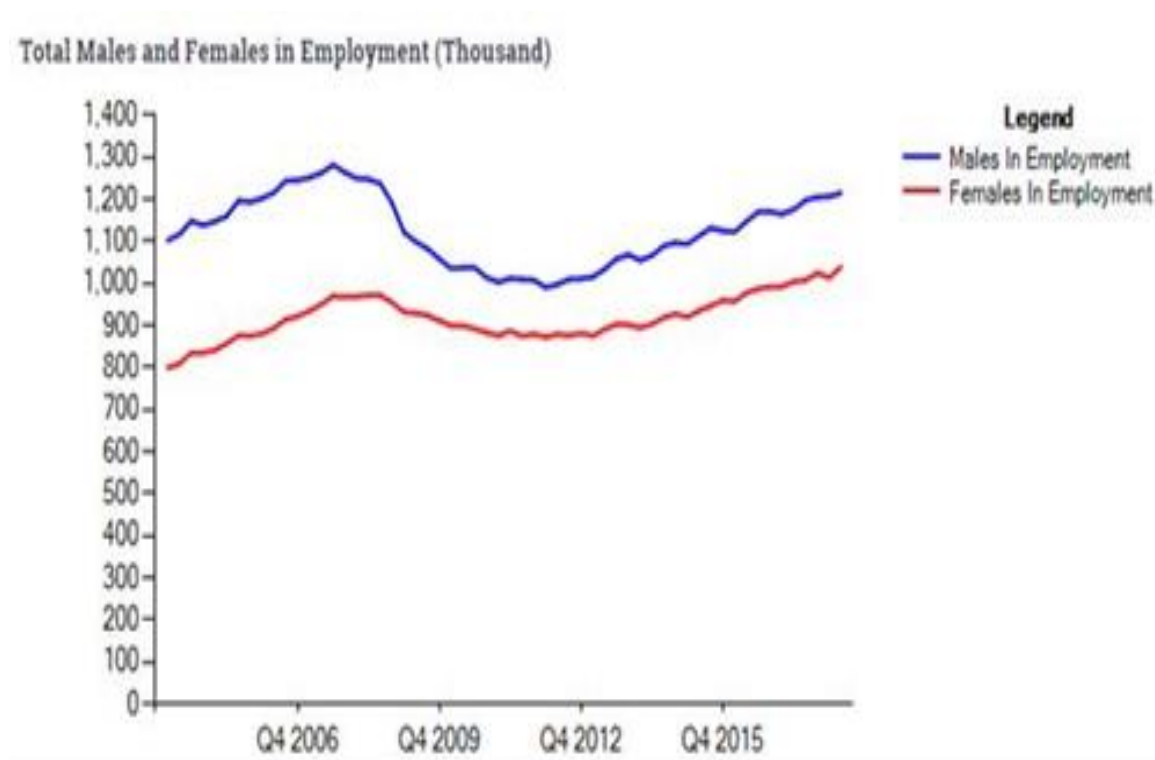
#### **Ireland's update on this Article.**

It should be noted that as stated in the 45<sup>th</sup> Report by the Government of Ireland, completed in accordance with Article 74 of the European Code of Social Security, Part VIII of this Convention, Maternity Benefit, has not been accepted by Ireland.

Ireland provides generous maternity leave entitlements of over 42 weeks currently – 26 week paid leave and a further 16 weeks unpaid. The 26 week duration of the payment has been preserved to acknowledge how important this time is for families and their children. This level is substantially in excess of the 14 weeks required under EU legislation, and under Article 8.1 of the Charter.

## Maternity Benefit

Ireland does not support the view of the Council “that the amount of maternity benefit is manifestly too low”. Ireland provides generous maternity & paternity leave benefits and entitlements of over 28 paid weeks and 18 weeks unpaid leave. This is reflected by one of the highest birth rates in Europe and growth of women in the labour force over the past decade.



CSO 2018 Labour Force Survey

## Maternity Leave

Under Irish legislation Maternity Leave of 26 weeks which attracts a payment (known as Maternity Benefit at a minimum rate of €240 per week rising to €245 in 2019) and 16 weeks unpaid leave is provided for. 18 weeks unpaid parental leave is provided for in the Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006. A number of Irish employers pay their employees full pay while they are on maternity leave.

In 2018, the average weekly number of women in receipt of the benefit is 19,500, i.e. almost 40,000 women per year paid through Maternity Benefit, at an average weekly payment value of €244.83. The Department of Employment Affairs Social Protection estimates that in 2018, €251m will have been paid to mothers under the scheme. Since 2016, fathers are entitled to a two week paternity benefit with an average weekly payment value of €251.89

The nominal ‘at risk of poverty’ threshold in Ireland is €12,358. Considering a woman may receive a maternity benefit of €240 a week for 26 weeks, where they are on leave from a position of employment, it can therefore be assumed that they will have come from the labour force and will return to the labour force following their maternity leave. In 2017 the average earnings in Ireland stood at €37,646. This should typically bring the annual earnings for a woman who receives maternity benefit for 26 weeks and has employment earnings for the remaining 26 weeks of the year to €25,063, exceeding the at risk of poverty rate.

Furthermore the recent 2019 Budget announced measures to introduce an additional 2 weeks parental leave per parent bringing paid leave for both parents to 32 weeks in 2019.

The full suite of entitlements to new parents from 2019 is as follows:

Paid parental schemes:

- Maternity Leave – 26 weeks (2 weeks must be taken before date of confinement)
- Paternity Leave 2 weeks
- Parental Leave 2 weeks per parent
- Health and Safety Leave – from date of award to commencement of maternity leave
- Adoptive Leave 24 weeks

Unpaid Parental Leave schemes in place:

- Unpaid Maternity Leave – 16 weeks
- Parental Leave Scheme – 18 weeks each parent for child up to age 8 years

In addition to maternity benefits, funding in excess of €2billion will also be paid to parents in the form of child benefit in 2018. In 2018 the average child benefit payment amounts to approximately €270 a month.

Maternity Benefit is a payment made for 26 weeks to employed and self-employed pregnant women who satisfy certain PRSI (pay related social insurance) contribution conditions on their own insurance record, in order to obviate the need for them to work pre and post-delivery of their baby. Prior to January 2014 the rate of payment was dependent on income level.

The weekly rate of benefit was calculated by dividing the gross earnings in the relevant income tax year by the number of weeks worked in that year. 80% of this amount was payable subject to a minimum rate of €217.80 and a maximum rate of €262.

However from January 2014 a single weekly payment is paid to qualifying persons and the amount paid is no longer dependant on income level as a determinant of benefit rate. This rate is equal to the greater of the weekly illness benefit rate which the woman would otherwise be entitled to or €240 per week.

### Legal Safeguards

Section 22 as inserted by Section 14 of the Maternity Protection Act (Amended) 2004 provides that:

- An employee on maternity leave, additional maternity leave, health and safety leave, time off for ante-natal or post-natal care, time off or reduced hours for breastfeeding and/or time off for

ante-natal classes is deemed to be in the employment of the employer while absent. The employee is to be treated as if s/he is not absent. The absence will not affect any rights or obligations related to the employee's employment conferred by legislation contract or otherwise.

- A period of absence from work for any of the above purposes is not to be treated as part of any other leave (including sick leave or annual leave).
- An employer cannot say that an employee must take a day's holidays to go to an ante-natal appointment.
- Similarly maternity leave or ante-natal visits must not be counted as part of the employee's sick leave record.

Section 26 of the Maternity Protection Act, 1994 as amended by Section 18 of the Maternity Protection Act (Amended) 2004 provides that:

An employee is entitled after maternity leave, additional maternity leave or health and safety leave to return to work;

- with the same employer, or the new owner (if there was a change of owner)
- to the same job
- under the same contract and
- under terms and conditions that are; (i) Not less favourable than those that would have applied to the employee and (ii) Incorporate any improvement to the terms and conditions to which the employee would have been entitled if she had not been absent.

### Civil Servants

Civil Servants are covered by the Maternity Protection Acts. Under the Maternity Protection (Amendment) Act 2004, at least 2 weeks have to be taken before the end of the week of your baby's

expected birth and at least 4 weeks after. 26 week paid maternity leave is available in the Civil Service. Maternity leave is paid at the full rate of pay in the public sector.

## **Article 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;*

### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 8§2 of the Charter on the grounds that:

- it has not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave;

it has not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave

### **Ireland's update on this Article.**

#### **Prohibition of dismissal**

In common with other EU Member States, the entire period of pregnancy and maternity leave is a special protected period. Although there are three avenues of redress, the Maternity Protection Acts, the Unfair Dismissal Acts and Employment Equality Acts, the route usually chosen by a woman who has been treated less favourably during the protected period is the Employment Equality Acts. That is

because redress is up to two years of salary or reengagement or reinstatement under those Acts. There is no need to mitigate a loss under the Employment Equality Acts and redress is tax-free.

An example of a case where the relevant national authority found against a public sector employer on the ground of gender is *A v A County Council*:

<https://www.workplacerelations.ie/en/Cases/2016/February/DEC-E2016-036.html>

Ms A was employed in an enterprise development role for a County council. She was on a 5 year fixed term contract. She was given assurances that her contract would be renewed but shortly after announcing her pregnancy, she was informed that it would not be extended. The Equality Officer accepted her evidence that her line manager said that ‘your pregnancy does not help’ regarding the renewal of her contract. She was awarded €50,000 and the decision was not appealed<sup>4</sup>.

#### Consequences of unlawful dismissal

If a woman is dismissed during the special protected period of pregnancy or maternity leave, she may pursue a case under either the Unfair Dismissal Acts or Employment Equality Acts. Both Acts allow for compensation, reengagement or reinstatement. Compensation is generally the award given as the relationship of mutual trust and confidence has broken down between parties following a dismissal (especially at an emotionally vulnerable time prepartum and postpartum) and subsequent litigation. The highest award given was €315,000 (plus Court interest), in 2012.

Actual decision here: <https://www.workplacerelations.ie/en/Cases/2012/February/DEC-E2012-010-Full-Case-Report.html>

This is one of the highest awards ever in the European Union for a pregnancy dismissal.

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<sup>4</sup> <https://www.irishtimes.com/news/social-affairs/woman-wins-50-000-after-being-dismissed-while-pregnant-1.2625504>



Other cases of dismissal during pregnancy and maternity leave are:

<https://www.workplacereactions.ie/en/Cases/2014/August/DEC-E2014-055.html>

<https://www.workplacereactions.ie/en/Cases/2015/June/DEC-E2015-029.html>

It also is worth bearing in mind that to make a complaint under any of these Acts is by an online form. The mediation and adjudication service of the Workplace Relations Commission is a free service unlike other jurisdictions. People can represent themselves if they so wish and decisions are enforceable in the District Court.

Civil Servants, including those on fixed term contracts, are covered by the Maternity Protection Acts and the Employment Equality Acts. The Maternity Protection Acts provide for “employees” (people who have “entered into or works under a contract of employment” (Section 2) and include “employees employed by the State or Government”. There are no such dismissal cases in the Civil Service.

### **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; "*

### **Ireland's update on this Article.**

The Government of Ireland signed and ratified the Revised European Social Charter on 4th November 2000. Ireland accepted most of the Revised European Social Charter, but did not accept some provisions such as Article 8.3 and that situation remains unchanged.

## **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;"*

### **The Committee's conclusion.**

The Committee concluded that the situation in Ireland is in conformity with Article 8§4 of the Charter.

### **Ireland's update on this Article.**

#### **Summary**

The Maternity Protection Acts provide that employers may not require employees to perform night work if a doctor certifies that it is necessary for the safety or health of an employee that she should not be required to perform night work during pregnancy or for 14 weeks following childbirth. There have not been any recent changes/developments in this area since the 2011 Committee Report.

Safety, Health and Welfare at Work Act.

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).

The Safety, Health and Welfare at Work (General Application) Regulations 2007, Part 6, Chapter 2, Protection of Pregnant, Post Natal and Breastfeeding Employees (referred to as The Pregnancy Regulations) apply when an employee informs her employer that she is pregnant, has recently given birth or is breastfeeding and provides an appropriate medical certificate.

Regulation 151 of the General Application Regulations 2007 specifies the following;

151. (1) In this Regulation “night work” means work in the period between the hours of 11 p.m. on any day and 6 a.m. on the next following day where-

- (a) the employee works at least 3 hours in that period as a normal course, or
- (b) at least 25 per cent of the employee’s monthly working time is performed in that period.

Night work means working between 11.00 p.m. and 6.00 a.m. the next day, where an employee works at least three hours (not necessarily consecutive) in that period, or, where a minimum of 25 per cent of the employee’s working hours in a month are worked between those times.

151. (2) An employer shall—

- (a) if a registered medical practitioner certifies that it is necessary for the safety or health of an employee that she should not be required to perform night work during pregnancy or for 14 weeks following childbirth not oblige her to perform night work during that period, and
- (b) in a case to which subparagraph (a) relates— (i) transfer the employee to daytime work, or (ii) where such a transfer is not technically or objectively feasible on duly substantiated grounds, or both, grant the employee leave or extend the period of maternity leave.

If an employee has a medical certificate stating that for health and safety reasons she is not required to perform night work during the pregnancy or for fourteen weeks afterwards, the employer must remove her from night work by either transferring her to daytime duties, or, if this is not feasible, granting the employee leave. The employee concerned may have an entitlement to health and safety leave under the maternity protection legislation in these circumstances.

The Health and Safety Authority (HSA) is responsible for enforcement of the Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007. Employers are advised that, in producing their safety statement, they should

consider the possibility of pregnancy among employees. The HSA also provides information on safety, health and welfare protection for employees who are pregnant, recently given birth, breastfeeding while working. The HSA also takes complaints from employees if an employer has not undertaken a risk assessment or provided a safety statement. The HSA may intervene by advising the employer of the guidelines on implementing the Pregnancy Regulations or by a visit, verbal or written advice or the issuing of an enforcement notice on the employer.

### **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 take appropriate measures to protect the employment rights of these women".*

### **The Committee's conclusion.**

The Committee concludes that the situation in Ireland is in conformity with Article 8§5 of the Charter.

### **Ireland's update on this Article.**

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).

The Safety, Health and Welfare at Work (General Application) Regulations 2007, Part 6, Chapter 2, Protection of Pregnant, Post Natal and Breastfeeding Employees (referred to as The Pregnancy

Regulations) apply when an employee informs her employer that she is pregnant, has recently given birth or is breastfeeding and provides an appropriate medical certificate. As the earliest stages of pregnancy are the most critical ones for the developing child it is in the employee's best interest to let her employer know she is pregnant as soon as possible.

Both the Safety, Health and Welfare at Work Act, 2005 and the Pregnancy Regulations, 2007 require that a risk assessment be done as part of the Safety Statement. 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 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. The risk assessment should already have identified any hazards, which may present a risk during pregnancy. The risk assessment specifically required by the Pregnancy Regulations should therefore, be a re-appraisal of these hazards.

Once an employer becomes aware that an employee is pregnant, they must assess the specific risks from the employment to that employee and take action to ensure that she is not exposed to anything, which would damage either her health or that of her developing child. A risk assessment means determining to what hazards the pregnant woman is exposed and how often the exposure occurs and for how long

The main hazard types to which a pregnant or breastfeeding employee can be exposed are:

- General hazards
- Hazards specific to pregnancy
- Hazards specific to breast feeding

If a risk is identified, the employer must remove the risk/adjust the work. If the employer cannot remove the risk, the employee must be provided with suitable alternative employment. If the employer cannot provide suitable alternative employment, the employee must be granted Health and Safety Leave in accordance with Section 18 of the Maternity Protection Act, 1994.

During Health and Safety Leave, employers must pay employees their normal wages for the first 3 weeks, after which Health and Safety Benefit will be paid from the Department of Employment and Social Protection.

The Health and Safety Authority (HSA) is responsible for enforcement of the Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007. Employers are advised that, in producing their safety statement, they should consider the possibility of pregnancy among employees. The HSA also provides information on safety, health and welfare protection for employees who are pregnant, recently given birth, breastfeeding while working. The HSA also takes complaints from employees if an employer has not undertaken a risk assessment or provided a safety statement. The HSA may intervene by advising the employer of the guidelines on implementing the Pregnancy Regulations or by a visit, verbal or written advice or the issuing of an enforcement notice on the employer.

## **Article 16**

## **The right of the family to social, legal and economic protection**

**“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.”**

### **The Committee’s conclusion.**

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 16 of the Charter.

### **Ireland’s update on this Article.**

#### **Housing for families**

Article 41 of the Constitution of Ireland protects the rights of the family. Article 41.1 recognises the family as the ‘natural primary and fundamental unit group of Society’. Noting that Article 41.3.1 obliges the State to ‘guard with special care the institution of Marriage, on which the Family is founded’, the Irish courts have interpreted the references to the family in Article 41 as the family based on marriage. However, it is important to note that the Constitution does recognise the fundamental rights of citizens to be held equal before the law. Article 42A of the Constitution gives explicit recognition and protection to the rights of children. Legislation and public policy also recognise a much broader range of family relationships and seek to ensure that children are treated equally regardless of the marital status of their parents.

While the general right to housing is not referred to in this article, it is referred to in Article 31 which has not been accepted by Ireland, additional information relating to housing is provided in appendix 1.

Protection against unlawful eviction, legal protection for persons threatened by eviction includes:

1. an obligation to consult the parties affected in order to find alternative solutions to eviction;
2. an obligation to fix a reasonable notice period before eviction;
3. accessibility to legal remedies;
4. accessibility to legal aid;
5. compensation in case of illegal eviction.

The obligation to consult the parties affected in order to find alternative solutions to eviction

The Residential Tenancies Board (RTB) was established as an independent statutory body under the Residential Tenancies Act 2004, to operate a national tenancy registration system and to facilitate the resolution of disputes between landlords and tenants.

A Table to Section 34 of the Residential Tenancies Act 2004 sets out clearly defined grounds for termination of tenancy and requires the landlord to state in his or her tenancy termination notice the relevant ground, or grounds, for termination. The Table provides the following grounds for termination:

- vacant possession is required for substantial refurbishment/ renovation of the dwelling;
- the tenant has failed to comply with the obligations of the tenancy;
- the landlord intends to sell the dwelling within the next 3 months;
- the dwelling is no longer suited to the needs of the occupying household;
- the dwelling is required for occupation by the landlord or a family member; and
- the landlord intends to change the use of the dwelling.



Section 56 of the Act provides that where there is an abuse of the termination procedure in section 34, a tenant may bring a complaint to the RTB that they have been unjustly deprived of possession of a dwelling by their landlord. Where there is a dispute regarding the appropriate period of notice to be given in respect of a tenancy or the validity of a notice of termination, or where the tenant does not comply with the notice of termination, the dispute may also be referred to the RTB for resolution.

The Strategy for the Rental Sector, published in 2016, recommended the introduction of a Rent Predictability Measure to moderate rent increases in those parts of the country where rents are highest and rising - where households have greatest difficulties in finding accommodation they can afford. The Planning and Development (Housing) and Residential Tenancies Act 2016 provided for the Rent Predictability Measure and for areas, called Rent Pressure Zones (RPZs), where rents can now only rise by a maximum of 4% annually for the period of an area's designation as an RPZ. An area may be designated as a RPZ for up to three years. The designation of an area as an RPZ may be revoked by the Minister if the pressures on rent levels ease before the expiry date in the RPZ designation order. The Housing Agency continues to monitor the rental market and may recommend further areas for designation as RPZs.

On 17 April 2018, the Government approved the commencement of the drafting of the Residential Tenancies (Amendment) Bill 2018. Subject to legal advice during the course of drafting, the Bill will further strengthen the effectiveness of the rent setting and rent review laws by empowering the RTB to investigate any contravention of the law around rent limits (4% per annum) in Rent Pressure Zones (RPZs) and to take enforcement action, if necessary, including the imposition of sanctions on landlords in breach and initiate an investigation without the need for a complaint to be made.

A RPZ calculator is available on the Residential Tenancies Board website at:

<https://onestopshop.rtb.ie/calculator/rpz>, to assist landlords and tenants in determining if their dwelling is in a RPZ and to calculate the maximum rent amount permitted for their dwelling.

The first rent review in relation to a property in a RPZ can only take place 24 months after the time that the tenancy was established or the time that the rent was last set. Thereafter, rent reviews can take place annually.

The existing requirement that the rent set is not above the local market rents for similar properties still applies and the landlord must also provide three examples of rents for similar properties in a comparable area to demonstrate this.

#### The obligation to fix a reasonable notice period before eviction

The Residential Tenancies Acts 2004 to 2016 set out minimum notice periods for tenancy termination which are different for a landlord and a tenant.

During the first 6 months of a tenancy, a landlord may end the tenancy without giving any reason, provided the tenant is given 28 days' notice.

The Residential Tenancies Acts prescribe notice periods (maximum required notice period of 224 days) to apply for tenancy terminations for tenancies of duration of a continuous period of 6 months or longer.

#### Accessibility to legal remedies

The Residential Tenancies Act 2004 regulates the landlord-tenant relationship in the private rented residential sector and sets out the rights and obligations of landlords and tenants. Enforcement is an

important function of the Residential Tenancies Board. When landlords, tenants and third parties bring disputes to the RTB through mediation, adjudication or tribunal, they receive a legally binding Determination Order. The majority of determination orders are complied with but where they are not, the RTB takes non-compliance with Determination Orders very seriously.

Decisions on whether or not to pursue legal enforcement are made on a case-by-case basis, taking into account the RTB's resources, the cost of taking legal proceedings and the likelihood of successfully achieving a favourable outcome for the requester.

It is the policy of the RTB to try to secure compliance initially by non-judicial means, for instance by writing to the non-compliant parties to remind them of the terms of the Order and requiring them to make arrangements to comply. If this approach is unsuccessful, then the RTB may take other factors into account in reaching a decision on whether or not to pursue legal proceedings. These factors include; dispute type, history of compliance with landlord/tenant legislation, technical strength of the case, existing representations made by the RTB to the non-compliant party and relevant information obtained, the particular circumstances of the case. The RTB will make a decision on whether to initiate Court proceedings to enforce the Determination Order and it should be noted that any decision by the RTB is final.

#### Accessibility to legal aid

The RTB has created a panel of solicitors to assist parties in taking enforcement proceedings and appropriate training has been provided. The RTB has also published a guide to taking enforcement proceedings. The RTB also actively engages with case parties seeking to settle any debt by means of alternative payment arrangements. The necessity for any further legislative change is under consideration by the RTB Change Management Plan Project Board.

The Legal Aid Board provides legal advice and legal aid in civil cases to persons of modest means who satisfy the requirements of the Civil Legal Aid Act 1995.

The RTB now replaces the Courts in a majority of cases in relation to landlord and tenant disputes. The RTB was set up to deal with disputes on an informal basis and is intended to minimise expense in the resolution of landlord and tenant disputes. Therefore, legal representation should not be necessary but parties are free to arrange for representation.

If a party intends to have legal representation at a Tribunal hearing before the RTB, notification of this should be given to the RTB within 7 days of the notification of the hearing date. Costs of legal or other professional representation before the RTB will only be awarded in exceptional circumstances and with the consent of the Board of the RTB.

The RTB work in partnership with Citizens Information Centres (CICs) to provide information services dedicated to queries relating to the private rental sector. The RTB has provided a number of clinics with CICs which are always well attended by tenants and landlords who are seeking information on their rights and responsibilities. The RTB have recently piloted a training programme with Citizens Information Staff in Limerick, whereby 20 front-line staff were trained on the key aspects of legislation most pertinent to their roles.

#### Compensation in the case of an illegal eviction

A landlord found by the RTB to have carried out an unlawful termination may be directed to allow the tenant re-entry into the dwelling and / or required to pay substantial damages to the tenant depending on the circumstances of the case. Decision makers have discretion to award up to and including €20,000 in damages.

Additionally, Section 123(3) of the Residential Tenancies Act 2004, states that any of the parties concerned may appeal a determination of the Tribunal to the High Court, within the relevant period, on a point of law.

### Traveller Accommodation

The Housing (Traveller Accommodation) Act 1998 is designed to address the accommodation needs of Traveller families. Under the Act, housing authorities are required to assess the accommodation needs of Travellers and to prepare, adopt and implement multi-annual Traveller Accommodation Programmes (TAPs) in their areas. These are five-year rolling programmes which provide a road map for housing authority investment priorities over the period.

A commitment was made in the Government's action plan on housing and homelessness, Rebuilding Ireland, to undertake an expert, independent review of funding for Traveller-specific accommodation. This review, had regard to targets contained in the housing authority Traveller Accommodation Programmes (TAPs) and units delivered, the status of accommodation funded and the funding provided for accommodation maintenance and other supports. The purpose of this review was to provide factual information and to identify challenges in the provision of Traveller accommodation.

This review was completed in 2017 and was subsequently considered by the National Traveller Accommodation Consultative Committee (NTACC) who recommended the establishment of an Independent Expert Group. The Expert Group has now been established and has begun to review the Traveller Accommodation Act 1998 and all other legislation that impacts on the provision and delivery of accommodation for Traveller families. The review will also include widespread consultation with relevant stakeholders. The Department of Housing, Planning and Local Government will ensure that due consideration is given to recommendations put forward by the Expert Group that will improve the delivery of Traveller accommodation for Traveller families.

Following a nationwide consultation process which commenced in 2015, with input from each of the Traveller, Roma and relevant Government Departments/Agency stakeholders, the National Traveller and Roma Inclusion Strategy (NTRIS) 2017-2021 was launched on 13 June 2017. It replaces the previous integration strategy, which expired at end-2015. The Strategy takes a whole of Government approach to improving the lives of Travellers and Roma in Ireland in practical and tangible ways. To date, the NTRIS Steering Group, which is chaired by The Minister of State for Equality, Immigration and Integration, has met six times. Progress has been made on approximately 130 of the 149 actions which it contains. The Steering Group will continue to monitor progress on all 149 Actions and will focus in particular on actions where sufficient progress has not yet been made.

This Strategy's actions are grouped under ten themes, which are as follows:

- Cultural Identity;
- Education;
- Employment and The Traveller Economy;
- Children and Youth;
- Health;
- Gender Equality;
- Anti-discrimination and Equality;
- Accommodation;
- Traveller and Roma Communities;
- Public Services

As a response to a number of the actions in the Strategy, four sub-committees have been set up to report back to the Steering Group. The four areas being focused on are:

- Retention of Traveller and Roma children in education;
- Bringing an end to Feuding among Travellers;
- Promotion of the use of an Ethnic Identifier for Equality purposes; and
- Employment for Travellers and Roma.

#### Provision and Supports for Children with Special Educational Needs

The policy of the Department of Education and Skills (DES) is to ensure that all children with special educational needs can be provided with an education appropriate to their needs. Where possible, provision is made for the inclusive education of children with special educational needs. DES policy is that children with special educational needs should be included where possible and appropriate in mainstream placements with additional supports provided. In circumstances where children with special educational need require more specialised interventions, special school or special class places are provided for.

Legislative provision for inclusive education is set out in Section 2 of the Education for Persons with Special Educational Needs (EPSEN) Act 2004 which requires that:

*“A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with:*

- *The best interests of the child as determined in accordance with any assessment carried out*

*under this Act.*

- *The effective provision of education for children with whom the child is to be educated.”*

In general, educational provision for children with special needs is made:

- In integrated settings in mainstream classes.
- In special classes attached to ordinary schools.
- In special schools;

The nature and level of the educational response is based on the professionally-assessed needs of each individual child. The DES's policy is to achieve as much integration as possible and also to take account of the views of the parents. Where placement in an integrated setting is considered to be the appropriate response, provision will normally take the form of additional special education teaching support or special needs assistant support, or both, depending on the level of need involved.

While the DES' policy is to ensure the maximum possible integration of children with special needs into ordinary mainstream schools, students who have been assessed as having special educational needs have access to a range of special support services. The services range from special schools dedicated to particular disability groups, through special classes/units attached to ordinary schools, to placement on an integrated basis in ordinary schools with special back-up supports.

Children with more severe levels of disability may require placement in a special school or special class attached to a mainstream primary school. Each such facility is dedicated to a particular disability group and each operates at a specially reduced pupil teacher ratio. Pupils attending these facilities attract special rates of capitation funding and are entitled to avail of the special school transport service and the school bus escort service.



## Financial Provision

Very significant levels of financial provision are made to ensure that all children with special educational needs can be provided with an education appropriate to their needs. DES currently spends approximately €1.78 Billion or 19% of its total educational budget annually on making additional provision for children with special educational needs. The main supports this funding provides for are:

- Provision for up to 15,000 Special Needs Assistant (SNA) posts in primary, post primary and special schools. The SNA scheme provides mainstream Primary, Post Primary schools and Special Schools with additional adult support staff to assist children with special educational needs who also have additional and significant care needs from a disability.
- Over 13,300 special education teacher posts in mainstream primary and post primary who support the mainstream class teacher by providing additional teaching support for pupils with special educational needs in schools.
- 125 special schools providing specialist education for approximately 7500 pupils annually with over 1,400 teachers, and over 1,300 special classes in mainstream schools.
- An assistive technology scheme to provide for assistive technology supports and equipment for children with special educational needs.
- Special school transport arrangements for children who need additional transport provision or additional transport assistance such as bus escorts.
- Teacher training and continuing professional development in the area of special education.
- Enhanced capitation levels for special schools and special classes.
- Modification of school buildings to assist with access and new build provisions to ensure inclusive settings in newly built schools.
- The National Council for Special Education (NCSE) including a new Regional Support Service within the NCSE to support the inclusion of children with special educational needs in schools.

- A Home Tuition scheme to provide for the education of children with special educational needs who are awaiting school placement and an extended school year scheme.
- Special Arrangements for State Examinations – reasonable accommodations and supports are made available to support children with special educational needs to participate in state exams.
- Aided Fund for Students with Disabilities at 3<sup>rd</sup> level – supports provided for students to access third level education in colleges.
- Vocational Training for people with disabilities and Adult Education – once off projects for disability in education.

### Childcare facilities – Síolta

Síolta<sup>5</sup> is designed to define, assess and support the improvement of quality across all aspects of practice in early childhood care and education (ECCE) settings where children aged from birth to six years of age are present. Since December 2008, the Early Years Education Policy Unit, in the Department of Education and Skills (DES), has been responsible for the implementation of Síolta. The National Síolta Aistear Initiative was established in 2016 and is led by DES, in partnership with the National Council for Curriculum and Assessment (NCCA), the Department for Children and Youth Affairs (DCYA) and the Early Years Specialist service. The National Síolta Co-ordinator in DES works with quality mentors to support the use of the Síolta framework and its wider implementation.

To support quality provision for children in ECCE scheme, DES has developed two national practice frameworks that apply in all settings where children aged 0-6 are present. Aistear is the national curriculum framework for children aged 0-6 and Síolta is the national quality framework. DES supports the implementation and dissemination of the frameworks. Funding was secured by DCYA in

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<sup>5</sup> Síolta - the National Quality Framework for Early Childhood Education

Budget 2016 for the National Síolta Aistear initiative (NSAI) which co-ordinates the implementation of both frameworks throughout the sector under the management of two national co-ordinators. Under NSAI, specially trained Síolta-Aistear mentors based in the city and county childcare committees (CCC) and the national voluntary childcare organisations support early years practitioners in their practice.

In 2017 and 2018, the model for delivery of the Síolta and Aistear support was reviewed by DES and a new model for delivery was agreed with DCYA in August 2018. A national Síolta Aistear implementation office is to be placed in the Early Years Specialist Service in POBAL<sup>6</sup> (Better Start). A new nationally approved Aistear Continuing professional development (CPD) Programme was developed by DES. Better Start and the NCCA will be rolled out by Better Start from January 2019. Awareness raising activities for the two frameworks will continue to be delivered by the city and county childcare committees with CCC (City and County Childcare) plans to be agreed by the National Síolta & Aistear Implementation (NSAI) office. The initiative as a whole is overseen by a national steering group.

### Visiting Teacher Service

DES operates a Visiting Teacher Service for deaf or hard-of-hearing children and children with visual impairments. The DES provides funding for visiting teachers for children who are deaf/hard of hearing or blind/visually impaired. As of the 20 March 2017, the management of visiting teachers transferred from the DES to the National Council for Special Education (NCSE).

Visiting teachers are qualified teachers with particular skills and knowledge of the development and education of children with varying degrees of hearing loss and/or visual impairment. They offer longitudinal support to children, their families and schools from the time of referral through to

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<sup>6</sup> Pobal works on behalf of Government, with communities and local agencies, to support social inclusion and local and community development.

the end of post-primary education.

Each visiting teacher (VT) is responsible for a particular region and is allocated a case load of students. The VT supports children/young people, parents, guardians, teachers and other professionals involved with the child. The frequency and nature of support takes into account a range of factors based on individual needs. The work of the VT involves liaising with other professionals and agencies such as audiological scientists, ophthalmology services, speech and language therapists, low vision specialists, psychologists, early intervention teams, school staff, and parents.

### Visits to the Home

The VT interacts directly with babies and younger children, to support their development. Support is usually provided in the home in the presence of the parents and visits take place by mutual agreement.

The VT may:

- provide information and advice to parents about their child's hearing or visual impairment
- reinforce and model good communication and language support for children with hearing loss through everyday activities, interaction and play
- inform parents about the range of communication options available, including spoken and sign language
- work on stimulating vision and provide support in the development of pre-braille skills and mobility for children with visual impairment
- discuss and demonstrate the management of amplification devices, low vision aids and assistive technologies
- help parents to monitor and celebrate their child's progress
- provide information on the range of education options available to assist parents in choosing a pre-school or school for their child as the child approaches the relevant age

- make recommendations to the preschool or school regarding assistive technologies that may be required when the child is enrolled, and
- facilitate contact with other parents of children who are deaf/hard of hearing or blind/visually impaired so that parents can share experiences and information and can provide mutual support.

### Visits to the Primary School

At primary school level, the support provided by the VT may include:

- direct teaching particularly in the areas of language and communication
- modelling teaching approaches for mainstream and special education teachers contributing to the child's school support plan in cooperation with parents and school staffs
- assessing and recording the child's progress in attainment of targets
- empowering mainstream staff to deliver the curriculum by advising them of the potential educational and social impact of hearing loss or visual impairment on a child's development
- making recommendations and advising teachers on the use of assistive technologies, amplification equipment, low vision aids
- advising on the acoustics (in the case of deafness) and safe environment (in case of visual impairment) in the classroom, and
- liaising with other professionals and agencies who provide services for children with hearing loss or visual impairment.

### Visits to the Post-Primary School

In advance of transition to post-primary school, the VT works with the parents and schools to assist with the transition process. In addition to the type of support provided at primary school level, the VT at post-primary level:

- assists with the child's transition from primary to post-primary

- makes recommendations regarding reasonable accommodations provided by the State Examinations Commission , and support schools' application for such accommodations, where appropriate and
- prepares a transition report which the student may provide to disability officers in third level education, further education and training agencies, or potential employers.

#### The number of children concerned

The services of the Visiting Teachers are currently provided to 3,552 children, of which 1,284 are provided by the Visiting Teacher for Visually Impaired and 2,268 by the Visiting Teacher for Hearing Impaired.

#### Family counselling services

Families must be able to consult appropriate social services, particularly when they are in difficulty. Tusla, the Child and Family Agency administer funding to support the provision of family counselling services. Prior to the establishment of Tusla on the 1 January, 2014, responsibility for the administration of this funding fell under the remit of the then Family Support Agency.

Tusla provides funding to voluntary organisations offering the following types of counselling/psychotherapy and support:

- Marriage and Relationship Counselling;
- Child Counselling;
- Rainbows peer support programme for children;
- Bereavement Counselling and Support on the deaths of a family member.

Many funded counselling services were originally established by local enterprises with a vision for a

new type of service to respond to emerging counselling needs in their area. Most of these services are community-based, and have evolved from a volunteer-led model to a service provided by professional counsellors and psychotherapists on a “low or no-cost” basis. These organisations provide face-to-face counselling delivered by professional counsellors/psychotherapists, many of whom provide their services on a voluntary basis.

Tusla issued funding of €6.2m to 315 counselling services throughout Ireland in 2017. In 2018 all counselling services funded by Tusla signed a Service Level Agreement (SLA) which introduced comprehensive governance standards. The SLA also includes a provision to ensure accessibility of these services to all family types.

Counselling services are widely recognised as very important components of service delivery within local communities throughout Ireland. These services are funded by Tusla through a network of community based counselling services and Family Resource Centres around the country. Many counselling services also provide much needed support to local Child and Family Services.

#### Participation of associations representing families

To ensure that families’ views are catered for when family policies are framed, the authorities must consult associations representing families. The Department of Justice and Equality engages with and consults with non-governmental associations, civil society organisations and other interested parties on an ongoing basis in relation to the development of policy on family law. The DCYA hosts a biannual Early Years Forum to consult and formulate policies pertaining to the early year’s education with relevant stakeholders, including a number representing parents, such as the National Parents Council (NPC) and One Family, a charity advocating on behalf of single parent families.

DCYA funds the NPC to have an early year's coordinator. The NPC early years coordinator enables the NPC to draw on parents' views to inform policy development in the DCYA, e.g. through participation in policy working groups, such as the working group on development of standards for school-age childcare.

DCYA has also hosted open policy debates relating to its forthcoming ten year strategy on babies, young children and their families, which have included a range of stakeholders representing parents. Finally, a number of consultative working groups have been established as part of the development of the Affordable Childcare Scheme, which includes numerous focus groups with parents utilising childcare supports under the current system. This builds upon a national public consultation conducted at the outset of development of the scheme, which attracted more than 4,000 responses.

### Legal Protection of Families

The Rights and obligations of Souses:

- Maintenance

Under Irish law, issues arising from disagreements about the provision of maintenance for spouses or dependent children, or failure by persons with maintenance responsibilities for children to provide proper maintenance are determined by the courts in cases where the persons involved cannot reach agreement, whether informally or through mediation. Relevant legislation in this area includes the Guardianship of Infants Act 1964, the Family Law (Maintenance of Spouses and Children) Act 1976, the Family Law Act 1995, the Family Law (Divorce) Act 1996 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

- Custody and access

Where parents separate or divorce, they can decide between themselves on custody arrangements for their children. If they cannot agree, they can try to work out a custody agreement through mediation. If they still cannot agree on custody arrangements they must apply to the courts to decide on the matter.



Section 11 of the Guardianship of Infants Act 1964 provides that either parent of a child, whether or not he or she is also a guardian of the child, may apply to court for a direction regarding the custody of a child or the right of access to the child. A court may also make an order under section 11 when granting a judicial separation or divorce. The 1964 Act was modernised extensively with a wide range of amendments to that Act made, in relation to guardianship, custody and access by the Children and Family Relationships Act 2015.

The law places an emphasis on recognising the rights of the child to the society of both his and her parents. Section 11D of the 1964 Act obliges the court in proceedings under section 11 to consider whether the child's best interests would be served by maintaining personal relations and direct contact with each of his or her parents on a regular basis. Section 31 of the 1964 Act sets out a wide range of factors that the court is required to take into account when determining the best interests of the child. These factors include the benefit to the child of having a meaningful relationship with each of his or her parents.

Section 25 of the 1964 Act also requires the court, as it thinks appropriate and practicable, to take into account the child's wishes in custody and access matters, having regard to the age and understanding of the child. Section 12A of the 1964 Act (inserted by section 58 of the Children and Family Relationships Act 2015) provides that in making any order under the Act, the court may impose such conditions as it considers necessary in the best interests of the child.

### Separation agreements

If a married couple can agree the terms on which they will live separately, they may enter into a separation agreement which is a legally binding contract setting out each party's rights and obligations to the other. Where a separation agreement includes provisions relating to maintenance, other

payments or property, either or both spouses may apply to court for an order making the relevant provisions of the agreement a rule of court. The court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of both spouses and the dependent children (if any) of the family. In divorce proceedings, the court is required to have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.

Civil partners may enter into separation agreements. Where a separation agreement includes provisions relating to maintenance, other payments or property, either or both civil partners may apply to court for an order making the relevant provisions of the agreement a rule of court. The court may make such an order if it is satisfied that to do so would adequately protect the interests of the civil partners. In proceedings for the dissolution of a civil partnership, the court is required to have regard to the terms of any separation agreement entered into by the civil partners that is still in force.

#### Judicial separation, divorce and dissolution of civil partnerships

When a married couple who wish to separate cannot agree the terms by which they will live separately, an application to court for a decree of judicial separation can be made by either party. A person cannot apply for a judicial separation if there is already in force a separation agreement which has been made an order of court. A decree of judicial separation confirms that the couple is no longer obliged to live together as a married couple. A decree of judicial separation does not confer the right to remarry. The Judicial Separation and Family Law Reform Act 1989 and the Family Law Act 1995 made provision for judicial separation.

Article 41.3.2 of the Constitution provides that a court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that;

- i. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
- ii. there is no reasonable prospect of a reconciliation between the spouses,
- iii. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iv. any further conditions prescribed by law are complied with.

The Family Law (Divorce) Act 1996 provides for the exercise by the courts of the jurisdiction conferred by the Constitution to grant decrees of divorce.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides for dissolution of civil partnerships.

In granting a decree of judicial separation, divorce or dissolution, a court has the power to make a wide variety of orders. These include orders relating to custody of and access to children, maintenance and lump sum payments, ownership of property and assets, pension rights and succession rights. When considering what orders to make in each particular case, a court will consider all of the circumstances of the family.

Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides a redress scheme for opposite-sex cohabiting couples who are not married and for same-sex cohabiting couples who are not registered in a civil partnership. The Act provides that a financially dependent cohabitant may apply to the courts for redress by way of orders such as maintenance, property

adjustment, pension adjustment and related orders, or for provision to be made from the estate of a deceased cohabitant. The aim is to provide protection for a financially dependent member of the couple if a long-term cohabiting relationship ends either through death or separation. The Act allows cohabitants to enter into a cohabitants' agreement to provide for financial matters during the relationship or when the relationship ends.

#### Best interests of children in family law proceedings

Article 42A.4 of the Constitution of Ireland requires that provision be made by law that in the resolution of all proceedings concerning the guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration. It also requires that provision be made by law for securing, as far as practicable, that in all such proceedings in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

The Children and Family Relationships Act 2015 contains new provisions regarding the best interests of children in family law proceedings which have been in operation since 18 January 2016. Section 3 of the Guardianship of Infants Act 1964, as amended by section 45 of the 2015 Act, provides that the best interests of the child shall be the paramount consideration for the court in any proceedings where guardianship, custody or upbringing of, or access to, a child is in question.

The best interests of a child are to be determined in accordance with the new Part V of the Guardianship of Infants Act 1964, inserted by section 63 of the Children and Family Relationships Act 2015. Part V, entitled "Best Interests of the Child", contains two important sections. Section 31 sets out an extensive list of factors and circumstances to be taken into account by a court when determining the best interests of a child. Section 32 provides the court with the option to seek a written expert

report on the welfare of the child. It also enables the court to appoint an expert to determine and convey the child's views to the court, so that the child's voice can be heard in the proceedings.

The Government of Ireland has undertaken a series of reforms of family law in recent years to respond to the situations of families across a range of situations.

A statutory civil partnership registration scheme for same-sex couples was introduced in January 2011 by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. A civil partnership confers on the couple a broad range of legal rights, obligations and protections. Civil partners have protections in relation to their shared home, obligations to maintain each other, and a large range of rights in relation to pensions, inheritance and common property. Civil partners are treated in the same way as spouses for immigration purposes and under the tax and social welfare codes.

The Act also provides a separate set of protections for opposite-sex and same-sex cohabitants. These protections include enabling a person who has cohabited with another person in an intimate and committed relationship for a substantial period to apply for maintenance from the other person, or for a pension or a property adjustment order, or, if the relationship ends on death, for provision from the estate of the deceased cohabitant.

Between 2011 and 2015, more than 2,000 same-sex couples registered civil partnerships. Many more who registered relationships in other jurisdictions became entitled to the same legal treatment as civil partners in Ireland. Following the introduction of marriage for same-sex couples in 2015, no new civil partnerships can be entered into.

Following a referendum on 22 May 2015, Article 41 of the Constitution of Ireland was amended to

provide that marriage may be contracted in accordance with law by two persons without distinction as to their sex. The referendum was passed by 62% of voters which meant that Ireland became the first sovereign state to extend marriage rights to same-sex couples by popular vote.

The constitutional amendment was given legislative effect by the Marriage Act 2015 which was enacted on 29 October 2015 and came into operation on 16 November 2015. The Act enables same-sex couples to marry on the same basis as opposite-sex couples. Existing civil partners may remain as civil partners and their rights as such are not affected. Foreign marriages between same sex couples are recognised under Irish law as marriages.

The Children and Family Relationships Act 2015 was enacted in April 2015. The Act is child-centred and addresses the rights of children to legal security, to the care of their parents and important adults in their lives, and to equality before the law. Step-parents, civil partners and cohabiting partners can now apply for custody, or to become guardians of a child. The Act also makes it easier for grandparents and other key people in a child's life to apply for access. These reforms in family law recognise the crucial role of parents and the need for a child to maintain meaningful relationships with both parents. Parts 2 and 3 of the Act provide for parentage through donor-assisted human reproduction (DAHR). The Act provides a new statutory framework for consideration of the best interests of the child in family law proceedings, and to allow the views of the child to be taken into account in such proceedings, whether directly or through a report by a child's views expert.

### Mediation services

A state-funded family mediation service was established on a pilot basis in 1986 and placed on a statutory footing by the Family Support Agency Act 2001. Since November 2011 the family mediation service has been provided by the Legal Aid Board. The Civil Law (Miscellaneous Provisions) Act

2011 amended the Civil Legal Aid Act 1995 to provide that one of the functions of the Legal Aid Board is to provide family mediation services. Family mediation offered by the Legal Aid Board is free of charge and available to all on a first-come first-served basis. It is provided through 16 mediation offices located across Ireland. Court-based mediation is offered in certain locations.

In 2017, the service provided 10,196 mediation sessions, countrywide. 2,279 of these were mediation information sessions and there were 2,453 completed cases, with an average of 3.04 sessions per completed case. There were 1,175 written agreements.

Family mediation is also commercially available from the private sector.

### Domestic violence against women

“Cosc”, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence was established in 2007 as an executive office of the Department of Justice and Equality to co-ordinate response of the Government to domestic, sexual and gender-based violence. The Second National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021 was launched in January 2016 (the first national strategy concluded in 2014). This multi-annual strategy contains a range of actions to be implemented across Government aimed at combatting domestic and sexual violence. Key actions include a six year national awareness raising campaign – “What would you do?” -to change societal behaviours and activate bystanders to prevent domestic and sexual violence. The bulk of the strategy’s actions are focused on improving services to victims and holding perpetrators to account.

The Gardaí<sup>7</sup> has established National Protective Services as well as the establishment of a nationwide network of Victim Services Offices with dedicated staff in each of the 28 police divisions. The Bureau is tasked with improving services to victims, improving the investigation of sexual and domestic violence incidents, and identifying and managing risk. It is also intended to establish Divisional Protective Services Units (DPSUs) in each policing division, mirroring the responsibilities held by the National Protected Services Bureau, by end of 2019.

The Domestic Violence Act 2018 was enacted in May 2018. This landmark legislation contains a number of significant enhancements to the protections available to victims of domestic violence including a new criminal offence of coercive control recognising psychological abuse in an intimate relationship. The Act also contains a number of provisions that are necessary for Ireland to ratify the Istanbul Convention, which is a commitment in the Programme for Government.

In addition, the Criminal Justice (Victims of Crime) Act 2017 The Act was passed into law in November 2017. The Act introduces, for the first time, statutory rights for all victims of crime, including victims of domestic violence. The legislation gives all victims of crime an entitlement to information about the system and their case, and supports, and special measures during investigation and court proceedings if necessary.

## Equal treatment of foreign nationals and stateless persons with regard to family benefits

- The habitual residence condition

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<sup>7</sup> Gardaí - An Garda Síochána- the Irish Police force.



Since the eighth report was submitted by Ireland, the Department of Employment Affairs and Social Protection have continued to examine the way in which the habitual residence conditions (HRC) is applied and make improvements where necessary. The HRC is applied to all applicants for the revenant payments, regardless of their nationality.

During late 2015 the Department completed work on a quality assurance project with the Social Welfare Appeals Office relating to HRC decisions. Following this, a bulletin was issued to all staff and this included case studies from the project in order to disseminate the lessons learned. Comprehensive guidance on assessing HRC is also provided to staff. The Department's Staff Development Unit provides two forms of training for staff on HRC: a general e-learning module for all staff and more detailed instructor-led training for HRC decision makers.

Decision makers can escalate a complex query concerning HRC to their line managers or if necessary refer such cases to the Decisions Advisory Office (a specialist unit in the Department which provides guidance to decision makers on complex case) or Staff Development Unit for further consideration.

As HRC is one of the most complex decisions in Social Welfare Legislation and case law continues to evolve as a result of Irish and EU Court rulings, the department continues to update the guidelines as necessary.

The most recent guideline which was updated in July 2017 and issued to all decisions makers may be found [here](#). This guideline advises all decision makers the manner in which HRC is to be applied in terms of both fairness and consistency.

- The total number of applications for child benefit between 01-01-2011 and 31-12-2017 was 246, 809.

- The total number of applications refused on the basis of the applicant not satisfying habitual residence conditions was 5,195.
- Of this figure 5,096 were non – Irish citizens.
- So, overall 2.1% of applicants fail to qualify on the basis of the HRC; the majority of these are not Irish citizens.

## **Article 17**

### **The right of children and young persons to 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;**

### **The Committee’s conclusion.**

The Committee concludes that the situation in Ireland is not in conformity with Article 17§1 of the Charter on the grounds that:

- young prisoners are not always separated from adults;
- the age of criminal responsibility is too low for some offences;
- corporal punishment of children is not explicitly prohibited in the home.

## **Ireland's update on this Article.**

### **Birth registration – Naming of the Father – Status of the child**

Registration of the Fathers names on Birth Certificate is now compulsory. The Civil Registration (Amendment) Act 2014 provides that in the case of the registration of a non-marital birth, a father is required to provide his information and the mother is required, other than in exceptional circumstances, to supply the father's details. In the case that the mother wishes to register the child with no father's particulars (the exceptional circumstances referred to above) she may do so by signing a declaration that:

- she does not know the father's identity, or
- she does not know the father's whereabouts, or
- she believes that providing the information would not be in the best interests of the safety of the child.

In the case of single registration (where the mother attends alone to register the birth and names a person as the father) the registrar shall contact the person named as the father to inform them of the declaration and request them to contact him/her to complete the registration. There is an appeal mechanism built into the legislation whereby a mother may appeal the decision of a registrar to a superintendent registrar and then to the courts.

Another amendment in the 2014 Act deals in a similar way with birth re-registrations. These amendments have yet to be commenced.

### **Children in Public Care**

The Child Care Act 1991 (as amended) continues to form the statutory framework within which child welfare and protection services are provided in Ireland. The legislative framework thus remains substantially the same as it was in the 2011 report. One development of note has been the creation by statute in 2014 of Tusla, the Child and Family Agency, which has responsibility for child protection, family support and other functions formerly vested in the Health Service Executive.

#### Criteria for the restriction of custody or parental rights

The Irish Constitution (notably Article 41) sets out very strong protection for parental and family rights and this is reflected in Irish child care law.

Child protection in Ireland is underpinned by the Child Care Act 1991 (as amended) and the Child and Family Agency Act 2013. Under these Acts, Tusla, the Child and Family Agency, has a statutory duty to promote the welfare of children who are not receiving adequate care and protection. Where possible, Tusla, in line with international best practice, aims to work cooperatively with parents to support children.

Where a child is not receiving the protection and care they need, Tusla is obliged to take them into the care of the State. In some cases a child may be taken into the care of the State through a voluntary care agreement with the parent(s). Under a voluntary care agreement, the child's parent(s) or guardian(s) is entitled to have an input into the care that their child receives and they have the power to withdraw their consent if they are not satisfied with the care their child is receiving.

In other circumstances Tusla may apply to the courts for one of a number of orders provided for under the Child Care Act 1991. The main types of orders include:

- Emergency Care Order

- Interim Care Order
- A Care Order (under section 18 of the Act)
- Supervision Order
- Special Care Order. Special Care is an exceptional intervention restricting the liberty of the child and involves the detention of a child for his/her own welfare and protection in a Special Care Unit for a short-term period of stabilisation. The child is detained as a result of a High Court Order, and not on the basis of any criminal activity.

Where there is not a pronounced threat to a child's safety or wellbeing, a less intrusive intervention, such as a Supervision Order, may be more appropriate. Under section 19 of the Child Care Act 1991, a Court may grant a Supervision Order where there are reasonable grounds for believing that a child has been or is being abused or neglected or is otherwise at risk. This order authorises Tusla to visit the child regularly in their home. The Court may also give further direction as to the care of the child, including requiring the parents of the child to bring the child for medical or psychiatric examination or treatment.

#### Extent of restrictions of custody or parental rights

Where a care order is in force, parental rights over the child are exercised by Tusla. This is not the case under voluntary care, an emergency care order, or an interim care order. In the latter instances parental rights continue to be exercised by the child's parent(s), albeit that the child is now in the care of Tusla. As a result, parental consent is required for children in care in these circumstances to undergo medical procedures, apply for a passport, etc. The requirement for parental consent in these instances can only be waived by judicial decision.

### Procedural safeguards to ensure that children are removed from their families only in exceptional circumstances

Children can only be removed from their families with parental consent or through judicial decision under the Child Care Act 1991 (as amended). To make a care order under the Act a Justice of the District Court must be satisfied that child has been or is being assaulted, ill-treated, neglected or sexually abused, that the child's health, development or welfare has been or is being avoidably impaired or neglected, or that the child's health, development or welfare is likely to be avoidably impaired or neglected; and that the child requires care or protection which he is otherwise unlikely to receive. For an interim care order the Justice must find reasonable cause to believe that these circumstances are taking or have taken place. In the case of the more strictly time-limited emergency care order the Justice must find reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child.

### The possibility to lodge an appeal against a decision

Orders restricting parental rights can only be made, extended, reviewed or modified by judicial decision in the District Court. These proceedings provide an opportunity for parents to appeal to the Court to void such an order or, where parental rights are restricted under such an order, to issue directions with regard to parental and family access. Parents who are not satisfied with the arrangements made by Tusla for parental access may apply to the Court to make (or vary) an order directing such terms of access and the Court will decide on what it considers appropriate.

### Young offenders

From 1 January 2012, the Irish Youth Justice Service (IYJS) operates as an executive office located in the Department of Children and Youth Affairs (DCYA). It has responsibility for leading and driving

reform in the area of youth justice and its objective is to improve delivery of youth justice services and reduce youth offending.

This challenge is met by focusing on diversion, rehabilitation, and the greater use of community-based interventions and the promotion of initiatives to deal with young people who offend. Providing a safe and secure environment for detained children and supporting their early re-integration back into the community is also a key function. It is staffed by officials from DCYA and the Department of Justice and Equality. Responsibility for the Children Act, 2001 is shared between the Minister for Children and Youth Affairs and the Minister for Justice and Equality.

- The Minister for Children and Youth Affairs is responsible for the Oberstown Children Detention Campus Located in Lusk, Co. Dublin which provides detention places to the Courts for girls and boys up to the age of 18 years ordered to be remanded or committed on criminal charges. The Minister for Children and Youth Affairs is also responsible for the child care aspects of the Children Act 2001.
- The Minister for Justice and Equality is responsible for youth crime policy and law, including crime prevention/reduction/detection, criminal proceedings and diversion<sup>8</sup> and community sanctions (including community projects). The Minister also retains responsibility for dealings with Gardaí and the Probation Service.
- The IYJS is focussed on implementing the “Tackling Youth Crime; Youth Justice Action Plan 2014-2018.” The Mission Statement of the Youth Justice Action Plan 2014 - 2018 is to create a safer society by working in partnership to reduce youth offending through appropriate interventions and linkages to services. The emphasis of this Action Plan is on changing behaviour. This can be brought about through the implementation of evidence-informed

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<sup>8</sup> The aim of the Garda Juvenile Diversion Programme is to prevent young offenders in Ireland from entering into the full criminal justice system.



targeted interventions to achieve better outcomes for young people are in difficulties, or who are at risk of getting into difficulties with the enforcement agencies.

The Plan sits within the National Policy Framework, Better Outcomes Brighter Futures, for children and young people. Implementation of the Action Plan is overseen by a multi-agency steering group, chaired by the Irish Youth Justice Service.

### Garda Youth Diversion Programme

All criminal incidents involving a child under 18 must be considered for Diversion in the first instance. A prosecution will only be pursued if a case is not suitable for Diversion – usually in the case of more serious or repeated offending.

The Garda Youth Diversion Programme is further supported by the operation of Garda Youth Diversion Projects (GYDPS). These are locally based community projects which engage primarily with young people who may have committed an offence, but also include some young people who may be at risk of becoming involved in criminal or anti-social behaviour.

The intended expansion of the GYDP programme referred to in the Committee's report was seriously affected by the financial crisis from 2008 onwards. There has been a modest expansion of the programme and at present there are 105 GYDPs operating nationally which provide services to approximately 4,000 participants.

### Funding

In 2017, the Department of Justice and Equality provided €13,290,518 in grant funding to support the delivery of the nationwide GYDP network. A further €1,372,178 in grant funding was provided to

support a range of other activities, including project work relating to Local Drugs Task Forces, pilot mentoring initiatives and measures to support training and best practices. From 2015, GYDPs have been co-funded under the Programme for Employability Inclusion and Learning of the European Social Fund (ESF) 2014-2020. The GYDP approach is the subject of ongoing development with a view to extending the existing network of projects so that these services are available to every child who might require them.

The Children's Act, 2001 provides for a range of community sanctions that allow for the supervision of children who are convicted on criminal offences with enhanced provisions.

The Probation Service currently supervises over 220 children nationally. The Service has developed effective partnerships with families and key agencies to reduce re-offending. The Probation Young Person Probation team works in collaboration with a range of Community Organisations who provide mentoring, day centres, training and activities, and the opportunity for the children to complete Community Service.

It is the responsibility of the Courts to make orders under the Children's Act. The preferred orders include:-

- Probation Orders, with conditions;
- Detention and Supervision Orders,
- Mentoring Orders; and
- Community Service Orders.

#### Alternative sanctions within the Criminal Justice system

Since October 2016, the Department of Children and Youth Affairs has been operating a pilot "Bail

Supervision Scheme.” This Scheme operates from the Dublin Children’s Court, and was established as a pilot for 2 years with the option of a 3rd year. The Scheme provides a court with the option to grant bail to a child, rather than detaining the child, during remand proceedings. The option offered to the court would be to release the child on bail with conditions set by the court. The scheme is undergoing an evaluation during the pilot project which is due to be completed in October 2018.

As of August 2018, 40 referrals relating to young people and their families have been supported by the Scheme. There are presently 7 active cases held by the Scheme team with 30 cases having been closed. There are a further 3 cases currently being assessed for suitability. The results show increasing compliance with bail conditions; reduction in breaches of bail or new criminal activity, and a return to education for participants has been impressive. By maintaining this number of young people in the community on the Bail Supervision Scheme there is a reduction in the need for detention places. This approach is also in keeping with the principle that the detention of a child should only be imposed as a last resort. Additionally, the pilot scheme has recently been expanded, on a case by case basis, to include children from outside the Dublin catchment area in 2018. The Scheme has been extended until the end of 2019.

#### Young prisoners and their separation from adult prisoners

With effect from 31 March, 2017, The Courts commit all 17 year old offenders to the Children’s Detention Centre at Oberstown, rather than to St. Patrick’s Institution. This has enabled St. Patrick’s Institution to be closed with effect from 7 April, 2017 and all references to it are now removed from the statute books. This is in fulfilment of a long-standing Government policy commitment.

From 1 May 2012, all 16 year old boys referred to detention by the courts are referred to the Children Detention Schools. From 31 March, 2015, all newly remanded 17 year old males were referred to the

Children Detention Schools. From 30 March, 2017 all newly sentenced 17 year old males are referred to the Oberstown Children Detention Campus. From 30 March, 2017, no children are newly remanded or sentenced to prison, as all children are now referred to the Oberstown Campus.

St. Patrick's Institution has now closed and the Oberstown Children Detention Campus is currently authorised to detain all categories of detained children with the exception of boys aged 17 years who are currently serving a sentence and accommodated in Wheatfield Place of Detention. The Government commitment to end the practice of detaining children in adult prison facilities was fully met in 2016, on foot of the addition of a sufficient number of new care staff under a recruitment Programme which is ongoing at present.

The provision of education and access to appropriate training programmes is a core element of each person's journey through care.

#### Children Act 2015

Oberstown had comprised three children detention schools, each of which was separately managed, namely, Oberstown Boys School, Oberstown Girls School and Trinity House School. It was proposed that the three schools should be amalgamated and a unitary management structure put in place to form the Oberstown Children Detention Campus. In order to achieve this and also to ground the overall project in legislation, amending legislation was drafted and proposed to the Oireachtas. On 1 June 2016 following the passage of the Children (Amendment) Act 2015, the Minister ordered the amalgamation of the three schools.

Oberstown Children Detention Campus provides accommodation for all children under age 18 remanded for a period of pre-trial detention, or committed to a period of detention, by a court of law. A

comprehensive care model of, Care, Education, Health and Wellbeing, Offending Behaviour and Preparation for returning to families and community (CEHOP) is in operation at Oberstown with the aim of achieving the best outcomes for young people in detention. CEHOP was developed by Oberstown and is a bespoke model for the delivery of care programmes in line with section 158 of the Children Act 2001 which sets out the principal objectives of children detention schools. The principal objective is to provide appropriate educational, training and other programmes and facilities for children referred to them by a court.

Oberstown is staffed predominantly with residential Social Care Workers who work in each unit directly with the children. In addition, children also have access to the Assessment, Consultation and Therapy Service (ACTS) which is national service that provides clinical services to children in Oberstown. The role of the service is to determine, based on the results of the mental health screening in conjunction with other available reports, if young people need more specialist assessment or intervention from specialists within the clinical team. Provision of an in-reach psychiatric service is provided through the Health Service Executive (HSE). Currently there is a psychiatrist and psychiatric nurse working as part of the multidisciplinary team which includes the ACTS and Oberstown staff.

The provision of education in Oberstown is the responsibility of the Department of Education and Skills and this is provided through the Dublin and Dún Laoghaire Education Training Board. The curriculum includes both primary and secondary level courses, remedial literacy and numeracy, based on an Individual Educational Plan (IEP) as well as a wide range of vocational awards and Quality and Qualifications Ireland (QQI) accredited awards through the Oberstown Education Faculty.

### Statutory right to Education

The Education system in Ireland operates on an inclusive basis in keeping with our obligations under the Constitution, national and international law. Legislation relevant to the education sector such as the

Education Act 1998, the Education Welfare Act, 2000 and the Education for Persons with Special Education Needs Act, 2004 clearly set out these principles of equality.

Under Section 7 of the Education Act, 1998, the Minister For Education and Skills has a function to ensure that within available resources that a level and quality of education appropriate to his/her needs is made available to each child attending a Centre for Education in a Children Detention Campus

Under Section 159A of the Children Act 2001, an Education and Training Board (ETB) in whose functional area a Child's detention school is situated shall provide for the education of those children. As mentioned above, the ETB responsible for providing education in Oberstown is the Dublin and Dún Laoghaire ETB.

#### The age of criminal responsibility

Ireland's age of criminal responsibility has not changed since the Committee's last report. For most offences the age of responsibility remains at 12 years of age. While 10 and 11 year-olds can be held responsible for some serious offences, no prosecutions of any child under the age of 14 years may take place without the consent of the Director of Public Prosecutions. The Department of Justice and Equality is currently engaged in a review of the Children Act 2001 and this process will include consideration of the provisions in relation to the age of criminal responsibility.

#### Corporal punishment of children

In response to the Committee's observations on Article 17 of the Charter regarding corporal punishment in Ireland, the State would like to confirm that the common law defence of reasonable chastisement has since been abolished. The abolition was achieved by way of a Government amendment to the Children First Bill, and the subsequent enactment of the Children First Act 2015.

The Children First Act came into force on 19 November 2015 and the commencement order for Section 28, which inserted the amendment, came into effect on 11 December 2015. The abolition of the common law defence of reasonable chastisement resulted in the defence no longer being available to parents and all persons acting in loco parentis.

Given the very broad threshold for application of the law on assault that exists under Section 2 of the Non-Fatal Offences Against the Person Act 1997 and, the existence of a specific provision for prosecution of cruelty to children under Section 246 of the Child Care Act 1991, it was considered that the termination of the common law defence would constitute a sufficient change to ensure that children have the necessary and full protection of the law in regard to corporal punishment in all settings, including the home.

#### **Article 17.2**

*“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 provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”*

#### **The Committee’s conclusion.**

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

#### **Ireland’s update on this Article.**

#### **Travellers and Roma children in the Irish Education system**

In accordance with our policy of inclusion, education policy in relation to Traveller education is that traveller children attend mainstream schools, with previously segregated provision now funded as part of the mainstream system. A number of Traveller-specific supports remain in the system to assist with the transition to the mainstream system of pupils, previously provided for in segregated provision. These comprise of:

- 141 alleviation resource teacher posts for schools with significant numbers of Travellers at a current cost of €8.46 m.
- Additional pupil capitation for Travellers at a rate of €70 per pupil for Primary, and €201 per pupil for Post Primary at a current cost of €1.11m.

DEIS<sup>9</sup> Plan 2017 includes specific actions in relation to Traveller and Roma education to promote improvements in school attendance and completion in order to improve educational outcomes and overall life chances for Traveller and Roma children and young people. The actions in relation to Travellers and Roma reflect the need for improved collaboration between the Department of Education and Skills (DES), Tusla and Traveller representative groups to achieve these objectives. At present, separate achievement data is not collected for Traveller and Roma pupils so it is not possible to establish the impact of the additional resources currently provided for them. This is an issue to be addressed in the context of the DEIS Plan 2017 Monitoring and Evaluation Framework to provide an evidence-base for future interventions.

DES has also introduced a number of specific initiatives to encourage the participation of under-represented groups, including Travellers and Roma, in higher education such as the establishment of a €5.7m “Higher Education Access Fund” to support students from under-represented groups, including Travellers, to access higher education.

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<sup>9</sup> DEIS - Delivering Equality of Opportunity in Schools



In June 2017 the new *National Traveller and Roma Inclusion Strategy 2017- 2021* (NTRIS) was published by the Minister for Justice and Equality following extensive consultation with Government Departments, agencies and relevant stakeholders. The DES was a key participant in the development of this strategy and is participating in the Steering Group which was established to oversee the implementation of the actions contained therein.

The strategy takes a whole of Government approach to improving the lives of Travellers and Roma in Ireland in practical and tangible ways. Departments have worked together to identify actions that can be taken to bring about a real improvement in the quality of life for Travellers and Roma. It also aims to improve public service engagement with Traveller and Roma communities in Ireland. There are 149 actions in the strategy covering the themes of Cultural Identity, Education, Employment and Traveller Economy, Children and Youth, Health, Gender Equality, Anti-discrimination and Equality, Public Services, Accommodation and Traveller and Roma Communities.

Key education-related actions proposed in the NTRIS include

- Traveller and Roma should be supported in key areas including education, employment and economic development
- The development of education resources on Traveller and Roma culture and history for use in primary, post primary and adult education settings;
- Improved access, participation and outcomes for Travellers and Roma in education to achieve outcomes that are equal to those for the majority population.
- SOLAS and ETBs to consider the needs of disadvantaged groups including Travellers and Roma in the planning of FET provision;
- Strengthening of cooperation between formal education and non-formal learning sectors to

address the high rate of early school-leaving in the Traveller and Roma communities.

- A positive culture of respect and protection for the cultural identity of Travellers and Roma across the education system.

#### Access to Further and Higher Education.

The current system of access to further education and training and Third level can be a barrier for some categories of migrants. At present non-Irish nationals in the following categories are entitled to free access to Further Education courses, Post Leaving Certificate (PLC), Vocational Training Opportunities Scheme (VTOS), Youthreach, the Back to Education Initiative (BTEI), Adult Literacy and Community Education) on the same basis as Irish nationals:

- EU Nationals; persons who have refugee status in Ireland;
- persons in the State as the spouse of an EU national, where the EU national has moved from one country to another within the EU to work;
- persons (including their spouse and children) who have been granted leave to remain in the State on humanitarian grounds;
- persons who have permission to remain in the State as the parents of a child born in Ireland;
- persons in the protection process who have been granted permission to work in Ireland.

The Department also oversees a pilot scheme to support school leavers who are in the protection process in accessing further and higher education.

#### Integration of Pupils from other Denominations

The Education (Admission to Schools) Act 2018 was passed by the Oireachtas on 4 July 2018, and was signed into law by the President on the 18 July 2018. The Act, when commenced, will create a more parent-friendly, equitable and consistent approach to how school admissions policy should operate for

all primary and post-primary schools.

The Act will, when commenced, bring into operation a number of important measures, such as to:

- ensure that where a school is not oversubscribed (approximately 80% of schools) as it must admit all students applying;
- ban fees relating to admissions in non-fee charging schools;
- require all schools to publish their admissions policies, which will include details of their arrangements for pupils who decline to participate in religious instruction ;
- require all schools to consult with and inform parents where changes are being made to their admissions policies;
- replace section 29 of the Education Act 1998 (Appeals) with a new section to align the legislation with actual practice and procedures as they have developed over the years and to increase the efficiency of the processes involved;

The Act provides new powers for the National Council for Special Education (NCSE) and Tusla, the Child and Family Agency, to designate a school place for those children who cannot get a school place.

The Act also contains a provision banning waiting lists and this measure will ensure that children who move to a new area are not disadvantaged when applying for admission to a school.

The Education (Admission to Schools) Act 2018 contains a provision to remove, in the case of recognised denominational primary schools, the existing provision in the Equal Status Act 2000, which permits such schools to use religion as a selection criterion in school admissions. Under this provision, there is a protection to ensure that a child of a minority faith, can still access a school of their faith.

As a result of when this provision is commenced, non-denominational families will find that for well

over 95% of primary schools which accounts for all schools (except minority religion primary schools who admit children of minority religions) will be treated the same as all other families in primary school admissions.

#### Forum on Patronage and Pluralism in the Primary Sector

The lack of diversity of patronage in the primary sector is being addressed through the implementation of the recommendations of the Forum on Patronage and Pluralism, which was established in 2011 in line with a commitment in the Programme for Government.

The terms of reference of the Forum gave it the task of developing recommendations on steps to be taken to ensure that the education system at primary level could provide a sufficiently diverse number and range of primary schools to cater for children of all religions and none. The Forum held public sessions and consulted with various stakeholders to discuss the key issues arising. The Advisory Group to the Forum published its report in 2012.

The Report's recommendations covered the following four broad areas:

- planning towards future patronage arrangements and having a more diverse range of patronage types for new schools in areas of rising population;
- dealing with the practicalities of achieving divesting of patronage where there is a stable population and a demand for diversity of school types;
- dealing with Irish language provision;
- the creation of more inclusive schools, where divesting to another patron is not a feasible option.

Work on implementation is being advanced by the Department of Education and Skills in consultation

with relevant stakeholders. A number of different steps have been taken to implement many of the recommendations contained in the Action Plan, in particular in relation to :

- Reconfiguration of School Patronage and Planning towards Future Patronage Arrangements;
- Enrolment policies;
- Issues Underpinning Diversity in all Schools; and
- Education about Religion and Beliefs and Ethics.

#### Issues Underpinning Diversity in all Schools

The Forum recognised that outside urban areas, there is unlikely to be sufficient population to warrant the opening of more than one school in a given geographic area. Therefore, the existing school has to cater for the full range of traditions, religions and beliefs in the community.

A public consultation on inclusiveness in primary schools was held in 2013 and sought views on issues such as:

- how best to accommodate students of various belief systems and traditions;
- having school policies on the conduct of religious celebrations and the display of religious symbols.

The submissions received, together with the Forum Report findings and recommendations in this area, and the findings of consultations with other stakeholders contributed towards a paper entitled "Forum on Patronage and Pluralism in the Primary Sector: Progress to Date and Future Directions" which was published in 2014. The paper outlined good practice and options for promoting diversity in schools, in particular in relation to:

- The right to opt out of religion classes;
- Scheduling of Religion Classes and other Religious Activities;

- Options for Pupils in relation to Religious Ceremonies of the Ethos of the School;
- Celebration of Religious Festivals;
- Display of Religious Artefacts.

The paper was not prescriptive on how schools should address these issues but instead it encouraged school authorities to engage in consultation with stakeholders and to review their policies and practices on an ongoing basis to ensure that they remain suitable for the school population that they serve. It recognised that each school should arrive at solutions that suit its own particular context. It also noted that this is an evolving situation and that practices may evolve over time as circumstances change.

#### Patronage Divesting Process

On foot of the report of the Advisory Group, to the Forum on Patronage and Pluralism in the Primary Sector, surveys of parental preferences were undertaken in 43 areas of stable population in 2012 and 2013 to establish the level of parental demand for a wider choice in the patronage of primary schools within these areas.

Analysis of the parental preferences expressed in each area surveyed indicated that there was sufficient parental demand to support changes in school patronage in 28 areas. From 2013 to 2017, ten multi-denominational schools have opened under the patronage divesting process. In parallel with the Schools Reconfiguration for Diversity process below, work will continue on delivering multi-denominational schools in the remaining areas under the patronage divesting process.

#### Schools Reconfiguration for Diversity Process

The Programme for Government reflects the Government's objective of strengthening parental choice and further expanding diversity in our school system. The desire of parents for diversity in education is

being pursued primarily by increasing the number of non-denominational and multi-denominational schools with a view to reaching 400 by 2030. In this context and given the modest pace of progress with the Patronage Divestment process (see above), the Minister for Education & Skills announced on 30 January 2017 new plans aimed at providing more multi-denominational and non-denominational schools across the country, in line with the choices of families and school communities and the Programme for Government commitment in this area.

The new Schools Reconfiguration for Diversity process involves the ETBs in the initial phase, as the State's local education authorities, identifying areas where there is likely to be demand for greater diversity and working with their local City/County Childcare Committees to establish evidence of this demand among the cohort of pre-school parents. As part of this process, surveys of the parents of pre-school children commenced from 24 May 2018 in 16 areas across the country - one pilot has been identified by each of the 16 ETBs. The learning from this initial roll out will inform the further development of the survey process and associated documents prior to extending the process to additional areas in the remit of each ETB.

ETBs will analyse the survey results and determine the extent of demand for multi- denominational or non-denominational education in each area. This will form the basis of discussions with the majority patron (the Catholic Bishop in most cases) concerning the transfer of patronage of an existing school to meet that demand. Each ETB will then draw up a comprehensive report on the position in relation to each of the 16 pilot areas for submission to the Department of Education and Skills, which will subsequently publish the reports. It is planned that, following the publication of the reports, the Schools Reconfiguration for Diversity process will move into the *Implementation Phase*, involving existing patrons consulting with their local school communities on accommodating the demand for diversity by transferring patronage of an existing school to a new multi- or non-denominational patron.

The new process supporting transfers of schools to multi-denominational patrons in response to the wishes of local families is based around principles of transparency and cooperation. Therefore, there will be a very substantial level of consultation of local communities in the process, both with the ETBs in the initial phase to establish evidence of demand by consulting pre-school parents and subsequently through the requirement for the existing patron to consult with local community and school interests in proposing to transfer patronage of an existing school to an alternative patron body. In that process, proposals from all prospective multi-denominational patrons that wish to be considered will be taken into account.

In the meantime, the "early movers" provision encourages school communities which have already decided to seek a transfer of patronage (independent of the survey process) to request their existing patron to apply to the Minister for Education and Skills for a direct transfer of patronage under section 8 of the Education Act. Two Mile School in Killarney, Co. Kerry opened in September, 2017 under the "early-movers" provision of the process as a multi-denominational Community National School following a successful transfer of Patronage from the Bishop of Kerry to Kerry ETB.

#### New school required for demographic reasons

Arrangements were introduced in 2011 whereby when it is decided that a new school is required to meet demographic needs in an area, the Department of Education and Skills runs a separate patronage process to decide who will operate the school.

It is open to all patrons and prospective patrons to apply for patronage of the new school under this process and the level of parental preference for each patron, along with parental preference for either Irish-medium or English-medium provision, are key to decisions in relation to the outcome of the



process. Between September 2011 and September 2017, 25 new primary schools (all multi-denominational) and 28 new post-primary schools (23 multi-denominational & 5 denominational) have been established under the new patronage process. These being established outcomes are reflective of parental preferences in the areas where the schools are multi-denominational. Patronage has also been awarded in relation to 6 new schools (1 primary and 5 post-primary) scheduled to open in September 2018.

### Anti-bullying Procedures

Anti-bullying Procedures for all primary and post primary schools were published at the beginning of the 2013/14 school year. The procedures are designed to give direction and guidance to school authorities and school personnel in preventing and tackling school-based bullying behavior amongst its pupils. All Boards of Management are required to adopt and implement an anti-bullying policy that fully complies with the requirements of these procedures. A template anti-bullying policy which must be used by all schools for this purpose is included in the procedures.

The procedures acknowledge that while bullying can happen to any pupil, it is known that some may be more vulnerable to or at risk of experiencing bullying including Traveler and Roma children.

The procedures include a number of specific measures in respect of identity-based bullying including a requirement on all schools to have in place education and prevention strategies that explicitly deal with identity-based bullying. The education and prevention strategies that the school will implement must be documented in the anti-bullying policy and must explicitly deal with the issue of identity-based bullying.

The procedures for schools is to outline key principles of best practice for both preventing and tackling bullying and require all schools to commit to these principles in their anti-bullying policy. In particular,

they emphasise that a cornerstone in the prevention of bullying is a positive school culture and climate. In that regard, the procedures set out the need for schools to encourage and strengthen open dialogue between all school staff and pupils and to ensure that they provide appropriate opportunities for pupils to raise their concerns in an environment that is comfortable for the pupil.

The anti-bullying procedures also include specific requirements in relation to the use of prevention and education strategies and the consistent investigation, follow up and recording of bullying behavior. The procedures for schools put in place important new oversight arrangements at school level that involve the school principal reporting regularly to the Board of Management and a requirement for the Board to undertake an annual review of the schools anti-bullying policy and its implementation. Confirmation that the annual review has been completed must be provided to the Parents' Association and published on the school website.

There is no requirement on schools to report incidents of bullying behavior to the Department. However, the Department's Inspectorate in the course of their whole school inspection work gathers information about how schools deal with bullying in a number of ways through:

- Review of relevant school document action, including the school's Code of Behavior and Anti-Bullying policy;
- Meetings with parents and student representatives at which there is an opportunity for parents and students to raise issues where relevant; and
- The inclusion of parent and student Questionnaires on items relating to bullying.

Students and parents are also asked to respond to questions about how the school deals with bullying and discipline in the school and whether or not the school provides a safe environment for children. Where responses indicate that students and/or parents do not believe that bullying is dealt with

effectively, Inspectors raise this issue with school management who has ultimate responsibility for Anti-Bullying policies and procedures.

The Department's Inspectorate, as part of its whole school evaluation inspections of schools, specifically examines schools compliance with the anti-bullying procedures including the actions taken to create a positive school culture and to prevent and tackle bullying. Where the Inspectorate encounter non-compliance with the anti-bullying procedures relevant findings are included in whole-school evaluation reports published on The Department of Education and Skills website.

### Cost of Education

In Ireland all immigrant children, including children in direct provision can access pre-school, first and second level education in a manner similar to Irish nationals. Back to school supports that are available to eligible families come under the remit of the Department for Employment Affairs and Social Protection.

These supports include the Back to School Clothing and Footwear Allowance (BSCFA) scheme, which provides a once-off payment to eligible families to assist with the costs of school clothing and footwear when children start school each autumn. In 2017, 151,000 families received a payment under the scheme, including some 530 families residing in direct provision accommodation. The Government has provided €49.5 million for the scheme in 2018 which is a means tested scheme.

In addition, in an attempt to reduce back to school costs for those living in direct provision accommodation centres, return to school packs have been provided in respect of some 1,100 school going children under the Fund for European Aid to the most Deprived (FEAD) EU Programme which is managed by the Department of Employment Affairs and Social Protection. The pack comprises of

basic stationery items relevant to the child's educational level requirements.

The Action Plan for Education, which aims to make the Irish education and training service the best in Europe, commits to strengthen the focus on reducing school costs for parents. In 2017 the Minister for Education and Skills introduced measures that now require school authorities to adopt principles of cost-effective practice which will put a greater emphasis on reducing the cost of school uniforms and increase the financial support for book rental schemes, in order to reduce/eliminate school book costs for parents .

Funding is provided by the Department of Education and Skills for the provision of a book grant to all recognised primary and post primary schools within the Free Education Scheme, with DEIS schools receiving an enhanced rate. The Department provided approximately €16.5m in total to first and second level schools by way of book grants in 2017.

Primary and Post Primary schools received funding of €15.7m over three years 2014 - 2016 in support of the establishment of book rental schemes. DEIS schools received €150 per child and non-DEIS schools received €100 per child in seed capital to establish book rental schemes. The most recent figures available indicate that 65% of primary schools operate a book rental scheme and at post primary level 68% of schools reported operating a book rental scheme.

The Minister for Education and Skills has also introduced a requirement on every school to consult with parents and students regularly, and publish and operate a Parent and Student Charter. Some of the issues which schools will be required to deal with under the charter include:

- Consult students and parents regularly in relation to school costs and work to avoid costs acting as a barrier
- Publish a school financial statement which would include information on how any voluntary

contributions are used

- Schools are encouraged to develop uniform policies in consultation with parents

A Bill to provide for a Parent and Student Charter is in the process of being drafted in conjunction with the Attorney General's Office and it will be published as soon as possible.

### Roma children

An ethnic identifier is collected on a voluntary basis for Primary pupils in Irish schools. Based on the data provided the analysis shows that the total population of Roma children in Irish primary schools stood at 1,415 in 2017, and of these some 1.2% of pupils drop -out of the system on average each year (meaning their reason for leaving is unknown). As the total population of Roma children in Ireland is unknown (census 2016 data on ethnicity is incomplete) therefore the total enrolment rates cannot be calculated. Information on the ethnic group of post-primary pupils is unavailable.

## **Article 19**

### **The right of migrant workers and their families to protection and assistance**

#### **Article 19.1**

*“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: 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;”*

#### **The Committee’s conclusion.**

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 19§1 of the Charter.

#### **Ireland’s update on this Article.**

##### **The training of law enforcement officials who are first in contact with migrant workers**

In establishing the Garda Racial and Intercultural Office (now titled the Garda National Diversity and Integration Unit (GNDIU)) in 2001, An Garda Síochána demonstrated its capacity to quickly anticipate and respond to the need for appropriate policing initiatives to meet the needs of migrant workers from a myriad of cultures and religions so as to minimise the potential for crime, and foster good community relations in a multi-ethnic environment.

GNDIU ensures the provision of a quality service to the members of minority communities (migrant

workers or otherwise), and acts as necessary to meet emerging needs of groups and/or individuals.

This is central to integration and an anti-discrimination strategy, which seeks to:-

- Identify local issues and problems
- Assists in informing migrant workers/minorities about current Garda strategy
- Acts as an aid to promote public support and cooperation
- Develops into a two-way process in that Garda members become au-fait with customs, protocols and practices pertaining to migrant workers
- Creates an environment of trust with minority communities in assisting in cross-working intercultural relations building with An Garda Síochána through national and local initiatives encouraging safe integration innovatory practices.

### Ethnic Liaison Officers (ELOs)

The Garda Commissioner approved the appointment of Ethnic Liaison Officers (ELO) in 2002 (HQ Directives: 24/02 and 42/12, refers), for the purpose of directly engaging with members of ethnic minority communities, to build trust and confidence in order to facilitate ease of access to Garda services. This trust and confidence building endeavours to facilitate the ease of access between An Garda Síochána and all sections of Ireland's minority communities. There are currently 247 ELOs appointed throughout the State. These officers are trained and supported by GNDIU.

### Current Training

The GNDIU advanced anti-discrimination practitioner modular training course is tailor-made for roll-out to front-line Garda Ethnic Liaison/LGBT<sup>10</sup> Officers, Community Garda members and first responders; in conjunction with various external expert representatives. It currently consists of two full days training and is designed to facilitate ELOs, community Gardaí and first responders to understand

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<sup>10</sup> LGBT - lesbian, gay, bisexual, and transgender.

and respond appropriately to the sensitivities pertaining to migrant workers under a range of diversity strands, namely: age, disability, gender, sexual orientation, and ethnicity; religion and Traveller/Roma community.

The aim of the training is to ensure that attendees are able to carry out their policing roles effectively when coming into initial front-line contact with migrant workers in ways that promote awareness around diversity, human rights protection, and to reduce the propensity for any forms of unlawful discrimination and/or hate crime.

The modular training promotes developmental skills and practices to enable effective negotiation of intricacies and sensitivities associated with protocols pertaining to the various strands of diversity outlined above, thereby building confidence in anti-discriminatory Garda service delivery by members at local level. The sessions are practical, job related and interactive thereby providing attendees with an opportunity to reflect on attitudes and prejudices and how to ensure that these do not impact negatively on their work.

The Human Trafficking Investigation & Coordination Unit, Garda National Protective Services Bureau run a three day training course “Tackling Trafficking in Human Beings: Prevention, Protection Prosecution & Partnership which includes delivery of training in respect of interactions with migrant workers. This training course is ordinarily run on a bi-annual basis and members attached to the Garda National Immigration Bureau attend same.

### Future Training

It is recognised that Community Police are specialists and therefore all assigned Gardaí must be appropriately trained. The Garda National Community Policing Unit is responsible for the development



of bespoke training programmes for all assigned Community Gardaí. This training will be designed to meet the skills required to deliver an effective community policing service and it is envisaged that the training will be delivered to all probationer Gardaí prior to concluding their training in the Garda College. The training programme will be informed by best international policing practice and academic research. It is hoped to accredit the training program with a national university in time.

#### Office for the Promotion of Migrant Integration

The Office for the Promotion of Migrant Integration (OPMI), is the focal point for the Government's commitment on anti-racism as a key aspect of integration, diversity management and broader national social policy. It provides funding to a number of local authorities, community and voluntary organisations to support local programmes that educate the public on issues such as immigration, integration and anti-racism.

In 2017 the OPMI granted €9.7 million to 40 national and 131 regional projects to support integration over the next three to four years with both EU and Irish Government funding. Projects are aimed at promoting integration, combating racism and xenophobia, and increasing mutual understanding between migrants and their host communities. So far in 2018 a further €500,000 has been distributed across 115 projects nationwide under this year's round of the Communities Integration Fund. Government Departments and agencies can also finance integration activities from their own resources.

Ireland is currently operating under a comprehensive Migrant Integration Strategy, which was launched in February of 2017. This is a Whole-of-Government Strategy. At its heart is the vision that migrants are facilitated to play a full role in Irish society, that integration is a core principle of Irish life, and that Irish society and institutions work together to promote integration. The Strategy will be implemented over four years through a series of initiatives across all branches of Government. Focus areas include

access to citizenship and public services; employment and education; political participation and the promotion of intercultural awareness. Government Departments, Agencies, Cities and local communities all have their part to play in delivering on the commitments in the Strategy. Our National Strategy is also the main vehicle to promote intercultural awareness and to combat misleading propaganda on migration.

The Office for the Promotion of Migrant Integration also redeveloped its website in 2018 to be more user friendly and to focus more on raising public awareness about government integration policy, the funding available for integration projects and highlight integration and anti-racism activities taking place across the State. This website provides migrants with access to information on a wide range of relevant topics including developments in the area of integration/diversity management, practical information for new migrants and advice on dealing with racist incidents or racial discrimination.

#### Legal Aid Board.

Please see the responses outlined under Article 16 and Article 19.7

#### **Article 19.2**

*“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: 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;”*

#### **The Committee’s conclusion.**

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in

conformity with Article 19§2 of the Charter.

### **Ireland's update on this Article.**

The Department of Justice and Equality does not provide facilities for a migrant worker or their family to travel to Ireland. Where the Department of Business, Enterprise and Innovation (DBEI) grants an employment permit to a non-EEA national, the Department of Justice and Equality processes the associated visa application. Ireland's visa system is different to that applied in the other EU Member States in that it does not give an automatic right of entry to the State. It allows the person to travel to the frontiers of the State where their right of entry will be determined by an immigration official. The Minister for Justice and Equality under his Executive powers issues a number of immigration permissions to non-EEA nationals, some of which include a permission to [access](#) the labour market (for example Stamp 4). In general, these permissions are applied for from outside the State.

If entry to the State is permitted on the basis of one of these permissions, the person must register with the Irish Naturalisation and Immigration Service before the date added to the immigration Stamp in the person's passport on arrival. This Department of Justice and Equality does not further facilitate or make any travel arrangements for persons granted an immigration permission to travel to the State.

On the international protection side, neither the relocation nor resettlement strands of the Irish Refugee Protection Programme apply to migrant workers. A person who spontaneously arrives at the frontiers of the State to apply for international protection is permitted to [access](#) the labour market after waiting 9 months or more on a first instance recommendation on their protection application.

### **Health Services.**

Entitlement to health services in Ireland is primarily based on residency and means, rather than on

payment of tax or pay-related social insurance (PRSI). Any person, regardless of nationality, who is accepted by the Health Service Executive (HSE) as being ordinarily resident in Ireland, regardless of employment status, has eligibility to health services. A person is deemed ordinarily resident if they are living in Ireland and have lived here, or intend to live here, for at least one year.

The Irish Public Health System provides for two categories of eligibility for persons ordinarily resident in the country, i.e. full eligibility (medical cardholders) and limited eligibility (all others). Full eligibility is determined mainly by reference to income limits. Determination of an individual's eligibility status is the responsibility of the HSE. Eligibility for a GP Visit Card was introduced as a graduated benefit for persons, so that people on lower incomes, particularly parents of young children, who do not qualify for a medical card, would not be deterred on cost grounds from visiting their GP. Children under the age of 6 years, those over 70 years of age and those in receipt of Carers Benefit or Carers Allowance have automatic eligibility for a GP visit card. Persons who do not qualify for a GP visit card pay for GP service as a private patient.

Persons with full eligibility (medical card) are entitled to a range of services including general practitioner services, prescribed drugs and medicines, all in-patient public hospital services in public wards including consultant services, all out-patient public hospital services including consultant services, dental, ophthalmic and aural services and appliances and a maternity and infant care service. Other services such as allied health professional services may be available to medical card holders. With the exception of prescribed drugs and medicines, which are subject to a €2.00 charge per prescribed item (maximum of €20 month per month per individual/family), these services are provided free of charge.

Persons with limited eligibility are eligible for in-patient and outpatient public hospital services

including consultant services, subject to certain charges. The public hospital statutory in-patient charge is €80 in respect of each day during which a person is maintained, up to a maximum payment of €800 in any twelve consecutive months. There is also a charge of €100 for attendance at Accident & Emergency departments unless, inter alia, the person has a referral letter from their General Practitioner.

### European Employment Services

The European Employment Services (EURES) of the Department of Employment Affairs and Social Protection is responsible for coordination and implementation of EURES services in Ireland. The purpose of EURES is to provide information, advice and international recruitment/placement (job-matching) services for the benefit of workers and employers interested in the European labour market.

EURES Ireland has 13 specially trained EURES Advisers. The main areas of their responsibility are placement, advice and counselling to jobseekers who wish to find work or return to Ireland or find employment in Europe. EURES Ireland also plays an active role in addressing labour market related issues of Non-Irish jobseekers in Ireland, helping them with integration and in the recent years also providing advice and support to those who intend to return home. The DIALOG platform is based on co-operation between a variety Government and Non-Governmental Organisation providing services to non-Irish workers in Ireland and EURES departments from five European countries. A number of DIALOG workshops, seminars and other initiatives for migrants in Ireland are being held around the country every year.

A number of recruitment projects have been established in the past years to address skills shortages and surpluses in Ireland. EURES Ireland has been working closely with a number of European and Irish based companies to help satisfy their specific recruitment needs which included ICT, language skills,

nursing/medical. In many instances specially tailored European Recruitment projects have been established for various sectors including Education (teachers' recruitment) or Health sector (nurses' recruitment). As a result of the Nurses Recruitment Project, initiated in 2015, over 340 job applications from Europe were received and 69 nurses have started employment with Irish employers throughout the country. The project was mainly assisting private sector employers however due to its success it is now assisting a number of Irish public hospitals with their vacancies. Nurses have been recruited mainly from Italy and Spain. EURES Ireland also has been organising sector specific online events on behalf of Irish and European Employers as well as National/European Jobs & Advice Fairs in various locations of Ireland. In 2017/ 2018 EURES Ireland hosted 3 National/European Jobs & Advice Fairs and 5 sector specific Online Job Days (ICT, Customer/ Business Support, Hospitality, Bilingual Jobs) with 40-100 employers and thousands of jobseekers in attendance at each event.

EURES Ireland coordinates and implements European Job Mobility schemes i.e. 'Experience Your Europe' (EYE) programme with the following three options: 'Your First EURES Job' (YFEJ) mobility scheme (aimed at people aged 18-35), 'Reactivate' (aimed at people over 35) and the Co-Sponsored Placement Programme under the Irish Youth Guarantee. Under the EYE Programme EURES offers financial support to cover some of the re-location costs and/or living costs incurred by jobseekers undertaking a job or work experience abroad. From January 2017 until September 2018 EURES Ireland granted 46 interview allowances and 202 relocation allowances to jobseekers moving for work to another country. 'Co-Sponsored Placement Programme' offers Irish jobseekers an opportunity to upskill and gain experience through a work placement in another European country. Under 'Co-Sponsored Placement Programme' unemployed jobseekers aged 18- 30 can take up a work placement in Europe for up to 12 months. During this time the jobseeker is Co-Sponsored by EURES Ireland and the Employer offering the work placement. On completion of the placement the jobseeker will be upskilled and meet the requirements to take up employment in Ireland. Participation on these

programmes greatly enhances the development and skills of those taking part and assists them in realising their full potential.

### Employment Permits

The employment permits regime in Ireland is governed by the Employment Permits [Acts](#) 2003 to 2014 and by the Employment Permits (Regulations) as amended. The following changes have been made in respect of the employment permits process in Ireland since 2010:

- From 2013, non-EEA nationals who are in the State legally, may, depending on the type of immigration permission they hold, apply for an employment permit while present in the State.
- In 2014, the Employment Permits Act 2006 was amended by the Employment Permits (Amendment) Act 2014. The 2014 Act introduced nine categories of employment permits to enable non-EEA nationals to enter employment legally in the State.

The nine employment categories are:

- A Critical Skills Employment Permit, designed to address critical shortages of skills. In order to attract individuals who possess such skills, this permit type allows immediate family reunification and a fast track to residency. In addition, a number of the criteria normally applying to issue of an employment permit will be waived for this category;
- A Spouses, Civil Partners and Dependents Employment Permit, to enable the family members of holders of Critical Skills Employment Permits and Researchers to work in the State;
- A General Employment Permit, to issue in cases where a contract for a designated highly skilled occupation has been offered for a duration of less than two years, or for other occupations, apart from those included on a list of ineligible jobs, where a number of other criteria have been met;
- An Intra Company Transfer Employment Permit, to allow for the temporary transfer of

employees between affiliated foreign and Irish companies;

- A Reactivation Employment Permit, to allow for the return of individuals to employment who had fallen out of the employment permits system through no fault of their own;
- A Contract for Services Employment Permit, to allow the employee of a foreign company that has entered a contract with an Irish company to work in the State;
- An Exchange Agreement Employment Permit, to allow individuals to whom a designated exchange agreement applies to work in the State;
- A Sports and Cultural Employment Permit, to allow individuals with sporting or cultural expertise to work in the State;
- An Internship Employment Permit, to allow students of foreign institutions in disciplines designated by Regulations as critical skills in short supply, to work in the State, where that is a key component of the course which they are following.

The Act also adjusts in a number of ways the criteria for issue of an employment permit, with a view to balancing the skills needs of enterprise with the stability of the labour market. The key adjustments are:

- Retaining and extending the requirement for a labour market needs test, with certain grounds for waiver including an exemption for applications for Critical Skills Employment Permits;
- Retaining and extending the requirement where at least 50% of an enterprise's employees must be Irish or EEA nationals where an employment permit is to be issued, while making provisions for this requirement to be waived for enterprise start-ups for a designated period.

In August 2016, Trusted Partner Regulations were commenced, which provide for the registration of employers who meet certain criteria as Trusted Partners for the grant of employment permits, for whom aspects of the application process are streamlined.



An online application system for employment permits was introduced in 2016, for the convenience of applicants.

### **Article 19.3**

*“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: to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;”*

### **The Committee’s conclusion.**

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 19§3 of the Charter.

### **Ireland’s update on this Article.**

No significant new developments since our last report except to note the information in Article 19.2 and the following;

### **The co-operation between social services of emigration and immigration States.**

An additional permission to reside in the State was added to Section 246(6) of the Social Welfare (Consolidated) Act, 2005. This was for persons who had been granted temporary protection in accordance with the International Protection Act. The Act provides for EU laws (Directive 2001/55/EC) for immediate and temporary protection to be granted in the event of a mass influx of displaced persons unable to return to their country of origin. The section provides for a displaced

person to be given permission to enter and remain in the State by the Minister for Justice and Equality for temporary protection as part of a group of persons. In accordance with the International Protection Act, while this permission is in force, such persons would have a right to [access](#) social welfare on the same basis as an Irish citizen.

Amendments were made through Section 18 of the Social Welfare Act 2016.

### Habitual Residence Condition – recent legislative changes.

#### 2014 amendments

In 2014 amendments were made to the Section of the Social Welfare Act 2005 dealing with the application of the Habitual Residence Condition (HRC).(S.246).These amendments were made;

1. Largely to permit a review by a deciding officer to determine at any time the continuing entitlement of a claimant to be regarded as satisfying the HRC .The existing legislation had only permitted a determination to be made at the time of the claim. The purpose was to prevent payments being made to claimants that were no longer satisfied the Habitually Residence Condition.
2. Existing legislation had included a rebuttable presumption that HRC could not be fulfilled if the claimant was resident less than 2 years. This was in breach of the 5 conditions as derived from EU legislation - Article 11 of Regulation 987/2009, and ECJ Jurisprudence – the *Swaddling* case (C-90/97) and the *Knoch* case (C-102/91) amongst others.

This section was accordingly repealed.

These legislative changes were made by Section 11 of the Social Welfare and Pensions Act 2014.

#### 2016 amendments

In 2016 some technical amendments were made to Section 246 of the Social Welfare Consolidation Act 2005. These were required to enable other legislation to take effect in Social Welfare legislation. They did not change the existing policy in this area. They continued the policy principle that a person who does not have a right to reside in the State cannot be habitually resident in the State for social welfare purposes, including that applicants for refugee status would be regarded as being Habitually Resident only from the date of the grant of such status. They provided for certain legislative provisions of the European Communities (Free Movement of Persons) Regulations 2015 and the International Protection Act 2015 to be appropriately referenced in section 246.

The payment to international protection applicants residing in accommodation centres, the Daily Expenses Allowance (formerly known as the Direct Provision Allowance), is not a payment for migrant workers. International protection applicants are permitted to reside in the State for the duration of the examination of their protection application and as mentioned previously can only [access](#) the labour market if they have not received a first instance recommendation on their application within 9 months of lodging the application. Where an applicant does receive permission to [access](#) the labour market, their Daily Expenses Allowance can be reduced or withdrawn (depending on the level of income) where they have been working for a reasonable period of time (12 weeks).

### EU migrant workers

Under certain circumstances, EU migrant workers can qualify for family benefits without satisfying the HRC.

<http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#sect3>

A migrant worker may also be eligible for specific payments under the Supplementary Welfare Allowance scheme (such as an Exceptional Needs Payment or Urgent Needs Payment) in certain

circumstances without satisfying the HRC.

#### **Article 19.4**

*“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: 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;”*

#### **The Committee’s conclusion.**

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

#### **Ireland’s update on this Article.**

The Workplace Relations Commission (WRC) is an independent, statutory body which was established on 1<sup>st</sup> October 2015 under the Workplace Relations Act 2015 (No. 16 of 2015). The WRC is an office of the Department of Business, Enterprise and Innovation (DEBI).

The Workplace Relations Commission (WRC) has responsibility for:

- promoting the improvement of workplace relations, and maintenance of good workplace relations,
- promoting and encouraging compliance with relevant enactments,
- providing guidance in relation to compliance with codes of practice approved

under Section 20 of the Workplace Relations Act 2015,

- conducting reviews of, and monitor developments as respects, workplace relations,
- conducting or commissioning research into matters pertaining to workplace relations,
- providing advice, information and the findings of research conducted by the Commission to joint labour committees and joint industrial councils,
- advising and apprising the Minister in relation to the application of, and compliance with, relevant enactments, and
- providing information to members of the public in relation to employment.

The WRC's core services include the inspection of employment rights compliance, the provision of information, the processing of employment agency and protection of young persons (employment) licences and the provision of mediation, conciliation, facilitation and advisory services.

Additional information is available in the Inspection and Enforcement Chapter on Page 28 in the Annual Report of the WRC for 2017, which is at this link:

<https://dbe.gov.ie/en/Publications/Publication-files/WRC-Annual-Report-2017.pdf>

The Migrant Rights Centre Ireland

The Migrant Rights Centre Ireland (MRCI) <https://www.mrci.ie/> is a Government

sponsored body working to promote justice, empowerment and equality for migrants. The MRCI uses a community work approach with a focus on participation, leadership and empowerment. MRCI operates a Resource Centre and has a national remit. Current priorities include rights for undocumented migrants; identification and protection of victims of trafficking for forced labour; employment rights and protections for vulnerable workers in hidden or precarious sectors, including migrants in diplomatic households, au pairs, carers, domestic workers, and restaurant workers; ethnic profiling and [access](#) to education.

#### Office for the Promotion of Migrant Integration (OPMI)

The OPMI has a mandate to develop, lead and co-ordinate migrant integration policy across Government Departments, agencies and services. The functions include the promotion of the integration of legal immigrants into Irish society, the establishment of new structures for this purpose, the coordination of Ireland's international reporting requirements relating to racism and integration and overseeing the operation of the Irish Refugee Protection Programme established in 2015 as a humanitarian gesture to migrants fleeing conflict and provide assistance to the EU effort to manage mass migration events in Europe.

Ireland adopts a policy of mainstream service provision in the integration area while recognising the need for targeted initiatives to meet specific short-term needs. Overall responsibility for the promotion and coordination of integration measures for legally resident immigrants rests with the Office for the Promotion of Migrant Integration but, in general, the actual delivery of integration services is the responsibility of mainstream Government Departments and service providers.

### Integration policy

Integration policy in Ireland focuses on a number of different strategic themes as follows:

- A policy of mainstreaming service delivery for migrants
- Promoting interculturalism with emphasis on finding common ground and creating mutual respect
- The provision of core public services in a manner that serves all customers equally regardless of cultural identity
- A 'two-way process' bestowing both rights and responsibilities on migrants and the host society
- Mutual adaptation
- A 'whole-of-Government' approach
- The need to embed migrant integration within the wider social inclusion context through activities of sports clubs, unions, the media etc.

- Effective and equitable provision of services through the private sector (e.g. retail, wholesale, banking etc.)
- Local level integration measures
- Building capacity and encouraging self-determination among migrants

### Mainstreaming

A key pillar of integration in Ireland is the policy of achieving integration through mainstream service provision i.e. migrants access the same services as Irish people do. Mainstream services in turn have to adapt to the new cultural diversity of their client base to ensure they deliver equality of outcomes to all customers.

This approach emphasises effective and equitable provision of core services and sees the responsibility for planning, delivery and for making services more accessible to migrants as resting with mainstream Government Departments and Agencies.

Some of the ways in which Government Departments have made their services more accessible include through providing information for migrants, the translation of various documents into different languages<sup>11</sup>, providing interpretation and translation services and making services more interculturally

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<sup>11</sup> [https://www.workplacerelations.ie/en/Publications\\_Forms/#Other\\_Language\\_Publications](https://www.workplacerelations.ie/en/Publications_Forms/#Other_Language_Publications)



competent for migrant clients. In this regard the WRC provides information on employment rights in a range of languages including Hindi, Mandarin, Filipino, French and Polish.

### **The Migrant Integration Strategy- A Blueprint for the Future**

The Migrant Integration Strategy which was published on the 7th of February, 2017 sets out the Government's approach to the issue of migrant integration for the period from 2017 to 2020. It envisages a whole-of-Government approach involving actions by all Departments. It is targeted at all migrants, including refugees, who are legally residing in the State. It is also intended to encompass those who have become naturalised Irish citizens but who were born outside Ireland. The Strategy also embraces anti-racism measures and actions to aimed at combating discrimination as key elements of integration policy.

This policy of mainstreaming is complimented by other more targeted initiatives set out in the

Government's Migrant Integration Strategy - A Blueprint for the Future<sup>12</sup>.

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<sup>12</sup>[http://www.justice.ie/en/JELR/Migrant\\_Integration\\_Strategy\\_English.pdf/Files/Migrant\\_Integration\\_Strategy\\_English.pdf](http://www.justice.ie/en/JELR/Migrant_Integration_Strategy_English.pdf/Files/Migrant_Integration_Strategy_English.pdf)

## Access to housing

The qualification criteria for social housing support are set down in section 20 of the Housing (Miscellaneous Provisions) Act 2009 and in the Social Housing Assessment Regulations made in 2011 and 2016 under the 2009 Act (S.I. Nos 84 of 2011, 136 of 2011, 321 of 2011 & S.I. 288 of 2016) and are applied by all local authorities in assessing individual households for support. The application process commences with the submission by the household of a fully completed application form (prescribed in the Social Housing Assessment Regulations 2011, S.I. 84 of 2011). If the application is valid, it is then assessed. The first step involves an assessment of the qualification of the household for support based on four main eligibility criteria:

- Residency status;
- Income;
- Previous Rent Arrears; and
- Availability of Alternative Accommodation.

In relation to Residency Status, social housing applicants who are not Irish or UK nationals must meet additional criteria in order to be assessed for social housing support as set down in Department of Housing Circular 41/2012. EEA nationals must, generally speaking, be or have been, employed in the State for a minimum period of time (usually three months) in order to be assessed. Non-EEA nationals who have been granted refugee, programme refugee or subsidiary protection

status may be assessed for social housing support under exactly the same terms as Irish citizens. Asylum seekers are not eligible for social housing support.

In order for a local authority to assess a household for social housing support, the household concerned must be normally resident in the area or have a local connection to the area (in terms of past residence there, employment or education or relatives living in the area, etc.). However, a local authority may, at its discretion, assess a household that does not meet these particular criteria. Decisions on the eligibility of households for social housing support are a matter for the local authority concerned.

In relation to income a person is deemed eligible for social housing support if their income is lower than a set amount. This amount varies depending on location authority and can also be adjusted upwards to reflect an applicant household size and composition. Typically a person with a net income (i.e. income after taxes and various other deductions) of less than €30,000-35,000 per year can qualify for social housing. This is the same regardless of the nationality of the applicant.

Where a household is deemed to meet the eligibility criteria, only then is its housing need assessed under the criteria in Regulation 23 of the 2011 Regulations, having regard to its current accommodation. Households that meet the eligibility and need criteria and deemed to qualify for social housing support and are entered

onto the local authority's waiting list to be considered for the allocation of suitable tenancies in accordance with the authority's allocation scheme. The method and manner of allocations is a matter for each local authority concerned. However, the nationality of the household on the list is not a factor that is considered one way or the other by any local authority.

### Access to the labour market

An Action **strategy** to support Integrated Workplaces was a social partner initiative organised by representatives of Congress, IBEC, the Small Firms Association, the Construction Industry Federation, Chambers Ireland, the Office of the Minister for Integration and the Equality Authority. Funding for this strategy has been provided by the Office of the Minister for Integration and the Equality Authority.

A Strategy to Assist You: to manage a culturally diverse workplace, to contribute to and develop an integrated workplace.

### Membership of trade unions

In 2010/2011, Congress developed guidelines towards a **strategy** on integrating migrants and ethnic minorities into trade unions and ran a **challenge fund** for affiliate union initiatives in this area.

<https://www.ictu.ie/equality/race.html> Where migrants are legally employed in Ireland under a contract of employment they are treated the same as any other

employee under our employment rights legislation and are entitled to the full range of protections as all other employees.

Article 40 of the Irish Constitution guarantees the right to form associations and unions under Irish law, there is no requirement for an employer to recognise trade unions for the purpose of collective bargaining.

It has been the consistent policy of successive Irish Governments to promote collective bargaining through the laws of this country and through the development of an institutional framework supportive of a voluntary system of industrial relations that is premised upon freedom of contract and freedom of association. There is an extensive range of statutory provisions designed to back up the voluntary bargaining process.

The Industrial Relations (Amendment) Act 2015 which came into effect in August 2015 provides an improved framework in this area for employees' right to engage in collective bargaining. The 2015 Act provides a clear and balanced mechanism by which the fairness of the employment conditions of workers in their totality can be assessed where collective bargaining does not take place. The Act ensures that such workers, aided by a trade union, can advance claims about remuneration and conditions of employment and have these determined by the Labour Court based on comparisons with similar companies. It provides definitions of key terms as well as guidelines to help the Labour Court identify if internal bargaining bodies are genuinely independent of their employer, and policies and principles for the Labour Court to follow when assessing the comparability of the remuneration and conditions in dispute.

Arising from an earlier Government commitment to bring Irish law on employees' right to engage in collective bargaining into line with decisions of the European Court of Human Rights, the Industrial Relations (Amendment) Act was introduced in August 2015. In the lead up to this legislation, in-depth consultations with stakeholders, including employer and worker representatives, took place.

The introduction of the 2015 Act, combined with the enhanced Code of Practice on Victimisation, provide strong protections in the area of collective bargaining in this country and there are no plans to introduce further legislation in this area.

#### **Article 19.5**

*“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: 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;*

#### **The Committee’s conclusion.**

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 19§5 of the Charter.

#### **Ireland’s update on this Article.**

##### **Equal treatment of migrant workers with respect to employment taxes and contributions**

The position in Ireland is that there is no discrimination in the treatment of migrant workers when it comes to the imposition of income tax, USC (universal social contributions) and PRSI (pay related

social insurance) contributions. Income tax, USC and PRSI are levied on the emoluments from offices and employments in the State, and the reliefs associated with the levying of such income tax, USC and PRSI are granted, irrespective of the nationality or citizenship of the employee or officer holder concerned.

Since the Eighth report, administrative supports have been put in place to assist migrant workers comply with their tax obligations. Information forms and leaflets have been translated in to some of the most common languages used by migrant workers. Staff have also been recruited with the ability to engage in languages commonly used by migrant workers. Finally, a guidance document has recently been prepared specifically for asylum seekers and it outlines how they should register for tax when they start a job or become self-employed.

#### **Article 19.6**

*“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: to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;”*

#### **The Committee’s conclusion of non-conformity.**

The Committee concludes that the situation in Ireland is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that migrant workers receiving social benefits are not precluded from the right of family reunion.

#### **Ireland’s update on this Article**

## Family Reunion

The criteria for family reunification for third country nationals in Ireland varies depending upon the type of permission the migrant resides in the State under. Family reunification, where non-EEA/Swiss family members of a person resident in Ireland can apply to join them, broadly takes place under four categories: family reunification for recipients of international protection, family reunification for non-EEA/Swiss nationals, family reunification for Irish nationals, and family reunification for EEA/Swiss nationals. The criteria that needs to be met under a number of categories to qualify for family reunification is different across each category. Family reunification for non-EEA/Swiss family members seeking to join either an Irish national family member or a non-EEA/Swiss family member in Ireland is governed by the [Policy Document for non-EEA Family Reunification](#). This document does not govern family reunification for EEA/Swiss nationals (except Irish) living in Ireland, or recipients of international protection.

For the purposes of family reunification (except for EEA/Swiss nationals), the different categorisations of family applied are:

- a. Immediate Family
  - i. Nuclear family – spouse and children under the age of 18 (exceptions made for children over the age of 18 who are dependent on the care of the parent sponsor, directly or indirectly, due to a serious medical or psychological problem which makes independent life impossible);
  - ii. De facto partners (a de facto relationship is a cohabiting relationship akin to marriage duly attested)
- b. Parents
- c. Other family



Certain categories of non-EEA nationals resident in Ireland can apply for family reunification with their non-EEA family members. Critical Skills Employment Permit holders, investors, entrepreneurs, PhD students and researchers can apply for immediate family reunification, which means their families can travel to Ireland with them. Persons who are resident in Ireland as students, other than those pursuing a PhD, are generally not eligible to act as a sponsor. Non-Critical Skills Employment Permit holders, Stamp 4 holders and Ministers of Religion are eligible to apply for family reunification, but only after twelve months of legal residence in the State. Applications for family reunification by non-EEA nationals resident in Ireland will take into account, inter alia, the type of residence permit the non-EEA national applicant in Ireland has, the closeness of the familial relationship, the length and nature of their separation, and in some cases, their financial situation.

For non-EEA nationals resident in Ireland who fall into certain categories (researcher, PhD student, Critical Skills Permit holder), there is no defined minimum financial threshold, but a gross salary in excess of €30,000 minimum per annum is expected for immediate family. For elderly parents, non-EEA nationals who fall into this category are expected to earn in excess of €60,000 gross per annum for one parent, or €75,000 for two parents. For non-EEA nationals who fall outside of the above-mentioned categories (Stamp 4 holders, non-Critical Skills Permit holders, Ministers of Religion), the same financial thresholds apply, and gross income in each of the preceding two years must be in excess of the Working Family Payment limits. Social welfare payments are not reckonable as earnings for this purpose.

Figures on rejection of applications for family reunion:

- 2011 - 232
- 2012 - 367
- 2013 - 465
- 2014 - 116

- 2015 - 340
- 2016 - 374
- 2017 – 395

Migrants availing of public funds is not in and of itself a reason to reject an application.

As per the Policy Document for non-EEA Family Reunification, “It is not proposed that family reunification determinations should become purely financial assessment. It is a question of finding the correct balance between rights and responsibilities.”

#### Public Funds

For the purposes of family reunification, public funds refer to social welfare payments, including housing benefit.

As noted above, a migrant availing of public funds is not in and of itself a reason to reject a family reunification application. Family reunification applications are assessed in a holistic manner, and a number of different factors are taken into consideration, including the income of the family member in Ireland, and whether they avail of public funds. The fact that a migrant avails of public funds will be taken into consideration during the assessment period, but availing of public funds does not definitively preclude these migrants from family reunification. Various economic considerations are taken into account and made on balance.

As noted in the Policy Document for non-EEA Family Reunification: “All other things being equal however, a non-EEA resident of Ireland in active well paid employment will have a considerably greater opportunity of being joined by family members than a person who is subsisting on State

supports.” (page 28, 8.4)

Since the last reporting period, the Policy Document for non-EEA Family Reunification has been put in place to provide a guide for immigration officials making decisions on family reunification applications for Irish nationals and non-EEA/Swiss nationals seeking to bring their non-EEA/Swiss family members to live in Ireland.

#### **Article 19.7**

*“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: 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;”*

#### **The Committee’s conclusion.**

Pending receipt of the information requested the Committee concludes that the situation in Ireland is in conformity with Article 19§7 of the Charter.

#### **Ireland’s update on this Article.**

##### Access to an interpreter

The right to the free assistance of an interpreter in criminal proceedings is outlined in the European Convention on Human Rights Act 2003. Article 6(3) is relevant to criminal proceedings in court.

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings has been transposed by S.I. No. 565/2013 - European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations, 2013. This S.I. clearly sets out the responsibilities of the Courts Service in relation to interpretation and translation in criminal proceedings, including the translation of relevant documents.

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime has been transposed by the Criminal Justice (Victims of Crime) Act 2017. Section 22 places an obligation on many bodies, including the Courts Service, to "make such arrangements regarding interpretation and translation as are considered appropriate in the circumstances or as directed by the court, as the case may be".

In Civil proceedings, if the judge orders that an interpreter is necessary or a document is to be translated, and in the circumstances of the case decides that the cost of same is to be paid for by the Courts Service, the Courts Service orders and pays for that service. This may occur in a Domestic Violence case, for example.

The Legal Aid Board can also approve claims from practitioners for interpretation and translation services in certain circumstances.

#### **Article 19.8**

***“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: 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;”*

**The Committee’s conclusion of non-conformity.**

The Committee concludes that the situation in Ireland is not in conformity with Article 19§8 of the Charter on the grounds that migrant workers have no right of appeal against a deportation order.

**Ireland’s update on this Article.**

**The right of appeal against a deportation order.**

In addition to the response provided in Ireland’s last report to the Committee, Ireland would like to draw the attention of the Committee members to a judgment of the Irish Supreme Court in 2010 *Meadows v Minister for Justice, Equality and Law Reform*. This judgment has held that a proportionality review is part of judicial review and endorsed the use of a proportionality test in judicial review where the impugned decision engaged fundamental rights. Judicial review has therefore been held by the Irish Supreme Court to meet the requirements of an effective remedy following the *Meadows* judgment.

Furthermore, the power to determine who may enter the State is an executive power of the State under Article 28.2 (and 29.4.1) of the Constitution. This means it may only be exercised by or on the authority of the Government. As Hogan J said in *Efe v Minister for Justice, Equality and Law Reform* in 2011 the effect of Article 28 of the Constitution is that: “... the actual decision whether to deport or

not must remain with the executive branch”.

This case found that provided the legislation provides for a mechanism for considering new facts prior to deportation, this together with judicial review is held to be an adequate remedy. Therefore it is believed that the requirements of this Article are met by the current arrangements.

#### **Article 19.9**

*“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: to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;”*

#### **The Committee’s conclusion.**

The Committee concludes that the situation in Ireland is in conformity with Article 19§9 of the Charter.

#### **Ireland’s update on this Article.**

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

#### **Article 19.10**

*“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: to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.”*

#### **The Committee’s conclusion of non-conformity.**

The Committee concludes that the situation in Ireland is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 6, 8 and 12 of the same Article.

#### **Ireland’s update on this Article.**

Ireland believes that each sub Article should stand and be reviewed on its own merits and does not believe that it is reasonable to be found in contravention on the basis of other sub articles. It is also not clear on what basis that Ireland was found to be in non-convention.

Information has been provide in this report in relation to paragraphs 6, 8, and 12 which Ireland hopes will persuade the Committee that Ireland is in fact in conformity with these provisions.

#### **Article 19.11**

*“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: 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;”*

### **The Committee's conclusion.**

Pending receipt of the information requested the Committee concludes that the situation is in conformity with Article 19§11 of the Charter.

### **Ireland's update on this Article.**

#### **The measures taken to enable migrant workers to learn English.**

Ireland continues to welcome a diverse cohort of 'new Irish' - and these new community members in Ireland come from a wide range of cultural, linguistic, educational and social backgrounds. English for Speakers of Other Languages (ESOL) classes are provided across the country to meet the needs of this cohort, comprising of learners who may be highly educated with professional and skilled backgrounds, as well as those who are less qualified and are attending classes to learn English or improve their English. Demand for provision has increased steadily, with a range of target groups in need of tuition.

In recognition of the above, and led by the Department of Education and Skills Adult Literacy Operational Guidelines, which stated that ESOL provision should prioritise particular target groups, ETBI<sup>13</sup>, SOLAS<sup>14</sup> and NALA<sup>15</sup> have recently published research on English Language Provision for Low Skilled and Unemployed Migrants,

<http://www.solas.ie/SolasPdfLibrary/English%20language%20provision%20and%20language%20assessment.pdf>

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<sup>13</sup> ETBI - Education Training Board Ireland

<sup>14</sup> Solas - Further Education and Training

<sup>15</sup> NALA - National Adult Literacy Agency



## Article 19.12

*“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: to promote and facilitate, as far as practicable, the teaching of the migrant worker’s mother tongue to the children of the migrant worker.”*

### **The Committee’s conclusion of non-conformity.**

The Committee concludes that the situation in Ireland is not in conformity with Article 19§12 of the Charter on the grounds that it has not been established that Ireland promotes and facilitates the teaching of the migrant worker’s mother tongue to the children of migrant workers.

### **Ireland’s update on this Article.**

Language Connect - Ireland's Strategy for Foreign Languages in Education 2017 - 2026 was launched in December 2017.

<http://www.solas.ie/SolasPdfLibrary/English%20language%20provision%20and%20language%20assessment.pdf>

The strategy includes specific targets aimed at supporting the "New Irish" in maintaining their own heritage languages, and in diversifying the range of languages available for schools to offer.

### **Primary**

The new Primary Language Curriculum recognises that most schools now include some children whose home language is other than English or Irish. There are examples of good practice where schools have succeeded in cultivating very positive attitudes towards home languages among children and their parents. In examples of best practice some schools have encouraged the progression of

reading and writing skills in the home languages.

### Junior Cycle

Apart from the new Modern Foreign Languages (MFL) specification for Junior 1 or Cycle (Junior Certificate) which was introduced in 2017 for French, German, Spanish and Italian, the National Council for Curriculum and Assessment (NCCA) has developed a JC short course in Chinese Language and Culture. The Post Primary Languages Initiative (PPLI) have developed short courses in Japanese and in Polish as a heritage language. A short course in Lithuanian is currently being developed and will be piloted from September 2018.

The PPLI have also developed a generic short course specification and schools are free to use this to develop their own short courses in line with NCCA guidelines.

### Senior Cycle

At Senior Cycle, in addition to the 4 MFLs, Japanese, Russian and Arabic are also available as curricular languages. Students from the EU can also opt to sit a further non-curricular language, typically this will be their home language, for State Examination including: Latvian, Lithuanian, Romanian, Slovenian, Modern Greek, Finnish, Polish, Estonian, Slovakian, Swedish, Czech, Bulgarian, Hungarian, Portuguese, Danish, Dutch, Croatian, and Maltese.

A new Curricular specification for Mandarin Chinese will be available to schools from September 2020 and for heritage speakers of Polish, Lithuanian and Portuguese.

The Post Primary Language Initiative on behalf of the Department has worked very closely with a number of Embassy 's to further develop supports for home languages in second level schools.

State Examination 2018

In 2018, 41,974 students sat a foreign language at leaving certificate of which 1,461 took one of the 18 non-curricular EU languages.

**ARTICLE 27**

**The Right of workers with family responsibilities to equal opportunities and equal treatment**

**Article 27**

*“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:*

*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 daycare services and other childcare arrangements;”*

### **The Committee's conclusion of non-conformity.**

The Committee concludes that the situation is not in conformity with Article 27§1 of the Charter on the ground that periods of parental leave are not taken into account in the calculation of pension.

### **Ireland's update on this Article.**

The Government of Ireland signed and ratified the Revised European Social Charter on 4th November 2000. Ireland accepted most of the Revised European Social Charter, but did not accept some provisions such as Article 27.1 (c). That situation remains unchanged.

### **Measures taken to support the increased employment level of persons with family responsibilities**

- Paternity Leave

In September 2016, in line with the commitment in the Programme for Government, statutory paternity leave and benefit was introduced in Ireland for the first time. Qualifying fathers are entitled to two weeks of paternity leave and two weeks of paternity benefit following the birth of their baby. The leave can be taken at any time within the first six months following birth. It is also available to fathers of newly adopted children and to same sex couples.

The basis for the Government's decision to introduce paid paternity leave was consistent findings which showed that (a) targeting investment in a child's early years leads to better outcomes for both the child and wider society, and that (b) the support of both parents at an early stage is in the best interests of the child. The Scheme also supports mothers and promotes gender equality by helping to enable the sharing of parental responsibility.

- Parental Leave

In 2013, the Parental Leave Act 1998 Act was amended by the European Union (Parental Leave)

Regulations 2013 (S.I. No 81 of 2013) to provide for 18 weeks unpaid parental leave in respect of a child up to the age of 8 years – an increase of four weeks.

- Maternity Leave

Since 1 October 2017, mothers who give birth prematurely are entitled to extended maternity leave and benefit.

#### Council Directive 2010/18/EU

Since 8 March 2013, under the [European Union \(Parental Leave\) Regulations 2013](#), when employees return to work in Ireland after taking [parental leave](#), they are entitled to ask for a change in their work pattern or working hours for a set period. Employers must consider such requests but are not obliged to grant them.

In April 2017, the European Commission published a proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. The main aims of the (draft) directive on work-life balance for parents and carers are (1) to improve [access](#) to work-life balance arrangements, such as leave and flexible working arrangements for parents and carers and (2) to increase female labour market participation.

Trilogues between the Council, Parliament and Commission are currently taking place in respect of moving to a conclusion of the Directive.

In respect of the ESCR, the following would be the key points of the proposed Directive:

#### **Articles 4 & 8 - Paternity Leave**

- Member States to provide for 10 days paternity leave.
- As per article 8, persons on paternity leave are to receive a payment or an allowance to be

defined by Member States and / or social partners.

### **Article 5 & 8 – Parental Leave**

- Member States shall provide for an individual right to 4 months parental leave (18 weeks) before the respective child reaches a given age.
- The age of the child shall be determined by Member States and / or social partners in a way to ensure that each parent can effectively exercise their right to parental leave on an equal basis.
- Member States shall ensure that two months of parental leave cannot be transferred.
- Member States may make the right to parental leave subject to a period of work qualification and / or a length of service qualification (one year).
- As per article 8, 1.5 months (7 weeks) of the non-transferable leave shall be payable at a rate to be defined by Member States. <sup>[1]</sup>

### **Article 6 – Carers’ Leave**

- Member States shall ensure that workers have the right to carers’ leave, to be defined in national legislation or practice.

Budget 2017 announced a radical redesign of how the State delivers childcare subvention to families in Ireland. The forthcoming Affordable Childcare Scheme (ACS) will provide financial support for parents towards the cost of childcare. It will provide a system from which both universal and targeted subsidies can be provided towards the cost of childcare.

This new scheme will replace the existing targeted childcare programmes with a single, streamlined and more user-friendly scheme and will include “wraparound” care for pre-school and school-age children. Once launched, this scheme will improve outcomes for children; reduce poverty, facilitate

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<sup>[1]</sup> 52 weeks per annum divided by 12 months = 4.33333333 weeks per month  
1.5 months payable x 4.3333333 = 7 weeks (6.5 rounded up)

labour activation and tangibly reduce the cost of childcare for tens of thousands of families.

In the interim, a series of measures were launched in September 2017, including a new universal, non means tested subsidy worth up to €1,040 per annum for children under three years of age in registered childcare. Targeted subsidies for families that need it most were increased by up to 50% to €145 per week for children up to the age of fifteen. The Department of Education and Skills has estimated that as many of 70,000 children would be registered to receive these supports. To date, more than 80,000 have benefited and these measures will remain in place until the Affordable Childcare Scheme is introduced.

#### Conditions of employment, social security.

- Parental leave.

Parental leave in the Civil Service is unpaid and does not reckon for pension purposes. 2 weeks paid Paternity Leave is available to Civil Servants since 1 September, 2016.

[Parental Leave is provided for in the Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006, and further regulated by the European Union (EU) Parental Leave Directive 2010/18/EU which was transposed into Irish Law on 8 March 2013. It is dealt with by the Department of Justice and Equality].

Circular 0/2008 governs parental leave in the civil service and states that the arrangements applying to civil servants in relation to parental leave are, in general, as specified in the Parental Leave [Acts](#).

#### The Labour Relations Commission.

The Labour Relations Commission (LRC) prepared this Code of Practice on [access](#) to part-time working, following consultation with the social partners. The Code of Practice was implemented by the

Industrial Relations Act 1990 (Code of Practice on [Access](#) to Part-Time Working) (Declaration) Order 2006 (S.I. No. 8 of 2006). The Code applies to all employers and employees and it states, inter alia, that employers should give consideration to requests by employees to transfer from part-time to full-time work or to increase their working time should the opportunity arise.

Such Codes of Practice are more than just a guide for employers and employees. A Code is admissible in evidence in any proceedings before a Court, the Labour Court or an Adjudication Officer of the Workplace Relations Commission. This is set out in Section 42(4) of the Industrial Relations Act 1990.

Both IBEC<sup>16</sup> and ICTU<sup>17</sup> were involved in the process of drafting the European Framework Agreement through the European social partner organisations. They were also involved at national level in a tripartite group along with relevant Government Departments, which was established to consider the measures necessary for implementing the Directive in Ireland prior to the enactment of the Protection of Employees (Part-Time Work) Act 2001.

Ireland has fully transposed the Directive, as confirmed by the Commission in its 2003 Communication on this subject.

#### Pension entitlements, State Pension (Contributory)

Ireland has reviewed the findings of the Committee regarding parental leave and pension entitlements, and believes there is a factual error in the conclusion. While it may be true that parental leave itself does not attract credits, the underlying circumstances which result in it being claimed do, and so it is not the case that periods of childcare are not “taken into account when determining the right to and the

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<sup>16</sup> IBEC - Irish Business and Employers Confederation

<sup>17</sup> ICTU - Irish Congress of Trade Unions



amount of a pension”.

There is a Homemakers Scheme which allows such periods be disregarded for the purposes of calculating the Yearly Average of a person, thereby increasing the rate of the pension. For example, a person with 28 years working and 20 years caring can qualify for a 100% pension, whereas without this scheme, they would only have a pension at a rate of 90%. This would be a good example of such a period being taken into account in determining the amount of pension a person would receive.

The Homemakers Scheme is much broader than the Parental Leave scheme, and covers people who were not in employment, who were caring for older people with a care need, and also for long as well as short durations. It is applied for separately from Parental Leave. However, people who take Parental Leave do apply for it and are awarded it at the time they claim their pensions, and so the conclusion drawn by the Committee, that periods of parental leave are not “taken into account when determining the right to and the amount of a pension” is incorrect, and based on an incomplete understanding of how the Irish pension system works.

The Government announced this year a reform to the Pension system, which will see pension rates based on the total contributions, rather than yearly averages as under the current system, and this will see the Homemakers Scheme disregard replaced with a system of credits (as a disregard would not be effective under a total contributions approach).

The EU Directive 97/81/EC on Part-Time Work (the Part-Time Work Directive) was transposed through the Protection of Employees (Part-Time Work) Act 2001 (the 2001 Act) and the 2006 Code of Practice on Access to Part-time Work.

The purpose of the Directive was to implement the Framework Agreement on part-time work concluded by the European cross-industry organisations UNICE, CEEP and the ETUC. The Framework Agreement, attached as an annex to the Directive, aimed to eliminate discrimination against part-time employees and to improve the quality of part-time work. It also aimed to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and employees. In accordance with the Directive, the 2001 Act provides a wide degree of protection for part-time employees, including the general protection that a part-time employee shall not be treated in a less favourable manner in respect of his/her conditions of employment than a full time employee.

A provision in the 2001 Act – Section 13(5) – allowed the Labour Relations Commission (now the Workplace Relations Commission) to prepare and publish a Code of Practice in relation to the steps that could be taken by employers for the purposes of Clause 5.3 of the Framework Agreement on part-time work. The Labour Relations Commission prepared this Code of Practice, following consultation with the social partners. The Code of Practice was implemented by the Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006 (S.I. No. 8 of 2006).

The Code applies to all employers and employees and it states, inter alia, that employers should give consideration to requests by employees to transfer from part-time to full-time work or to increase their working time should the opportunity arise.

Such Codes of Practice are more than just a guide for employers and employees. A Code is admissible in evidence in any proceedings before a Court, the Labour Court or an Adjudication Officer of the Workplace Relations Commission. This is set out in Section 42(4) of the Industrial Relations Act 1990.

With the enactment of the 2001 Act and the agreement of the 2006 Code of Practice, Ireland has fully met its responsibilities in transposing the Part-time Work Directive into national law. This position is confirmed by a 2003 report on the implementation of the Directive undertaken by the European Commission.

#### **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;”*

#### **The Committee’s conclusion.**

The Committee concludes that the situation in Ireland is in conformity with Article 27§2 of the Charter.

#### **Ireland’s update on this Article.**

##### **Paid Parental Benefit**

As part of the Budget 2019 the Government announced a new Paid Parental Benefit. This measure will provide 2 weeks payment to each parent of a child, age under 1 year, who is on parental leave from

work and covered by social insurance (PRSI). Paid Parental Benefit for 2 weeks will be payable to both parents of the child at the standard rate of payment as that in place for maternity/paternity benefit of €245 (2019 rate) per week.

Parental Benefit will increase the leave available by 2 weeks for each parent and does not impact on the paid or unpaid parental leave arrangements already in place, as follows:

Paid parental schemes already in place are:

- Maternity Leave – 26 weeks (2 weeks must be taken before date of confinement)
- Paternity Leave 2 weeks
- Adoptive Leave 24 weeks
- Health and Safety Leave – from date of award to commencement of maternity leave

Unpaid Parental Leave schemes already in place:

- Unpaid Maternity Leave – 16 weeks
- Parental Leave Scheme – 18 weeks each parent for child up to age 8 years

Parental Benefit will not be shared and cannot be transferred between parents. This recognises that the provision of paid parental leave will be more effective and appropriate in terms of encouraging both fathers and mothers to take time off work to take care of their children.

With the introduction of this new leave for the first year of a baby's life, The Government recognise the importance of equality between men and women with regard to the labour market opportunities and treatment at work but also recognising the equal importance of men and fathers playing in a role, a very major role, in bringing up their children. Prior to the introduction of paid parental leave the Department of Justice and Equality will need to enact legislation to provide for this entitlement

The Programme for Government contains several references to increasing paid family leave and to meet this commitment it is planned to incrementally introduce up to seven weeks paid parental leave per parent, commencing with two weeks in 2019.

#### Unpaid parental leave

Section 6 of the Parental Leave Act 1998 provides for 18 weeks unpaid parental leave for both parents in respect a child up to the age of eight, or 16 years of age in the case of a child with a serious illness or disability.

In addition, the Act also provides for a number of comprehensive employment protections for those on parental leave. These protections include prohibitions on penalising employees, such as:

- an employee's dismissal;
- any unfair treatment of an employee (including selection for redundancy); and
- any unfavourable changes in the conditions of employment of the employee, while that employee is on parental leave.

#### **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”.*

#### **The Committee's conclusion.**

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

## **Ireland's update on this Article.**

### Effective Remedies

In practice, employees pursue gender and family status discrimination cases to the Workplace Relations Commission rather than the Circuit court as costs are lower and redress tends to be higher. The highest award (of €315,000) in the history of Equality Tribunal (which has subsequently been subsumed into the Workplace Relations Commission) was on the grounds of gender and family status:

Treating employees differently on the basis of parenthood or family responsibilities may be argued as indirect discrimination on the gender ground. However, it is also a standalone ground itself as discrimination on the basis of “family status” is unlawful. It is defined as follows:

“family status” means responsibility—

(a) as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or

(b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability;”

A complaint on the ground of “family status” can be decided by an Adjudication Officer of the WRC; it cannot be taken to the Circuit Court. A limit of 104 weeks remuneration applies to awards before the WRC.

An indirect discrimination complaint on the gender ground may be made to the Circuit Court where the

award is not limited. However, the employer has the defence available of objective justification to a claim of indirect discrimination which is not available in claims of direct discrimination.

Claims are rarely taken in the Circuit Court because of a number of issues including costs, level of expertise in the Circuit Court, appeal to the High Court etc. There are no known decisions of the Circuit Court in this area. The last known case taken on the gender ground and decided by the Circuit Court was in 2005 in a case involving sexual harassment.

## **ARTICLE 31**

### **THE RIGHT TO HOUSING**

#### **Article 31**

**1** *“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to promote access to housing of an adequate standard;”*

**2** *“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to prevent and reduce homelessness with a view to its gradual elimination;”*

**3** *“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to make the price of housing accessible to those without adequate resources.*

#### **Ireland’s update on this Article.**

The Government of Ireland signed and ratified the Revised European Social Charter on 4 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.

## **Appendix 1.**

### Housing.

The first part covers the period 2010 to 2015 and relates primarily to a time when State resources were limited and activity and provision in the sector was at a very low level. The second part of the period covers the years from 2016 onwards.

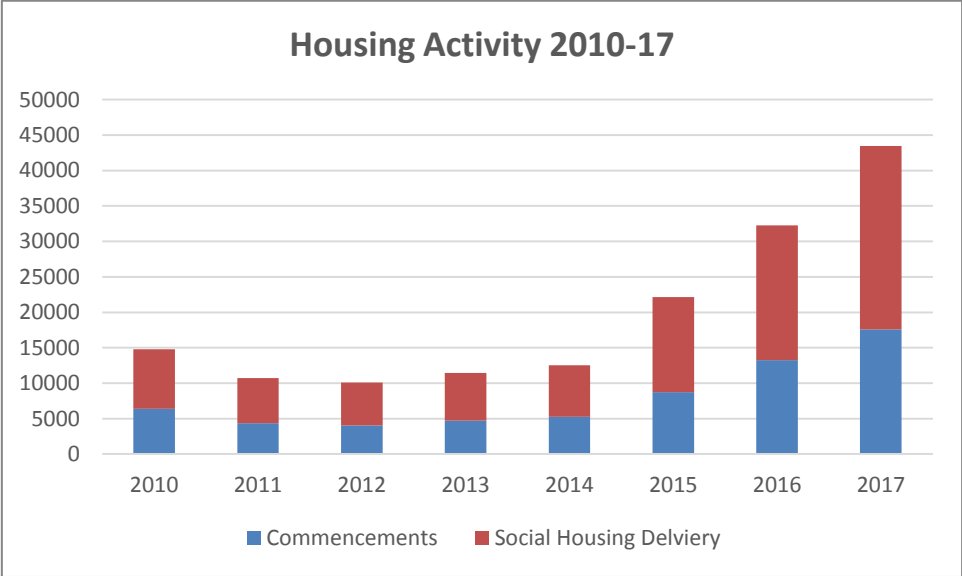
- 2010-2015 Fiscal Austerity

The international economic crisis had hit Ireland particularly badly during this period. It led to an almost total collapse in our home building sector. This is still taking some time to recover from.

The fiscal constraints imposed on the national Exchequer during the period were very acute. The amount of money available to meet the housing needs of the population was, in common with all other areas of public spending, severely reduced. This is reflected in the housing output in both the private and public sector during the period where there was a steep decline



leading into 2012 (the slowdown had started in 2008 initially) before a slow recovery began in 2013 onwards- see the graph and table below. However, it was only with the launch of the Government’s Action Plan for Housing and Homelessness- Rebuilding Ireland in 2016 that significant increases in housing output have ben achieved. This period is covered in detail in the material that follows.



	Commencements	Social Housing Delivery
<b>2010</b>	6391	8,401
<b>2011</b>	4365	6,376
<b>2012</b>	4042	6,054
<b>2013</b>	4708	6,721
<b>2014</b>	5247	7,261
<b>2015</b>	8747	13394
<b>2016</b>	13234	19,045

<b>2017</b>	17572	25,901
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“Commencements” refers to the number of house starts in any one calendar year. The number of commencements has increased by 175% during the 2010-2017 period. However, this large increase hides the fact that for the first few years of the period there was a decrease. In fact the decline in house building had started in 2008 and did not properly recover until 2015.

“Social Housing Delivery” includes all forms of social housing support offered to citizens. In the main it relates to direct provision of social housing by the local authority sector but also includes houses provided to social tenants by private approved housing bodies as well as acquisitions in the market of second-hand homes by local authorities. From 2014 onwards a significant element of social housing delivery has been made up of supports to people staying in the private rental sector known as the HAP or “Housing Assistance Payment”.

Social housing provision and the broader home building sector is now firmly on the road to recovery and the supply of houses is accelerating at a rapid rate. The targets for the years ahead are detailed in the material below.

- 2016-2021 Rebuilding Ireland: Action Plan for Housing and Homelessness

#### *Background*

The Irish Government is taking urgent action to deal with the challenges which currently exist in relation to the housing sector in Ireland

Rebuilding Ireland: Action Plan for Housing and Homelessness was published in July 2016 and sets out the Government’s approach to increasing the provision of housing, including social housing. It contains practical and implementable sets of actions to deliver 50,000 social

housing units by 2021 and to increase the supply of all homes to 25,000 units per annum by 2020, thereby creating a functioning and sustainable housing system. This cross-Government plan is divided into five pillars, each targeting a specific area of the housing system for attention. These are set out in summary form immediately below

### *Summary Overview*

The overarching aim of this Action Plan is to ramp up delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs, and to help those who are currently housed to remain in their homes or be provided with appropriate options of alternative accommodation, especially those families in emergency accommodation.

The Action Plan sets ambitious targets to double the annual level of residential construction to 25,000 homes and deliver 50,000 units of social housing in the period to 2021, while at the same time making the best use of the existing housing stock and laying the foundations for a more vibrant and responsive private rented sector. Achieving the aim of accelerated delivery will contribute to the following core objectives:

- Addressing the unacceptable level of households, particularly families, in emergency accommodation;
- Moderating rental and purchase price inflation, particularly in urban areas;
- Addressing a growing affordability gap for many households wishing to purchase their own homes;

- Maturing the rental sector so that tenants see it as one that offers security, quality and choice of tenure in the right locations and providers see it as one they can invest in with certainty;
- Ensuring housing's contribution to the national economy is steady and supportive of sustainable economic growth; and
- Delivering housing in a way that meets current needs while contributing to wider objectives such as the need to support sustainable urban and rural development and communities and to maximise the contribution of the built environment to addressing climate change.

In order to meet these objectives, the plan sets out a broad range of well-resourced actions (see summary table below) designed to increase housing output, particularly at more affordable prices, encourage the delivery of more and better rental options, keep people in their homes and bring vacant and under-utilised properties back into full use.

The Action Plan, a central component of the *Programme for a Partnership Government*, has been informed, in particular, by the *Report of the Oireachtas Committee on Housing and Homelessness (June 2016)* and extensive engagement with key stakeholders.

In order to ensure the ambition of the Action Plan is fully realised, implementation will be overseen by a special Cabinet Committee on Housing, chaired by An Taoiseach. A specific forum for stakeholder engagement for the implementation phase will be established and chaired at Ministerial level. A new Housing Delivery Office is being established in the Department and a Centre of Excellence for Procurement in the Housing Agency. Monthly

updates on housing activity will be published and overall progress reports on the Plan will be published on a quarterly basis on the dedicated website, rebuildingireland.ie.

Five Key Pillars of the Plan

These high-level actions will support a range of actions across the five key pillars of the



Action Plan.

The actions proposed under each of these five Pillars can be summarised as follows:

- Pillar 1 – Address Homelessness

Provide early solutions to address the unacceptable level of families in emergency accommodation; deliver inter-agency supports for people who are currently homeless, with a particular emphasis on minimising the incidence of rough sleeping, and enhance State supports to keep people in their own homes.

- Pillar 2 – Accelerate Social Housing

Increase the level and speed of delivery of social housing and other State-supported housing, with funding of €5.35 billion to deliver 47,000 units by 2021.

- Pillar 3 – Build More Homes

Increase the output of private housing to meet demand at affordable prices. Infrastructure Fund of €200m to open up large sites in areas where people need homes.

- Pillar 4 – Improve the Rental Sector

Address the obstacles to greater private rented sector delivery, to improve the supply of units at affordable rents.

- Pillar 5 – Utilise Existing Housing

Ensure that existing housing stock is used to the maximum degree possible - focusing on measures to use vacant stock to renew urban and rural areas

Many of these actions are inter-related and inter-dependent. In outlining the actions, this Action Plan contains key targets and deadlines for delivery by a number of Government Departments, local authorities and other bodies which will be subject to regular Cabinet Committee review.

## Pathfinders

What people want to see most flowing from this Action Plan is increased delivery of housing on the ground. This will require implementation of all the actions outlined in the Plan. However, in order to provide visible evidence of the Plan’s capacity to drive the delivery of the homes that people need, where they need them, a series of Pathfinder Projects will be the focus of particular attention, to test and demonstrate the Action Plan’s effectiveness.

Key Actions to be delivered under the Action Plan.

<b>Pillar objective</b>	<b>Key actions</b>
<b><i>Pillar 1 - Address Homelessness</i></b>	

Pillar objective	Key actions
<p>Provide early solutions to address the unacceptable level of families in emergency accommodation; deliver inter-agency supports for people who are currently homeless, with a particular emphasis on minimising the incidence of rough-sleeping; and enhance State supports to keep people in their own homes.</p>	<ul style="list-style-type: none"> <li>• Ensure that by mid-2017, hotels are only used in limited circumstances for emergency accommodation for families, by meeting housing needs through the Housing Assistance Payment (HAP) and general housing allocations, and by providing new supply to be delivered through: <ul style="list-style-type: none"> <li>○ An expanded Rapid Build Housing programme [1,500 homes – 200 in 2016; 800 in 2017 and 500 in 2018]</li> <li>○ A Housing Agency initiative to acquire vacant houses [1,600 units by 2020 - €70m revolving fund]</li> </ul> </li> <li>• Triple the targets for tenancies to be provided by Housing First teams in Dublin from 100 to 300 and extend the housing-led approach to other urban areas</li> <li>• Enhance supports for homeless families with children</li> <li>• Enhance supports for homeless people with mental health and addiction issues - triple the funding, from €2m to €6m, will be provided to the HSE.</li> <li>• Ensure an adequate supply of emergency accommodation nationally</li> <li>• Extend tenancy sustainment measures nationwide</li> <li>• Increased Rent Supplement and HAP limits</li> <li>• New mortgage Arrears Resolution Service to standardise supports for borrowers</li> <li>• New initiative to provide access to independent expert financial and legal advice for people facing serious mortgage arrears</li> <li>• Potential for further legislative measures in relation to mortgage arrears to be examined</li> <li>• Facilitate more households with Mortgage to Rent</li> </ul>



## ***Pillar 2 – Accelerate Social Housing***

Increase the level and speed of delivery of social housing and other State-supported housing.

- 47,000 social housing units delivered by 2021, supported by investment of €5.35 billion
- Accelerated Housing Assistance Payment (HAP) delivery – [12,000 in 2016 and 15,000 in 2017]
- NTMA/Private Housing Fund to deliver increased housing supply [potential to fund delivery of some 5,000 social houses]
- Mixed-tenure developments on State lands and other lands
- Establishment of a dedicated Housing Delivery Office and Housing Procurement Unit
- Extensive supports for Local Authorities and Approved Housing Bodies – e.g. AHB Innovation Fund
- Streamlined approval processes (e.g. Part 8 planning)
- Housing for specific groups: meeting the needs of the vulnerable.
- Increased target for Housing Adaptation Grants drawdown [increasing from 8,000 in 2016 to 10,000 in 2017]
- Pilots to support innovative design and housing solutions for older people
- Extending National Housing Strategy for People with Disabilities beyond its 2016 timeframe out to 2020

## ***Pillar 3 – Build More Homes***

<p>Increase the output of private housing to meet demand at affordable prices.</p>	<ul style="list-style-type: none"> <li>• Doubling of output to deliver over 25,000 units per annum on average over the period of the Plan [2017-2021], aided by <ul style="list-style-type: none"> <li>○ Opening up land supply and low-cost State lands</li> <li>○ Local Infrastructure Housing Activation Fund (LIHAF) - €200m</li> <li>○ NTMA financing of large-scale “on-site” infrastructure for developers, complementing LIHAF</li> <li>○ Prioritising large pathfinder sites in key urban locations to release housing more quickly</li> <li>○ Planning reforms – large housing development applications to go directly to the Board, new streamlined Part 8 process, on-line planning facilities</li> <li>○ Putting in place a National Planning Framework and land management actions – multi-tenure developments on State lands.</li> <li>○ Efficient design and delivery methods to lower housing delivery costs</li> <li>○ Measures to support construction innovation and skills</li> </ul> </li> </ul>
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***Pillar 4 – Improve the Rented Sector***

<p>Address the obstacles to greater private rented sector delivery, to improve the supply of units at affordable rents.</p>	<ul style="list-style-type: none"> <li>• Develop a strategy for a viable and sustainable rental sector</li> <li>• Introduce legislation on balanced arrangements for tenancy terminations – in sales of 20+ units in a single development, tenants to remain in situ.</li> <li>• Review the standards for rental accommodation</li> <li>• Enhance the role of the Residential Tenancies Board, including its enforcement powers</li> <li>• Introduce an Affordable Rental Scheme - €10m annually to support 2,000 rental properties by 2018.</li> <li>• Encourage “build to rent”</li> <li>• Support greater provision of student accommodation – develop national strategy, additional 7,000 places by 2019, assistance to find additional short-term student accommodation.</li> </ul>
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***Pillar 5 – Utilise Existing Housing***

<p>Ensure that existing housing stock is used to the maximum degree possible - focusing on measures to use vacant stock to renew urban and rural areas.</p>	<ul style="list-style-type: none"> <li>• Better management of social housing through rapid re-letting of vacant units (Voids) and introduction of choice-based letting</li> <li>• Review of the Tenant (Incremental) Purchase Scheme</li> <li>• Housing Agency purchases of vacant houses held by banks and financial institutions – [1,600 units - €70m revolving fund - same action as under Pillar 2]</li> <li>• New vacant Housing Repair and Leasing Initiative</li> <li>• Removing regulatory barriers to re-using vacant or under-utilised properties – e.g. change of use from commercial to residential</li> <li>• Urban regeneration actions, including Living City Initiative</li> <li>• Village and rural renewal initiatives to revitalise town centres and villages – DAHRRGA working with DHPCLG</li> <li>• Continue work to resolve unfinished estates</li> </ul>
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A review of Rebuilding Ireland was initiated in July 2017 which involved:

- A broad public consultation process with 122 submissions received, and
- A comprehensive review of key policies and programmes, and,
- The identification of new measures

While, Rebuilding Ireland remains the key action plan, new and additional actions have been identified as being necessary in the following areas:

- homelessness prevention and transition measures will be accelerated and enhanced, Budget 2018 increased the homeless budget from €18 to €116m
- the State will build more social housing directly and increasingly prioritise construction over acquisition within the capital investment programme,
- the affordability and access gap will be tackled for low - to middle-income households in areas of the country with the highest rents and purchase prices,
- the viability of residential construction projects of scale will be improved utilising available policy levers (planning, finance, State lands, etc.)
- further rental market reforms, especially tenancy protections and more visible enforcement.

### **Specific Delivery Targets for 2016, 2017 and up to 2021**

- Rebuilding Ireland aims to deliver 50,000 social housing units over the period 2016 to 2021. Just over €3 billion was expended on the implementation of a range of housing programmes over the period 2015-2017, with €1.4 billion being expended in 2017 alone - this facilitated the delivery of some 13,400 social housing units in 2015, 19,000 units in 2016 and 25,000 units in 2017.

- In Budget 2018, the total funding provision of €1.9 billion is an increase of 35% over 2017 (€1.4 billion) and it will allow us to meet the social housing needs of 25,500 households. A large element – €1.14 billion – is for the delivery of almost 5,900 social homes through a range of construction (5,000) and acquisition (900) programmes.
- The balance of the funding will add additional tenancies – and maintain existing ones - through HAP, RAS and long-term leasing. It will also fund other important housing supports and services in relation to homelessness, regeneration and programmes to upgrade existing housing (energy efficiency improvements, adaptation grants, housing for Travellers, pyrite, etc.).
- An allocation of €301 million (+€149m on 2017) for the Housing Assistance Payment which will enable a further 17,000 households to be accommodated, as well as support the 37,700 approx. existing HAP tenancies.
- Funding of €134 million will support a further 600 new transfers under the Rental Accommodation Scheme and also the ongoing cost of 19,900 households supported under the scheme.
- Overall, of the 50,000 social housing units to be delivered under Rebuilding Ireland, approximately 33,500 will be constructed, while 6,500 will be acquired by local authorities and approved housing bodies directly from the market or the Housing Agency, with a portion of these being newly built units. 10,000 units will be leased by local authorities and approved housing bodies, including an estimated 5,000 units to be sourced from the NTMA<sup>18</sup> Special Purpose Vehicle and a further 5,000 properties to be secured from a combination of the new Repair and Leasing Initiative and under long-term lease arrangements by local authorities and

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<sup>18</sup> NTMA - National Treasury Management Agency

approved housing bodies from a range of different sources, not including Part V.<sup>19</sup> Part V is a mechanism, introduced by the Government, through which local authorities can obtain up to 10% of land zoned for housing development at “existing use value” rather than “development value” for the delivery of social and affordable housing.

Part V refers to the provisions relating to Housing Supply in the Planning and Development Act 2000, as amended by subsequent legislation. It contains 9 sections (93 – 101). These sections relate to the development of housing strategies and the provision of social and affordable housing. The objective of Part V is to ensure an adequate supply of housing for all sectors of the existing and future population. A Part V agreement refers to the agreement between a developer (applicant) and the planning authority outlining how the developer will meet his/her obligations under Part V.

- This therefore includes a mix of units from the existing housing stock and newly built units. Overall, it is estimated that around 4,700 units could be secured for social housing from Part V agreements. However, the final delivery will ultimately depend on many factors, including activity in the private sector, capacity of local authorities and approved housing bodies and readiness of projects
- All of the 50,000 units to be delivered under Rebuilding Ireland, will be available for local authorities to utilise in addressing housing need for those on the waiting list
- Breakdown of the numbers is as follows:

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<sup>19</sup> Part V of the Planning and Development Act 2000 (Part V) provides for social and affordable housing obligations for developers.

Build		Acquisition		Leasing	
<b>LA</b>	16,328	LA	1,480	Repair & Lease	3,500
<b>AHB</b>	8,960	AHB	5,050	Direct leasing	1,536
<b>Voids</b>	3,459	-	-	NTMA/ISIF SPV	5,000
<b>Part V</b>	4,690	-	-	-	-
<b><u>33,437</u></b>		<b><u>6,530</u></b>		<b><u>10,036</u></b>	

Rebuilding Ireland Targets – 2016 to 2021 (50,000 homes)			
<u>Year</u>	<u>Build</u>	<u>Acquisition</u>	<u>Leasing</u>
<b>2017</b>	2,260	1,755	225
<b>2018</b>	3,200	1,250	600
<b>2018</b>	4,969	900	2,000
<b>2019</b>	6,385	1,025	2,130
<b>2020</b>	7,716	800	2,631
<b>2021</b>	8,907	800	2,450
	<b><u>33,437</u></b>	<b><u>6,530</u></b>	<b><u>10,036</u></b>

### Addressing Homelessness

- Dealing with homelessness is a priority for the Government and the Government is absolutely committed to increasing the delivery of housing to ensure that it can deliver solutions for those experiencing homelessness.
- €116m was set aside for the homelessness budget in 2018, an increase of 16% on the previous year's allocation.

- The Government is determined to increase the stock of social housing by 50,000 homes by 2021 under Rebuilding Ireland, with the necessary funding ring-fenced to achieve this.
- 4,729 exits from homelessness into tenancies were achieved in 2017. The Government is working to exceed this in 2018.
- In the first 6 months of 2018, over 850 families either exited emergency accommodation or were prevented from having to access emergency accommodation through State supports in the Dublin region alone.
- Given the continuing number of families presenting to homeless services, as well as the continuing use of hotels, a Rapid Hub Programme was commenced in early January that will see additional family hub places added to the existing hubs.
- Family hubs offer family living arrangements with a greater level of stability than is possible in hotel accommodation, with the capacity to provide appropriate play-space, cooking and laundry facilities, and communal recreation space, while move-on options to long-term independent living are identified and secured.
- There are currently 22 ‘hubs’ in operation (19 Dublin, 1 Cork, 1 Kildare, and 1 Limerick) providing 544 units of family accommodation.
- The Department of Housing, Planning and Local Government is working closely with local authorities in examining a number of options with the intention of bringing further hubs providing 400 additional family units into operation in 2018. Details of these facilities will be made available as projects are finalised by housing authorities.
- One of the measures put in place to support families, through the use of HAP, was the establishment of a Homeless HAP Placefinders service in the Dublin Region Homeless Executive, which leads the response to homelessness in the four Dublin local authorities, and in Cork early in 2017.



- The service is in the process of being rolled out across all local authorities. In furtherance of this, a network meeting/workshop for all Homeless HAP Placefinders was held in Dublin in 2018. All local authorities were represented.
- During the recent extreme weather events, State funding was used to open a number of new homeless facilities in Dublin; an additional 200 emergency beds have been put in place for rough sleepers since late 2017.
- A key mechanism of dealing with entrenched rough sleepers is through the Housing First Programme, which supports long-term homeless individuals and those with a history of rough sleeping move from emergency accommodation to independent living. A [National Implementation Plan for Housing First](#) was launched in September 2018.

### **Homeless HAP Pilot**

- The Homeless HAP Place Finder Service operating in the Dublin local authorities, and in Cork City Council, is a targeted support for homeless households who are finding it difficult to secure HAP tenancies. The Place Finder Service has been successfully utilised by the Dublin Regional Homeless Executive (DRHE) across the Dublin local authorities since February 2015, with more than 3,100 households being supported by the Homeless HAP scheme at Q2, 2018. A similar service began operating in Cork City in 2017.
- In order to further assist homeless households in exiting emergency accommodation the Homeless HAP Place Finder Service, with effect from 19 January 2018, has now be made available in each of the 31 local authority areas. All local authorities are now being provided with the options to pay deposits and [advance](#) rental payments for any households in emergency homeless accommodation, in order to secure

accommodation via the HAP Scheme. To date 21 Local Authorities have expressed an interest in establishing this service.

### **Government priorities for the years ahead for Housing**

- Implementing Rebuilding Ireland: Action Plan for Housing and Homelessness is the key priority for Government. By targeting practical actions to increase the supply of homes to 25,000 units per annum by 2020, The Government aims to create a functioning and sustainable housing system.
- Pillar 2 of Rebuilding Ireland is entitled ‘Accelerate Social Housing’ and it, clearly, is the most relevant to the housing needs assessment published in 2018. It provides for actions to increase the level and speed of delivery of social housing and other State supported housing, with significant funding of over €6 billion committed over the period of the Plan to deliver the 50,000 new social houses through build, refurbishment, acquisitions and leasing, between now and 2021.
- The other Pillars, however, will also have a beneficial impact for those identified through the SSHA as being in need of supported housing. The provision of more affordable, private housing, the better use of existing housing and improved planning procedures will all help to deliver new housing supply for those in housing need.
- Ensuring that there is a supply of housing that is affordable for people to buy or rent, depending on their choice and circumstances, is a priority for the Government.
- A broad number of measures are being brought forward to increase the housing supply sustainably and reform the housing sector for the long-term through Rebuilding Ireland and Project Ireland 2040.
- It is clear that progress is being made, with all indicators trending very positively. For example, the number of new homes built in 2017 was 14,435, this was up 45% from

9,907 in 2016, and it is expected that in the order of 20,000 new homes built this year. Planning permissions, commencement notices and Registrations are all show significant increases as well.

- The total collapse in our home building sector and is taking time to recover. Employment in construction as a whole was estimated as 145.7K in Q2 2018. This represents an increase of 18% on the same period in 2017.
- Increasing housing supply is the most important element of the Government's response to the housing crisis. New homes being made available will reduce competition for homes to rent and buy – in particular it will help those people who want to buy, can get a mortgage, which would be cheaper than their rent, but the supply of homes is too restricted.

### **Price of housing – making it accessible**

- For those households earning low to moderate annual gross incomes ( up to €50,000 for single applicants and €75,000 for dual applicants) there is a three-pronged, targeted approach to affordable housing provision:

1. Affordable housing for purchase, relevant provisions of the Housing (Miscellaneous Provisions) Act 2009 commenced; regulations & guidance to Local Authorities. Delivered by local authorities developing sites in key locations; complementary to other Government schemes which help first-time buyers to buy a home, such as the Help to Buy Scheme and the new Rebuilding Ireland Home Loan.

2. Making cost rental homes a major part of the rental landscape, announced details of a major cost rental project with the potential to deliver over 300 cost rental homes in Dublin, as part of

a mixed-tenure development of some 470 homes in total. In parallel, the Housing Agency, Dún Laoghaire-Rathdown County Council and a number of Approved Housing Bodies (AHBs) have been working on a smaller-scale cost rental pilot, the tenders for which will issue shortly. Learning from these pilot projects, cost rental will now be rolled out across other suitable sites.

3. Providing €75 million in Exchequer funding for enabling infrastructure via the Serviced Sites Fund to get Local Authorities and Housing Agency sites ready for affordable housing; adding Local Authorities co-funding, an overall minimum investment of €100 million will be provided to those sites that require infrastructural investment in order for them to be brought into use for affordable housing. I expect that initial funding awards will be made next month.

In addition, a new Land Development Agency has been established. It is mandated to build some 150,000 new homes over the next 20 years; with an immediate focus on managing the State's own lands to develop new homes, and regenerate under-utilised sites, and will deliver at least 40% of any housing potential on such lands in the form of both social and affordable housing.