

DIRECT PROVISION'S IMPACT ON CHILDREN: A HUMAN RIGHTS ANALYSIS

A Submission to the United Nations Committee on the Rights of the Child

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July 2020

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This study has been conducted in collaboration with the Movement of Asylum Seekers in Ireland (MASI) as part of the International Human Rights Law Clinic at the Irish Centre for Human Rights, NUI Galway.

The authors are solely responsible for the content of this report and the views expressed do not represent the position of the Irish Centre for Human Rights, NUI Galway, or MASI.

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The Irish Centre for Human Rights (ICHR) at the School of Law, National University of Ireland, Galway is Ireland's principal academic human rights institute. The ICHR undertakes human rights teaching, research, publications, and training, and contributes to human rights policy development nationally and internationally.

Acknowledgements

In compiling this report, valuable assistance and feedback were received from Dr Maeve O' Rourke, Professor Siobhán Mullally, Evgeny Shtorn and Claire Raissian. We are grateful to everyone who shared their expertise with us for the purpose of writing this report. All errors remain the authors' own.

LIST OF ABBREVIATIONS & IRISH TERMS

CEAS	Common European Asylum System
CESCR	UN Committee on Economic, Social and Cultural Rights
CFREU	Charter of Fundamental Rights of the European Union
CRC	UN Committee on the Rights of the Child
Dáil	Lower house of Irish parliament
DCDEI	Department of Children, Disability, Equality and Integration
DCYA	Department of Children and Youth Affairs
DJE	Department of Justice and Equality
DLP	Designated Liaison Person
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECSR	European Committee on Social Rights
ESC	European Social Charter
EU	European Union
HIQA	Health Information and Quality Authority
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-Governmental Organisation
RCD (recast)	EU Reception Conditions Directive (recast)
RIA	Reception and Integration Agency
Tusla	Child and Family Agency
UN	United Nations
UNCAT	United Nations Convention Against Torture
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	UN Refugee Agency

TABLE OF CONTENTS

EXECUTIVE SUMMARY	V
CHAPTER 1: HEALTH & DEVELOPMENT	1
1.1 ACCESS TO HEALTH SERVICES AND GOODS	1
1.1.1 <i>Legal Framework</i>	1
1.1.2 <i>Policy Framework</i>	4
1.1.3 <i>Situation in Direct Provision</i>	7
1.1.4 <i>Incoming National Standards</i>	15
1.2 FOOD & NUTRITION	17
1.2.1 <i>Legal Framework</i>	17
1.2.2 <i>Policy Framework</i>	19
1.2.3 <i>Situation in Direct Provision</i>	20
1.2.4 <i>Incoming National Standards</i>	21
1.3 RECREATION.....	22
1.3.1 <i>Legal Framework</i>	22
1.3.2 <i>Policy Framework</i>	23
1.3.3 <i>Situation in Direct Provision</i>	24
1.3.4 <i>Incoming National Standards</i>	25
1.4 SEXUAL EXPLOITATION.....	26
1.4.1 <i>Legal Framework</i>	26
1.4.2 <i>Situation in Direct Provision</i>	29
1.4.3 <i>Incoming National Standards</i>	30
CONCLUSION	31
CHAPTER 2: EDUCATION.....	33
2.1 <i>Legal Framework</i>	33
2.2 <i>Domestic Policy</i>	36
2.3 <i>Situation in Direct Provision</i>	37
2.4 <i>Incoming National Standards</i>	45
CONCLUSION	46
CHAPTER 3: PRIVATE AND FAMILY LIFE	48
3.1 <i>Legal Framework</i>	48
3.2 <i>Policy Framework</i>	52
3.3 <i>Situation in Direct Provision</i>	53
3.4 <i>Incoming National Standards</i>	61
CONCLUSION	63
CHAPTER 4: ACCOUNTABILITY & CHILD PROTECTION	64
4.1 CHILD PROTECTION/ INSPECTION	64
4.1.1 <i>Legal and Policy Framework</i>	64
4.1.2 <i>Situation in Direct Provision</i>	72
4.2 VULNERABILITY ASSESSMENTS	78
4.2.1 <i>Legal Framework</i>	78
4.2.2 <i>Policy Framework</i>	81
4.2.3 <i>Situation in Direct Provision</i>	82
4.3. OPERATION OF DIRECT PROVISION CENTRES AND DISPERSAL	88
4.3.1 <i>Emergency Accommodation</i>	88

4.3.2	<i>Staff Vetting</i>	90
4.3.3	<i>Responsibilities of Direct Provision Centre Staff and Child Protection</i>	93
4.3.4	<i>Transfers</i>	98
4.3.5	<i>House Rules and Complaints</i>	100
4.4	INCOMING NATIONAL STANDARDS	101
4.4.1	<i>Child Protection and Child Safeguarding: Persisting Inconsistencies</i>	102
4.4.2	<i>Accountability, Inspections and Oversight</i>	104
4.4.3	<i>Vulnerability Assessments</i>	106
4.4.4	<i>Operation of Direct Provision Centres</i>	110
APPENDIX: LEGAL AND POLICY BACKGROUND.....		114
A.	<i>Key Policies</i>	114
B.	<i>Key Legislative Instruments</i>	117
C.	<i>Key Actors and Institutions</i>	122
BIBLIOGRAPHY		I
PRIMARY SOURCES		I
SECONDARY SOURCES		V

EXECUTIVE SUMMARY

Introduction

This report examines how children's human rights are being impacted by Ireland's reception system for asylum seekers, known as 'Direct Provision' (including emergency accommodation centres). The report was completed in June 2020, just prior to the new Government's announcement that responsibility for Direct Provision would be transferred from the Minister for Justice and Equality to the Minister for Children, Disability, Equality and Integration.ⁱ This report refers to the apparatus that has been in existence up to June 2020. The issues that the new Government and its Minister for Children, Disability, Equality and Integration will need to address remain the same.

This report aims to inform the UN Committee on the Rights of the Child of: (1) the particular harms that children in Direct Provision are suffering, (2) the legal protection gaps that must be addressed immediately, (3) the deficiencies in the incoming National Standards, meaning that they will not vindicate children's rights, and (4) the need to end the system of Direct Provision.

The Direct Provision system has operated for 20 years despite being established as a temporary, emergency measure. According to the Reception and Integration Agency (RIA),ⁱⁱ in March 2020 the mean length of time spent in the asylum process by RIA residents was 23 months,ⁱⁱⁱ with some children having spent years in the system.^{iv} The latest available data says that 1,789 children live in Direct Provision, with a further 304 children living in emergency accommodation.^v This data shows that a significant number of children are spending extensive periods of time in a system deemed 'not fit for purpose' by the Oireachtas Joint Committee on Justice and Equality in 2019.^{vi}

The former Special Rapporteur on Child Protection, Dr Geoffrey Shannon has observed about Direct Provision that: 'When we look back in 10 years' time, we may ask ourselves how we allowed the system to exist. The debate sparked by the Tuam mother and baby story should prompt us to reflect on the manner in which all children are treated in Ireland, not merely citizen children.'^{vii}

The contents of this report demonstrate that Ireland's practice of institutionalising children and families in private, commercially operated Direct Provision settings is systematically infringing children's rights to health and development, education and respect for private and family life. A further, glaring similarity to past systemic failures in child protection according to this report's analysis is that the structures of accountability and state oversight to prevent child abuse, neglect and exploitation within the institutional settings of Direct Provision are weak. They are incomplete, inconsistent, insufficiently co-ordinated and non-transparent.

Methodology and Original Contribution

This report analyses children's experiences in Direct Provision by reference to (1) key legal instruments which are binding on Ireland (including international human rights treaties, European human rights law, the European Union (EU) Reception Conditions Directive (recast), and the Irish Constitution); (2) policies of the Irish Government and the EU's European Asylum Support Office; (3) publicly available

empirical evidence of the experiences of children and families in Direct Provision; and (4) existing academic, civil society and official State analysis of conditions in Direct Provision.

It is important to note that, as this report focuses on asylum-seeking children living in Direct Provision and emergency accommodation, the situation of unaccompanied minors, who are placed into State care upon arrival, is beyond its scope.^{viii}

The report adds to existing literature by considering how laws, policies and practice regarding Direct Provision impact children in particular, and by drawing together the findings of previous research on Direct Provision as they relate to children specifically. We consider the reports of State entities including the Department of Children and Youth Affairs,^{ix} the Special Rapporteur on Child Protection,^x the Ombudsman,^{xi} the Ombudsman for Children,^{xii} HIQA^{xiii} the McMahon Working Group,^{xiv} and the Oireachtas Joint Committee on Justice and Equality. We further take into account the reports of non-governmental organisations (NGOs) and others including the Irish Refugee Council,^{xv} Nasc,^{xvi} the Children's Rights Alliance^{xvii} the Faculty of Paediatrics of the Royal College of Physicians in Ireland, the Edmund Rice Schools Trust, Rape Crisis Network Ireland, AkiDwa, Doras, the Irish Council for Civil Liberties, An Cosán, and the Movement of Asylum Seekers in Ireland.^{xviii} We consider submissions by NGOs and the Irish Human Rights and Equality Commission to domestic^{xix} and international^{xx} human rights bodies, and the recommendations^{xxi} of these bodies in response.

Despite children making up a substantial number of Direct Provision residents, only a small number of official reports have been devoted to their experiences. In 2017, the Department of Children and Youth Affairs conducted consultations with children and young people living in Direct Provision.^{xxii} Although the report contained a range of negative findings, there has been no apparent follow-up. The Ombudsman for Children submitted an assessment of Direct Provision to the Oireachtas Committee on Justice and Equality in May 2019.^{xxiii} The Ombudsman for Children published a striking report in July 2020, entitled *Direct Division*, conveying testimony and recommendations from a consultation with children in Direct Provision.^{xxiv} Tusla, being the 'dedicated State agency responsible for improving wellbeing and outcomes for children',^{xxv} has not yet released a dedicated report on children in Direct Provision and rarely makes reference to children in Direct Provision in its reports generally. RIA has a section on 'child and family services' in its annual reports but has not published an annual report since 2017.^{xxvi} A review of the literature also showed a lack of research in relation to accountability and common standards across Direct Provision, particularly with regard to the increased use of emergency accommodation.

This report offers an original, timely analysis of whether the incoming National Standards (due to be enforced from January 2021) will be sufficient to address the problems facing children in Direct Provision. In addition, the report provides extensive original analysis of the State's accountability mechanisms regarding Direct Provision and the gaps in those mechanisms in the areas of child welfare and child protection. In so doing, the report sheds light on Ireland's failure to learn from a history of institutionalisation and systemic mistreatment of children and families on the margins of Irish society.

Contents of the Report

The report contains 4 Chapters and an Appendix:

- **Chapter 1** focuses on the right of the child to health and development: with a particular focus on access to healthcare services and goods, mental health, food and nutrition, recreation and sexual exploitation.

- **Chapter 2** focuses on the child's right to education.
- **Chapter 3** focuses on the right to private and family life.
- **Chapter 4** focuses on accountability and child protection.
- **The Appendix** provides an overview of the key policies, legal instruments, and actors and institutions relevant to Direct Provision and the protection of children's rights within the system.

Each Chapter sets out the relevant legal framework and policy framework before analysing the compliance of the lived experience of children in Direct Provision with those frameworks. At the end of every Chapter there is a discussion of whether the incoming National Standards appear capable of sufficiently addressing the problems that presently exist.

Key Findings

The problems with Direct Provision have been well documented, albeit with gaps regarding the particular experiences of children, by both NGO and official State reports for years. The approach of successive governments has been to undertake investigations of the Direct Provision system, for example the McMahon report, the Joint Committee on Justice and Equality and most recently the Expert Group on Direct Provision chaired by Dr Day. While this wealth of evidence is necessary to understand the operation and impacts of the Direct Provision system on asylum seekers, action on rectifying these harms is overdue. The failure of the previous Department of Children and Youth Affairs to advocate for and protect the rights of asylum-seeking children thus far is shameful. We find that, while the incoming National Standards for Direct Provision centres demonstrate well-meaning intentions, the National Standards do not go far enough to ensure that children living in Direct Provision, and their rights, will be protected equally to Irish citizen children.

The failure of the State to protect asylum-seeking children's rights, by maintaining the system of Direct Provision, in our view amounts to discrimination. The United Nations Committee on the Rights of the Child (CRC) has confirmed that Article 2 of the UN Convention on the Rights of the Child (UNCRC) prohibits any discrimination on the basis of a child's status a refugee, asylum seeker or migrant.^{xxvii} However, as this report outlines, asylum-seeking children living in Direct Provision are regularly deprived of their rights under the UNCRC. Direct Provision not only breaches the rights of asylum-seeking children under the UNCRC, but it also violates the Irish State's obligations under the Reception Conditions Directive (recast) (RCD (recast)) and the Charter of Fundamental Rights of the European Union (CFREU) as explained in this report.

What follows is a short summary highlighting the key concerns and findings contained in each Chapter, which are elaborated in detail in the report itself.

Chapter 1: Health and Development

Ireland is obliged to ensure all children can enjoy the highest attainable standard of health.^{xxviii} This includes being able to access necessary health care^{xxix} enjoyment of an adequate standard of living

which facilitates children's physical, mental and social development;^{xxx} enjoyment of nutritious food;^{xxxi} the ability to engage in recreation;^{xxxii} and protection from moral dangers.^{xxxiii}

This obligation is breached by the accommodation of children in Direct Provision, due, *inter alia*, to the following:

- Children living in Direct Provision are routinely accommodated in isolated areas which can create barriers to accessing GPs and specialist healthcare services.
- The failure of the State to conduct proper vulnerability assessments violates the right of asylum-seeking children to have their special reception needs recognised and met, as required by the RCD (recast).
- The isolation and social exclusion cited by children and caused by living in Direct Provision impacts their ability to form friendships and protect their own wellbeing. This in turn has a negative impact on the mental health of asylum-seeking children, and impairs their development.
- A lack of proper food and nutrition continues to be a significant barrier to health and development for children, as the canteen-style kitchens and catering typical of many Direct Provision centres prevents families from being equipped to provide nutritious meals for their children.

We believe that the incoming National Standards will not address these health and development concerns for children because:

- They do not apply to emergency accommodation, where living standards and access to services are even worse than Direct Provision centres.
- The over-reliance on service providers to rectify problems in relation to standard of living and nutrition of children will likely see continued disparities across centres.
- Provision of healthcare goods through requests by residents to service providers limits asylum-seeking families' independence.
- The National Standards fail to provide clear guidance on the standards to be achieved by service providers in their obligation to promote the health and development of children in their accommodation centres.

Chapter 2: Education

Education is a key right to assist children's development and life opportunities. In recognition of this, many domestic,^{xxxiv} European^{xxv} and international^{xxvi} obligations require Ireland to ensure asylum-seeking children's access to education. While asylum-seeking children are permitted to attend primary and secondary schools on an equal footing to Irish citizen children, life in Direct Provision hinders asylum-seeking children's ability to participate fully in education and extra-curricular activities.

Asylum-seeking children who live in Direct Provision are discriminated against in accessing education because:

- Enforced poverty caused by the limited right of persons to work, and the insufficient Daily Expenses Allowance, means many families living in Direct Provision are unable to access materials required for school-going children without the assistance of donations.
- The social exclusion caused by children living in Direct Provision also impacts children's ability and acceptance in engaging in extracurricular activities.

DIRECT PROVISION'S IMPACT ON CHILDREN

- The living conditions in Direct Provision centres routinely fail to provide adequate space for asylum-seeking children to complete homework and study to support their education.
- Due to the rural locations of Direct Provision centres children frequently are limited in transport options for school and extra-curricular activities.
- The prohibitive cost of third-level education and lack of national funding opportunities for asylum-seeking young people means many asylum-seeking children have few education opportunities to look forward to following their secondary education.
- Many children who live in emergency accommodation are prevented from attending ordinary school with other non-asylum-seeking children for months on end and are instead segregated in emergency education settings that are unregulated and lacking in resources.

The incoming National Standards fail to adequately address the concerns for asylum-seeking children's education because:

- There is a lack of clarity on the standard of 'appropriate and sufficient materials' to support learning and schoolwork, to be ensured by service providers.
- The National Standards fail to guarantee asylum-seeking young people equal access to third-level education with Irish citizen young people.
- Transport facilities continue to be left to the discretion of centre managers where 'necessary'.
- The failure to include emergency accommodation within the scope of the National Standards will continue to create gaps in effective access to education.

Chapter 3: Private and Family Life

The right to respect for private and family life is protected by domestic and international obligations. The Irish Constitution places a strong emphasis on the family unit as the natural primary and fundamental unit of society. The family is also protected, *inter alia*, under the European Social Charter,^{xxxvii} the European Convention on Human Rights^{xxxviii} and the UNCRC.^{xxxix}

However, for asylum-seeking children their family life is infringed by the standard of living in Direct Provision centres because:

- The limited right to work for asylum-seeking parents and further hinderance to their right to work caused by a lack of access to childcare means that many asylum-seeking families are living in state-sponsored poverty.
- Asylum-seeking children's limited ability to learn about their culture from parents is exemplified by the widespread denial of the opportunity to cook, which is frequently integral to one's culture.
- The communal setting typical of Direct Provision disempowers parents in child-rearing and thus prevents asylum-seeking children from enjoying basic aspects of ordinary life.

While the incoming National Standards provide some welcome measures such as entitling families to a private living space and bathroom in addition to bedrooms, they fail to fully address concerns regarding family and private life, namely:

- The National Standards fail to address issues of structural poverty enforced by the Direct Provision system; of particular concern is the continued failure to provide childcare for working parents.

- With regard to cultural heritage and cooking the National Standards continue to allocate a disproportionate amount of discretion to the service provider in implementing and monitoring progress in improvements.
- The continued reliance on communal accommodation centres fails to address the unsuitability of such accommodation for the natural development of children and families.

Chapter 4: Accountability and Child Protection

Effective accountability mechanisms are vital to ensuring that children's rights and welfare are protected. The UNCRC requires States to take all appropriate legislative and administrative measures to protect children from all forms of abuse, injury, neglect, or negligent treatment.^{xl} This report analyses child protection statements and policies which operate with regard to asylum-seeking children in Direct Provision and finds the following gaps:

- The statutory gap in child safeguarding measures regarding emergency accommodation is of particular concern.
- The lack of Tusla involvement in oversight of centre management prevents effective data-collection on at-risk children, thus failing to properly address potential risks while living in Direct Provision.
- The failure to conduct effective vulnerability assessments is inconsistent with the State's obligations under the RCD (recast); of particular concern is the reliance on child applicants to raise vulnerability and special reception needs.
- The lack of transparent vetting procedures for staff working with asylum seeking children is wholly unacceptable.
- Staff in Direct Provision centres do not receive adequate training in ensuring the rights and protection of children, which is of grave concern given the institutional nature of Direct Provision.
- Complaints mechanisms place Direct Provision centre managers as the first point of complaint, and the requirement that this method be exhausted before complaints may be made to the Ombudsman or RIA is wholly inappropriate where complaints may concern a Direct Provision centre's staff.

Unfortunately, the incoming National Standards are not sufficient to rectify the above issues and ensure an effective administrative and legislative framework for child protection as required by the UNCRC, because:

- Responsibility for monitoring and implementing improvements are allocated to Direct Provision centre managers and operators without an appropriate supervisory or sanction mechanism.
- The reliance on Direct Provision centre staff, without specified training, to identify, communicate and address existing or emerging special reception needs continues the unsatisfactory method of vulnerability assessment currently adopted.
- The unfit complaints mechanism remains unchanged by the National Standards, requiring asylum-seeking children or their parents to complain twice to a centre manager before informing RIA or the Ombudsman for Children.
- The National Standards do not address the fact that the RIA Child Protection Policy and RIA's Safeguarding Statement aimed at protecting children fail to adequately place responsibility on a 'mandated person' as required by the Children First Act 2015.

- The failure of the incoming National Standards to mandate that vetting procedures be subject to audit and that written records of vetting outcomes be maintained continues a recruitment system which lacks transparency.

Conclusions

Asylum-seeking children consulted by the Ombudsman for Children have stated that living in Direct Provision has exacerbated their exposure to discrimination.^{xli} This is unsurprising given the institutionalised and segregated living arrangements typical of Direct Provision accommodation. The lack of adequate human rights-based interrogation of the Direct Provision system has led to the State perpetuating an illusion that the system is basically satisfactory, if not without its flaws which may be remedied by reform. However, in reality the Direct Provision system is entirely incapable of ensuring human rights protection for asylum seekers, particularly children, as this report demonstrates.

While an in-depth analysis of alternatives to Direct Provision is beyond the scope of this report, we wish to highlight the economic cost of Direct Provision in addition to the human cost to children's rights which is outlined in the remaining chapters. In 2018, €78 million was spent on contracts for Direct Provision centres, the highest expenditure since 2010.^{xlii} The Department of Justice and Equality (DJE) anticipated that spending on Direct Provision would exceed €120 million in 2019.^{xliii} In August 2019 the DJE published a spending review which estimated the costs that would be involved in providing a social welfare-based alternative to Direct Provision.^{xliv} The DJE's own estimates placed the annual expenditure at between €66 million and €78 million; this figure varies depending on the Housing Assistance Payment (HAP) rate that would be granted depending on location.^{xlv} The spending review fails to highlight that a welfare-based scheme where all asylum seekers are based in Dublin (i.e. the most expensive area) is estimated to match the current expenditure on Direct Provision, both totalling €78 million, as per the review's figures.^{xlvi} It also fails to compare this figure with its own estimated expenditure for 2019 of €120 million,^{xlvii} or to relativize the social welfare estimate in terms of the current reliance on emergency accommodation, and expected increase in the number of international protection applicants requiring accommodation and services throughout 2020.^{xlviii}

By catering for asylum seekers' reception needs through Direct Provision, successive governments have excluded asylum seekers from accessing social welfare allowances. Asylum seekers are explicitly excluded from the 'habitual residence' criterion for social welfare payments,^{xlix} despite many in reality being able to demonstrate 'a proven close link to Ireland', 'permanence' and intention to stay in Ireland for the foreseeable future.^l A person must be habitually resident to qualify for child benefit, carer's allowance, domiciliary care allowance for children with severe disabilities and one-parent family payment, among others.^{li} However, a flat weekly allowance for asylum seeking adults and children is set by the DJE regardless of a child or family's individual circumstance.

In defending the denial of child benefit to an Irish citizen child resident in Direct Provision the State has argued that '[m]any of the additional costs associated with bringing up a child are/ were not in fact incurred by the applicants as a consequence of residing in the direct provision system'.^{lii} In the High Court, Hogan J observed that the same could be said for low income families who benefit from a range of State supports.^{liii} More recently, asylum seekers who have been temporarily unemployed due to the COVID-19 pandemic have been discriminated against due to their immigration status.^{liv}

As highlighted in this report, Direct Provision fails to adequately provide for the needs of asylum-seeking children, with families frequently required to supplement food and non-food items with the

small Daily Expenses Allowance. Living in Direct Provision automatically excludes asylum-seekers from accessing supports offered to nationals and places them in a situation of substandard living in comparison with many nationals. The automatic exclusion of asylum seekers from Child Benefit and the COVID-19 Pandemic Unemployment Payment highlight the discriminatory nature of the Direct Provision system.

The concerns highlighted in this report regarding asylum-seeking children's rights are not novel. Such concerns have been raised since the inception of the Direct Provision system. Asylum-seeking children are unable to enjoy their rights under domestic, European and international instruments to the same extent as Irish citizen children by virtue of their (and their parents') immigration status. The discriminatory treatment of asylum-seeking children is inexcusable particularly in light of the economic and human cost-effective social welfare alternative which was previously employed by the Irish State. The continued reliance on Direct Provision shows the Irish State's failure to learn from its 20th century history which demonstrates the detrimental life-long impact that institutionalised living has on children.

ⁱ Fiach Kelly, 'New Department of Children to be responsible for Direct Provision' *The Irish Times*, 28 June 2020, <https://www.irishtimes.com/news/ireland/irish-news/new-department-of-children-to-be-responsible-for-direct-provision-1.4290769>

ⁱⁱ The Reception and Integration Agency (RIA) has now been divided into two sections; the International Protection Accommodation Services (IPAS) and the International Protection Procurement Services (IPPS).ⁱⁱ As much of this report's research relies on documents prior to this change to avoid confusion this report will refer to RIA.ⁱⁱ

ⁱⁱⁱ Office of the Ombudsman for Children, *Direct Division* (2020), 14. Available at: <https://www.oco.ie/directdivision/direct-division-report/>.

^{iv} Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (32/JAE/47 December 2019), 16. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

^v Office of the Ombudsman for Children, *Direct Division* (2020), 14. Available at: <https://www.oco.ie/directdivision/direct-division-report/>.

^{vi} Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 80. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

^{vii} Carl O' Brien and Sinead O' Shea, 'Could Direct Provision be the subject of a future government apology?' *The Irish Times*, 12 August 2014, available at: <https://www.irishtimes.com/news/social-affairs/could-direct-provision-be-the-subject-of-a-future-government-apology-1.1894031>.

^{viii} See Emma Quinn, Corona Joyce and Egle Gusciute, 'Policies and Practices on Unaccompanied Minors in Ireland' (European Migration Network 2014), available at: https://emn.ie/files/p_201611160221452014%20UAMs%20in%20Ireland_final.pdf.

^{ix} Department of Children and Youth Affairs, 'Consultations with children and young people living in Direct Provision', (July 2017) available at: http://www.justice.ie/en/JELR/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf/Files/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf.

^x Geoffrey Shannon, 'Twelfth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas' (2019) available at: <https://assets.gov.ie/45418/612999d7993449c780ecfdf4392b323e.pdf>.

^{xi} Office of the Ombudsman, 'The Ombudsman and Direct Provision: An Update for 2018' (2019); Office of the Ombudsman, 'The Ombudsman and Direct Provision: An Update for 2019' (2020).

^{xii} Office of the Ombudsman for Children, *Direct Division* (2020), 14. Available at: <https://www.oco.ie/directdivision/direct-division-report/>.

^{xiii} Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

^{xiv} 'Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers', ('McMahon report') (Department of Justice and Equality June 2015).

^{xv} Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion. The Case of Children in State Accommodation for Asylum Seekers' (September 2012), available at:

<https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=10c78084-d67c-4b86-b6d6-3b1b48fb85ed>; Irish Refugee Council, 'Direct Provision: Framing an alternative reception system for people seeking international protection' (2013), available at: <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=f948176a-2acc-43d7-8306-ef054aaefa68>; Irish Refugee Council, 'Reception Conditions Directive: One Year On' (July 2019), <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=096fdab0-bac5-4273-9fdd-6e517f62a8d4> accessed 30 April 2020; Irish Refugee Council, 'The Education System in Ireland: A guide for people seeking asylum, those with refugee status, subsidiary protection or permission to remain' (July 2019) <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=70d0284a-c40a-4a17-9cee-fdfb270f2ed0>.

^{xvi} Nasc, 'Working Paper on the Implementation of the McMahon Report' (December 2017).

^{xvii} Children's Rights Alliance, 'Report Card 2020. Is Government Keeping Its Promises to Children?' (March 2020).

^{xviii} Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019); Edmund Rice Schools Trust, 'Futures on Hold. A Position Paper on Direct Provision and Its Impact on Learning and Wellbeing for Students and Young People' (June 2019); Kane, C. 'A Right to Play: A Study of the Care and Education Needs of Asylum-Seeking Children and their Families', Mayo County Childcare Committee (2008) available at: <http://www.mayochildcare.ie/en/media/Media,8688,en.pdf>; Rape Crisis Network Ireland, 'Asylum seekers and refugees surviving on hold: Sexual violence disclosed to Rape Crisis Centre' (October 2014) available at: <https://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>; ^{xviii} AkiDwa, 'No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland' (October 2012) 8. available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>.

^{xix} Doras, 'Submission on Direct Provision and International Protection Application Process' (December 2019); The Ombudsman for Children Office, 'Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process' (Ombudsman for Children Office May 2019) available at: <https://www.oco.ie/app/uploads/2019/06/Ombudsman-for-Children-submission-on-Direct-Provision.pdf>; Irish Council for Civil Liberties and Irish Centre for Human Rights, 'Submission to Oireachtas Justice Committee Consultation on Direct Provision' (June 2019); Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on Direct Provision and the international protection process' (May 2019); 'Submission to Joint Oireachtas Committee on Justice and Equality' (June 2019), available at: <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=d4691945-2fc5-4fa4-9abe-448921302b35>; An Cosán, 'Submission to the Joint Committee on Education and Skills, *Report on Education Inequality and Disadvantage and Barrier to Education*' (32/ES/24 May 2019) available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-06-05_report-on-education-inequality-disadvantage-and-barriers-to-education_en.pdf; Movement of Asylum Seekers in Ireland (MASI), 'Submission to Justice & Equality Joint Committee' (27th May 2019) available at: <http://www.masi.ie/wp-content/uploads/2019/09/MASI-SUBMISSION-final-original-copy-29.05.2019.pdf>;

^{xx} Children's Rights Alliance, 'Are We There Yet? Parallel Report to Ireland's Third and Fourth Combined Report under the UN Convention on the Rights of the Child' (September 2015); Irish Human Rights and Equality Commission, 'Report to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports' (IHREC December 2015); Irish Human Rights and Equality Commission, 'Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report' (IHREC October 2019); Immigrant Council of Ireland, 'UN CERD Alternative Report' (ICI October 2019); Irish Refugee Council, 'Submission to the United Nations Committee against Torture on the Examination of Ireland's National Report' (June 2017); Irish Network Against Racism, 'Alternative Report on Racial Discrimination in Ireland, to the Committee on the Elimination of Racial Discrimination (CERD) for Its Consideration of the Combined Fifth to Ninth Periodic Reports of Ireland' (November 2019); National Women's Council of Ireland (NWC), 'Shadow Report in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)', (January 2017) available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fIRL%2f26285&Lang=en; Irish Human Rights and Equality Commission (IHREC), 'Comments on Ireland's 16th National Report on the implementation of the European Social Charter' (May 2019) available at: <https://www.ihrec.ie/app/uploads/2019/05/Comments-on-16th-National-Report-on-the-Implementation-of-the-European-Social-Charter-May-2019-1.pdf>

^{xxi} **Domestic:** Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (32/JAE/47 December 2019) available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Joint Committee on Education and Skills, *Report on Education Inequality and Disadvantage and Barrier to Education* (32/ES/24 May 2019) available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-06-05_report-on-education-inequality-disadvantage-and-barriers-to-education_en.pdf

International: European Committee on Social Rights, 'Conclusions 2019: Ireland' (March 2020); UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Ireland*, 29 January 2016, CRC/C/IRL/CO/3-4, available at: <https://www.refworld.org/docid/56c17f574.html>.

- ^{xxii} Department of Children and Youth Affairs, 'Consultations with children and young people living in Direct Provision', (July 2017) available at: http://www.justice.ie/en/JELR/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf/Files/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf.
- ^{xxiii} The Ombudsman for Children Office, 'Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process' (Ombudsman for Children Office May 2019). available at: <https://www.oco.ie/app/uploads/2019/06/Ombudsman-for-Children-submission-on-Direct-Provision.pdf>
- ^{xxiv} Office of the Ombudsman for Children, *Direct Division* (2020), <https://www.oco.ie/directdivision/direct-division-report/>
- ^{xxv} Tusla 'About Us' (*Tusla*) available at: <https://www.Tusla.ie/about/>.
- ^{xxvi} As per RIA's website, the last annual report was in 2017. RIA, 'Statistics' (RIA) available at: <http://www.ria.gov.ie/en/RIA/Pages/Statistics>.
- ^{xxvii} UN Committee on the Rights of the Child, 'General Comment No. 6' (1 September 2005) UN Doc CRC/GC/2005/6, para 18.
- ^{xxviii} UNCRC, art 24.
- ^{xxix} UNCRC, art 24; European Social Charter, art 11; Charter of Fundamental Rights of the European Union, art 35.
- ^{xxx} UNCRC, art 27; ICESCR, art 12.
- ^{xxxi} UNCRC, art 24.
- ^{xxxii} UNCRC, art 31.
- ^{xxxiii} UNCRC, arts 19, 34-36, 24.
- ^{xxxiv} Irish Constitution, art 4.3.2 °; European Communities (Reception Conditions) Regulations SI 230/2018. Art 17(1).
- ^{xxxv} RCD (recast), art 14; Charter of Fundamental Rights of the European Union, art 14; European Social Charter, art 17(2).
- ^{xxxvi} UNCRC, art 28; ICESCR, art 13(1).
- ^{xxxvii} European Social Charter, arts 16, 17(1).
- ^{xxxviii} ECHR, art 8.
- ^{xxxix} UNCRC, art 16.
- ^{xl} UNCRC, art 19(1)
- ^{xli} Office of the Ombudsman for Children, *Direct Division* (2020) 28.
- ^{xlii} *Ibid*, 53.
- ^{xliii} *Ibid*, 56.
- ^{xliv} Department of Justice and Equality 'Spending Review 2019 Direct Provision: Overview of current accommodation expenditure' (August 2019). Available at: http://justice.ie/en/JELR/Spending_Review.pdf/Files/Spending_Review.pdf
- ^{xlv} *Ibid*, 54; 'HAP is a form of social housing support provided by all local authorities. HAP means that local authorities can provide housing assistance for households who qualify for social housing support... [through] payments, subject to rent limits, on behalf of the HAP recipient directly to the landlord in respect of rent' Department of Housing, Planning and Local Government, 'Housing Assistance Payment' Available at: <https://www.housing.gov.ie/housing/social-housing/housing-assistance-payment/housing-assistance-payment>.
- ^{xlvi} Department of Justice and Equality 'Spending Review 2019 Direct Provision: Overview of current accommodation expenditure' (August 2019) 54. Available at: http://justice.ie/en/JELR/Spending_Review.pdf/Files/Spending_Review.pdf.
- ^{xlvii} *Ibid*, 56.
- ^{xlviii} *Ibid*, 28.
- ^{xlix} Social Welfare Consolidation Act 2005 (as amended), s 246(7).
- ^l Department of Employment Affairs and Social Protection, 'Habitual Residence Condition', (3rd September 2019). Available at: <https://www.gov.ie/en/publication/170e70-habitual-residence-condition/>.
- ^{li} Department of Employment Affairs and Social Protection, 'Habitual Residence Condition', (3rd September 2019). Available at: <https://www.gov.ie/en/publication/170e70-habitual-residence-condition/>
- ^{lii} *Agha (a minor) & ors v Minister for Social Protection & ors and Osinuga (a minor) & anor v Minister for Social Protection & ors* [2018] IECA 155, para 31; The Irish Supreme Court overturned the decision on the basis of the explicit exclusion of asylum seekers in the habitual resident condition see *Michael (a minor), Sarah (a minor), Azmi (a minor), Afsar (a minor), (All suing through their mother and next friend Ms. X), Ms Z and Ms X -v- Minister for Social Protection & Ors And Emma (A minor suing by her mother and next friend Ms Y) and Ms Y* [2019] IESC 82.
- ^{liii} *Ibid*, para 32.
- ^{liv} During the ongoing COVID-19 pandemic the Department of Employment Affairs and Social Protection (DEASP) made the COVID-19 Pandemic Unemployment Payment for persons who had been temporarily laid off or had ceased trading as a self-employed person due to the pandemic. Given the exceptional nature of the pandemic the payment was made available to many who would not usually qualify for unemployment benefit such as full-time Irish, EU and international students and undocumented workers. The Irish Refugee Council understands the reasoning behind the decision to exclude those living in Direct Provision is that residents 'are deemed to be in receipt of a social welfare payment: the Direct Provision daily expenses allowance', a situation they describe as 'deeply disappointing'. (O'Hanrahan, R. 'Direct Provision jobless unable to claim Pandemic Unemployment Payment' Joe.ie (20th March 2020). Available at: <https://www.joe.ie/politics/direct-provision-covid19-pandemic-695184>.) The failure of the Department of Social Protection to consider the needs of asylum seekers who have been temporarily laid off during the COVID-19 pandemic is a sign of systematic discrimination. The rate of the Daily Expenses Allowance is incomparable to other social welfare payments, as such asylum seekers who have been temporarily laid off should be entitled to the COVID-19 Pandemic Unemployment Payment.

CHAPTER 1: HEALTH & DEVELOPMENT

1.1 ACCESS TO HEALTH SERVICES AND GOODS

Effective access to necessary health services is vital to ensuring every child's right to the highest attainable standard of physical and mental health. While asylum-seeking children may access the healthcare system on the same basis as citizen children in policy, this access is frequently impacted by the rural, dispersed nature of Direct Provision centres and lack of capacity in local services. The situation for asylum-seeking children in emergency accommodation is particularly precarious in accessing healthcare.

Asylum-seeking children often have specific healthcare needs, that may be distinct from those experienced by the general population, with the College of Psychiatrists of Ireland calling for a more nuanced approach to the mental health needs of asylum seekers, which cannot be assumed to be provided for by generic services¹ given the heightened instances of mental health issues among asylum seekers. Mental health issues among asylum seekers are often a consequence of prior trauma and the stress of the migration process, but are also referenced as being caused by living in the Direct Provision system.² Feelings of isolation, a sense of imprisonment and lack of services is evident across reports and un conducive to positive mental health, as detailed below.

Addressing MASI's first annual conference in October 2019, MASI member and founder of 'Cooking for Freedom', Mavis Ramazani stated,

There are young people [living in Direct Provision] with dreams who are talented, but they are going nowhere slowly. The reality is their lives are being slowly destroyed. The system is destroying lives; it's inhumane.

Ensuring access to necessary healthcare *goods* is also vital to ensuring children enjoy the highest attainable standard of living, this includes access to sanitary and personal hygiene products for the adequate development of adolescents.

This report argues the lack of adequate healthcare specific to asylum-seeking children's physical and mental health needs in combination with unresolved barriers to general healthcare is detrimental to their right to the highest attainable standard of physical and mental health.

1.1.1 Legal Framework

¹College of Psychiatrists of Ireland 'Mental Health Service Requirement in Ireland for Asylum seekers, Refugees and Migrants from Conflict Zones' Position Paper EAP/01/17 (March 2017) available at: <https://www.irishpsychiatry.ie/wp-content/uploads/2016/10/Mental-Health-Service-requirements-for-asylum-seekers-refugees-and-immigrants-150517-1.pdf>. See page 4-5, Asylum seekers suffer 'higher rates of anxiety and depressive disorders than other sections of society. They also have up to ten times the level of post traumatic disorder (PTSD) compared to the indigenous population. For many refugees, migrants, and asylum seekers the term post-traumatic stress disorder is not appropriate. This is because the process of migration into an alien and frequently hostile culture can mean that the trauma is still ongoing. It has not yet reached the 'post' stage.'

² Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers, Final report ('McMahon report') (June 2015) 50.

(1) Domestic Legislation

European Communities (Reception Conditions) Regulations 2018

Under the Reception Conditions Regulations, the Minister for Health must ensure that all residents in Direct Provision centres have access to emergency healthcare, healthcare necessary for treatment of serious illnesses and mental disorders, and healthcare necessary to maintain the recipient's health.³

Mental Health (Amendment) Act 2018

According to the Mental Health Act 2018, every child is entitled to access to health services so as to maintain the highest attainable standard of child mental health.⁴

(2) European Obligations

Reception Conditions Directive (recast)

Member States must provide an adequate standard of living which protects asylum seekers' physical and mental health and includes the provision of some or all material reception conditions, and healthcare where an asylum seeker does not have sufficient means to provide for themselves. In addition, the RCD (recast) requires that Member States ensure that asylum seekers receive the necessary healthcare, at minimum emergency care and essential treatment of illnesses and of serious mental disorders.

While the RCD (recast) does not make specific mention to healthcare goods, such items are considered to be included in the provision of material reception conditions by EASO in ensuring asylum seekers are guaranteed an adequate standard of living.⁵

Under the RCD (recast), Member States must inform asylum seekers of organisations or groups that may be able to assist them in accessing available services, including healthcare, within 15 days of having lodged their application for international protection. This information must be provided in writing and in a language the applicant understands.

European Social Charter

In accordance with the operation of the European Social Charter Ireland has agreed to be bound by, *inter alia*, Articles 11, 13 and 17. Article 11 places a duty on States to take appropriate measures to provide advisor and educational facilities for the promotion of health,⁶ with respect for physical and psychological integrity as being integral to the right protected by Article 11.⁷ This is to include both physical and mental wellbeing, in accordance with the definition of health in the Constitution of the World Health Organisation.

Under Article 13, all persons who lack adequate resources must be able to obtain medical assistance free of charge in the event of sickness,⁸ and this may include free or subsidised healthcare, or payments to enable persons to pay for the care required.⁹ Care is not defined under the ESC or by the

³ European Communities (Reception Conditions) Regulations 2018 SI 230/2018, art 18.

⁴ Mental Health (Amendment) Act 2018, 3(7)(d).

⁵ See Section 2.2.2 European Policy.

⁶ European Social Charter (revised), art 11.

⁷ International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, para 31.

⁸ ESCR, 'Conclusions XIII-4 (1996), Statement of Interpretation on Article 13'

⁹ European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 46/2007, Decision on the merits of 3 December 2008, §44.

ECSR, however the ECSR has stated medical assistance should not be confined to emergency situations.¹⁰

Article 17 specifically guarantees the right of children and young persons to social, legal and economic protection, which includes medical assistance and appropriate accommodation.¹¹

(3) International Obligations

UN Convention on the Rights of the Child

Article 24 of the UNCRC states that; 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health'. States Parties shall strive to ensure that no child is deprived of his or her right of access to such healthcare services'.¹² In the Committee on the Rights of the Child's General Comment No. 7 on Implementing Child Rights in Early Childhood, it argues that states have a responsibility concerning accessibility to medical services and children should be ensured guaranteed access to appropriate and effective services, and access to the highest attainable standard of healthcare.¹³ General Comment No.4 further notes that states parties must fulfil the following obligation; 'to ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to all adolescents'.¹⁴

General Comment No. 15 elaborates on a child's right to access healthcare under Article 24 UNCRC. It explains that children are entitled to quality health services which include rehabilitation and palliative care services, promotion, and treatment. These services must be available in sufficient quantity and quality, functional, within the physical and financial reach of all children irrespective of immigration or minority status. The General Comment continues by stating that States should ensure that there is no discrimination in regards to availability, accessibility, acceptability, and quality of essential children's health services.¹⁵ Accessibility is described in four dimensions: non-discrimination regarding services and equipment; physical accessibility relating to walking distance; economic accessibility and affordability concerning lack of ability to pay; and information accessibility.¹⁶

¹⁰ESCR 'Conclusions XIII-4 (1996), Statement of Interpretation on Article 13'; ESCR 'Conclusions 2009, Armenia.'

¹¹ *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France* Complaint No. 114/2015, Council of Europe: European Committee of Social Rights, 24 January 2018; *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No 14/2003, decision on the merits of September 2004, § 36; *Defence for Children International (DCI) c. Pays-Bas, réclamation n° 47/2008*, décision sur le bien-fondé du 20 octobre 2009, §§70-71; *European Federation of National Organisations working with the Homeless (FEANTSA) v. Netherlands*, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50.

¹² UN General Assembly, *Convention on the Rights of the Child*, art 24.

¹³ UN Committee on the Rights of the Child (CRC), 'General comment No. 7 (2005): Implementing Child Rights in Early Childhood' (2006) UN Doc CRC/C/GC/7/Rev.1, page 12 para 27.

¹⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 39(b), 1 July 2003, CRC/GC/2003/4, available at: <https://www.refworld.org/docid/4538834f0.html>, page 10.

¹⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, para. 15 & 94, 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html>, page 6 & 19.

¹⁶ *Ibid*, page 22, para. 114.

The CRC further explains in General Comment No.20¹⁷ that mental health and psychosocial problems stem from social exclusion. Factors such as suitable standards of living and healthy local environments help to promote healthy development and protect against mental illness.¹⁸

International Covenant on Economic, Social and Cultural Rights

The ICESCR provides for the 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'¹⁹ The right to healthcare services and facilities includes mental health; including *inter alia*, the provision of rehabilitative health services, health education, and appropriate mental health treatment and care.²⁰ General Comment No.14 confirms that this right is not confined to the right to healthcare, acknowledging that the right includes a range of socio-economic factors, contributory to conditions necessary for a healthy life.²¹ The right to health should be seen in conjunction with Article 2(2) and Article 3, in relation to the prohibition of discrimination in access to healthcare.²²

Article 12(2)(a) directly refers to the 'healthy development of the child' this coupled with obligations under the UNCRC State Parties are obliged to ensure the right to health for all children irrespective of legal or migratory status.

1.1.2 Policy Framework

(1) Domestic Policy

Healthcare Provisions for Asylum-seeking Children

Asylum-seeking children may access healthcare services on the same basis as Irish citizen children. All children under 6 years old are entitled to a GP visit card, which covers free GP and home GP visits, assessments at certain age intervals, out-of-hours urgent GP care, and care for children with asthma.²³ Persons living in Direct Provision will also generally qualify for a Medical Card, however this is based on a means assessment.²⁴ A Medical Card grants persons GP services, prescribed drugs and medicines, in-patient public hospital services, dental, optical and aural services and some personal and social care services free of charge.

Health screenings are to be made available in the immediate Reception Centre to all asylum seekers on a voluntary and confidential basis. Vaccination needs of an applicant and their family are also assessed in this medical screening, with vaccination schemes available to asylum-seeking children on an equal basis to Irish citizen children. Such vaccination schemes are provided to new-borns through

¹⁷ UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, available at: <https://www.refworld.org/docid/589dad3d4.html>

¹⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, available at: <https://www.refworld.org/docid/589dad3d4.html>, page 16, para 58.

¹⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, art 12.1.

²⁰ UN Committee on Economic, Social and Cultural Rights (UNCESCR), 'General Comment No.14: The Right to the Highest Attainable Standard of Health' (11 August 2000) Contained in UN Doc E/C.12/2000/4 para 17. Available at <https://www.refworld.org/pdfid/4538838d0.pdf>.

²¹ *Ibid*, para 4.

²² *Ibid*, para 18.

²³ HSE, 'GP Visit Cards: Under 6s GP Visit Card' available at: <https://www2.hse.ie/services/gp-visit-cards/under-6s-gp-visit-card.html>.

²⁴ RIA, 'While in RIA Accommodation: Health' available at: <http://www.ria.gov.ie/en/RIA/Pages/Health>.

the Immunisation Schedule following birth,²⁵ and to school-age children through the Schools Immunisation Programme.²⁶

National Policy Framework for Children and adolescent children

The National Policy Framework for Children and adolescent children highlights the impact of 'mental health, culture and social exclusion' on parenting, which may negatively impact children.²⁷ Good mental health among parents is understood as being 'critically important in supporting a child's early social and emotional development,'²⁸ and, as such, the Irish government recognises the 'need to support parents of young children early on to ensure the establishment of quality parent-child relationships.'²⁹ The policy recognises that 'children and adolescent children's mental health is the most important aspect of their social and cognitive development,' describing good mental health as 'a necessity if [children and adolescent children] are going to reach their full potential and truly live a life that is filled with positive experiences.'³⁰ The policy further highlights early experiences as determinative of 'a strong or weak foundation for future learning, behaviour, and physical and mental health,'³¹ with poverty, social exclusion, substandard housing and membership of a minority group identified as specific risk factors.³²

The policy repeatedly identifies asylum-seeking children as a vulnerable group, with vague commitments to reduce discrimination and inequalities. However, the policy fails to outline targeted resources or policy planning beyond implementation of child protection policies.³³ Direct Provision is mentioned only three times in 'Better Outcomes, Brighter Futures'. The policy names but fails to expand upon 'specific difficulties' faced by children and adolescent children resident in Direct Provision centres,³⁴ with its only recommendation to tackle these difficulties being a reduction in time spent living in Direct Provision.³⁵

Child and Adolescent Mental Health Services

The Health Service Executive (HSE) Child and Adolescent Mental Health Services (CAMHS) provide mental health services to children with moderate to severe 'mental disorders'.³⁶ Its Operational Guideline aims to 'ensure children, adolescents and their parent(s). are clear on the service provided by CAMHS' and to 'ensure that referral agents and other agencies involved in the provision of care to children and adolescents are clear on the service provided by CAMHS'.³⁷ The Guidelines' scope includes 'a summary overview of the process of referral, assessment, care planning, treatment and

²⁵ HSE, 'Immunisation Schedule' available at: <https://www.hse.ie/eng/health/immunisation/pubinfo/pcischedule/immschedule/>

²⁶ HSE, 'School Programme' available at: <https://www.hse.ie/eng/health/immunisation/pubinfo/schoolprog/>.

²⁷ Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020' (2014) 27. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

²⁸ *Ibid*, 54.

²⁹ *Ibid*, 66.

³⁰ *Ibid*, 53.

³¹ *Ibid*, 15.

³² *Ibid*, 49.

³³ *Ibid*, 21, 57, 75, 93, 104, 133, 139, 140.

³⁴ *Ibid*, 90.

³⁵ *Ibid*, 137.

Children and Adolescent Mental Health Services (CAMHS), 'Children and Adolescent Mental Health Services Operational Guideline, Second Edition' (2019) 2 Available at: <https://www.hse.ie/eng/services/list/4/mental-health-services/camhs/publications/camhs-operational-guide-2019.pdf>.

³⁷ Children and Adolescent Mental Health Services (CAMHS), 'Children and Adolescent Mental Health Services Operational Guideline, Second Edition' (2019) 2-3. Available at: <https://www.hse.ie/eng/services/list/4/mental-health-services/camhs/publications/camhs-operational-guide-2019.pdf>.

discharge in CAMHS'.³⁸ However, the document makes no reference to asylum seekers or Direct Provision in any form.

A Vision for Change

In recognition of the needs of minority communities in Ireland, including but not limited to asylum seekers, the Government has previously committed to ensuring mental health services are provided in a culturally sensitive manner.³⁹ To achieve this, mental health services must be resourced to provide services to ethnic groups including the provision of interpreters.⁴⁰ However, a follow-up to this report, *A Vision For Change Nine Years On*, states that currently there is 'no dedicated funding stream for tenancy sustainment support for individuals with a mental health difficulty who require this support'.⁴¹

RIA Child Protection Policy

The RIA Child Protection Policy makes only one reference to child mental health: that a centre's Designated Liaison Person is to engage with the RIA Health Unit in relation to the medical and psychological needs of an asylum seeker.⁴² Amongst children living in Direct Provision who have been referred to Tusla, HIQA have reported systemic failures, such as the case of a child threatening suicide who waited three years for a response from their local team of social workers.⁴³

(2) European Policy

Council of Europe Guidelines on Child-Friendly Healthcare

In 2011 the Committee of Ministers of the Council of Europe adopted the *Guidelines on Child-Friendly Healthcare*.⁴⁴ The Guidelines call for equitable access to quality healthcare for all children,⁴⁵ and state that specific healthcare provision may be required for more vulnerable children, including asylum-seeking children.⁴⁶

EASO Guidelines

EASO recommends that asylum seekers be granted access to all types of necessary healthcare services,⁴⁷ and that such services, including necessary prescribed medication, are provided free of charge or economically compensated through the daily expenses allowance.⁴⁸ When accessing

³⁸ Children and Adolescent Mental Health Services (CAMHS), 'Children and Adolescent Mental Health Services Operational Guideline, Second Edition' (2019) 2. Available at: <https://www.hse.ie/eng/services/list/4/mental-health-services/camhs/publications/camhs-operational-guide-2019.pdf>.

³⁹ Department of Health and Children, *A Vision for Change: Report of the Expert Group on Mental Health Policy* (2006), 41.

⁴⁰ *Ibid.*

⁴¹ Mental Health Reform, *A Vision For Change Nine Years On: A Coalition Analysis Of Progress* (July 2015), 29.

⁴² Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 21.

⁴³ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 22. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁴⁴ Committee of Ministers, *Guidelines on Child-Friendly Healthcare*, adopted 21 September 2011, available at: <https://rm.coe.int/168046ccef>

⁴⁵ *Ibid*, *Principles of the child-friendly healthcare approach*, Principle D 'Equitable access to quality healthcare' (13)

⁴⁶ *Ibid*, D (14)

⁴⁷ EASO Guidelines, Indicator 29.1.

⁴⁸ *Ibid*, Indicator 29.2.

healthcare services, arrangements should be in place to ensure effective communication with the medical personnel, i.e. by means of a trained interpreter (free of charge) where necessary.⁴⁹

EASO further recommends healthcare and social assistance are easily accessible from an asylum seeker's accommodation.⁵⁰ Such access may be ensured either by being 2km from healthcare facilities, where available infrastructure is safe for walking, or services being accessible with a reasonable duration of a journey, using public transport.⁵¹ Alternatively, relevant services could be accessed using transport organised by the Member State.⁵²

EASO recommends in the provision of healthcare goods that necessary prescribed medication should be provided for free of charge, or covered in the daily expenses allowance.⁵³ EASO further recommends that all necessary personal hygiene products are at the applicants' disposal, either through regular distribution or through the daily expenses allowance.⁵⁴ These include: toothbrush, toothpaste, toilet paper, soap, shampoo, shaver/shaving foam, sanitary pads, diapers and other hygiene products necessary for caring for babies.⁵⁵ In addition EASO considers it good practice to provide condoms as well as certain medication free of charge to adolescents, including when not prescribed.⁵⁶ Furthermore, EASO recommends that special arrangements are established for asylum seekers with special needs.⁵⁷ This would include for example, access to a paediatrician, or gynaecologist.⁵⁸

1.1.3 Situation in Direct Provision

The negative impact of living in Direct Provision is frequently cited across reports. A common theme identified by HIQA concerning referrals of children living in Direct Provision to Tusla was the impact of physical or mental illness on a parent's ability to provide quality care to their child.⁵⁹ Tusla's general guidelines state 'the impact of parental mental health concerns needs to be assessed' in responding effectively to children with mental health difficulties,⁶⁰ suggesting that vulnerability assessments and enhanced mental health services for parents may improve a child's wellbeing.

Further child welfare concern among children living in Direct Provision referred to Tusla, included gaps in provision of practical supports and children's mental health issues.⁶¹ In response to the HIQA's

⁴⁹ *Ibid*, Indicator 29.5.

⁵⁰ *Ibid*, Standard 1.

⁵¹ *Ibid*, Standard 1, Indicator 1.2(c) states that transport costs should be fully reimbursed, or transport should be free of charge when needed for health care, and obtaining medication, the asylum procedure and legal assistance, and for the education of children when they are enrolled in school.

⁵² *Ibid*, Indicator 1.2.

⁵³ EASO Guidelines, Indicator 29.4.

⁵⁴ *Ibid*, Indicator 25.2

⁵⁵ *Ibid*.

⁵⁶ *Ibid*, 34.

⁵⁷ *Ibid*, Indicator 29.8.

⁵⁸ *Ibid*.

⁵⁹ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 14. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁶⁰ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 57. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁶¹ Health Information and Quality Authority (HIQA), 'Annual overview report on the inspection and regulation of children's services — 2015' (June 2016) 32. Available at: <https://www.hiqa.ie/sites/default/files/2017-01/Childrens-Services-Overview-2015.pdf>.

report⁶² Tusla acknowledged the shortcomings in their services and committed to actions to ensure risks to children were identified and addressed,⁶³ yet there seems to be no follow up report to address whether these issues have been adequately addressed.⁶⁴

The National Policy Framework for Children and adolescent children, however, describe ‘good social networks and participation in community’ as factors that can either positively or negatively impact a child or young person’s mental health.⁶⁵ Indeed, RIA’s own Child Protection Policy lists failure to provide age-appropriate opportunities for the child’s cognitive and emotional development as an example of emotional abuse.⁶⁶

(1) Lack of Access to General Services

Due to the policy of dispersal in accommodating asylum seekers, many asylum-seeking children live in rural areas with limited services.⁶⁷ This has led to many asylum seekers unable to access local GP services, where they are at full capacity..⁶⁸ Where this happens, asylum seeker the HSE will appoint a GP service to them.⁶⁹ However, as the Ombudsman reported in his 2019 review, in some instances the nearest GP with capacity was up to 55km away from the asylum seeker’s accommodation.⁷⁰

Direct Provision centres are frequently located in isolated locations unserved by public transport, although in such situations transport should be provided by Direct Provision centre operators, who are frequently private companies, in practice this provision been criticised as highly limited.⁷¹ In some instances asylum seekers must request money or refunds for bus and train fares, which can create an additional barrier to accessing necessary healthcare services.⁷² The provision of transportation by the service provider also breaches privacy concerns as asylum seekers must divulge personal information

⁶² Health Information and Quality Authority (HIQA), ‘Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007’ (2014) 14. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁶³ The actions committed to included; an increased emphasis on collaborative and interagency working, staff training, cultural diversity, improved systems of collecting and analysing information and data, and carrying out an audit of all referrals about children living in Direct Provision. Tusla, Annual Review on the Adequacy of Child Care and Family Support Services Available (2015) 52.

⁶⁴ No reference was made to children in Direct Provision in either of Tusla’s annual review on the adequacy of childcare and family support services available in either 2016 or 2017, with no evidence to whether the issues outlined in the HIQA report were dealt with. Tusla, Annual Review on the Adequacy of Child Care and Family Support Services Available (2016). Tusla, Annual Review on the Adequacy of Child Care and Family Support Services Available (2017).

⁶⁵ Department of Children and Youth Affairs, ‘Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020’ (2014) 54. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

⁶⁶ Department of Justice and Equality, ‘Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality’, (May 2018) 13.

⁶⁷ Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (2019), 30 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

⁶⁸ Office of the Ombudsman, ‘The Ombudsman and Direct Provision: Update for 2019’ (Office of the Ombudsman 2020), 26 available at: https://www.ombudsman.ie/downloads/DP_Report_2020EMBARGO.pdf.

⁶⁹ Irish Refugee Council, The Reception Conditions Directive: One Year On (July 2019), 26, available at: <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=096fdab0-bac5-4273-9fdd-6e517f62a8d4>.

⁷⁰ Office of the Ombudsman, ‘The Ombudsman and Direct Provision: Update for 2019’ (Office of the Ombudsman 2020), 26 available at: https://www.ombudsman.ie/downloads/DP_Report_2020EMBARGO.pdf.

⁷¹ Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (2019), 35 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁷² https://www.mentalhealthreform.ie/wp-content/uploads/2014/10/Ethnic-Minorities-and-Mental-Health-A-position-paper_WEB.pdf

in their requests.⁷³ Moreover, issues with asylum seekers' ability to access Irish driving licenses has been highlighted as a barrier to accessing healthcare services.⁷⁴

Transfers

The decision-making process behind allocation of accommodation has been criticised for its lack of transparency, particularly as it is unclear whether access to healthcare for vulnerable asylum seekers is being appropriately considered.⁷⁵ Asylum seekers may be allowed, by request, to transfer from one accommodation centre to another accommodation centre. However, the request is subject to availability and extraordinary circumstances, access to appropriate healthcare is accepted as such an exceptional circumstance.⁷⁶ However, it is unclear the extent to which RIA considers the potential impact of an asylum seekers' access to healthcare when implementing mandatory transfers as no guidelines on the practice are publicly available. It has been noted that transfers can create gaps in the provision and management of a healthcare programme for asylum seekers with specific or greater needs, with issues such as communication between healthcare professionals in different areas cited as among the factors impacting the continuity of care for asylum seekers.⁷⁷

The Joint Committee on Justice and Equality noted the inadequacies of mental health services as a national issue that makes accessing such services even more difficult for those in Direct Provision centres.⁷⁸ Several non-governmental organisations have also raised that access to psychological services is limited, both because of the remoteness of many centres and the cost of support services.⁷⁹

(2) Lack of Access to Specialist Services

The Joint Committee on Direct Provision expressed concern regarding the 'sticking plaster' approach being adopted when treating mental health issues of asylum seekers in Direct Provision, for example providing sleeping tablets to address past traumas and serious mental health issues.⁸⁰ MASI has also highlighted the complicated route and long waiting times when seeking specialist services for mental health, and that while information about services provided by charities such as the Samaritans or

⁷³ Abortion Rights Campaign, 'Submission to the Oireachtas Committee on Justice and Equality on the Urgent Need to Abolish Direct Provision and Promote the Health and Human Rights of People Seeking Asylum' (31 May 2019) 67 available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁷⁴ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), 35 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁷⁵ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), 31 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁷⁶ Office of the Ombudsman, 'The Ombudsman and Direct Provision: Update for 2019' (Office of the Ombudsman 2020), 22 available at: https://www.ombudsman.ie/downloads/DP_Report_2020EMBARGO.pdf.

⁷⁷ Faculty of Public Health Medicine (Royal College of Physicians of Ireland), 'Migrant Health – The Health of Asylum seekers, Refugees and Relocated Individuals' (June 2016), at p 8 available at: <https://rcpi-live-cdn.s3.amazonaws.com/wp-content/uploads/2016/06/Migrant-Health-16062016.pdf>.

⁷⁸ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 29.

⁷⁹ Edmund Rice Schools Trust (n 314) 15; Irish Human Rights and Equality Commission, 'Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report' (October 2019) 117; Faculty of Paediatrics, Royal College of Physicians of Ireland (n 144) 13; Doras Luimní (n 144) 238–39; Irish Council for Civil Liberties and Irish Centre for Human Rights 4, 15.

⁸⁰ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), 29, available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

Spirasi is displayed in Direct Provision centres, asylum seekers must obtain a referral from a solicitor or GP to access these services.⁸¹

It may arise that an asylum-seeking child requires vaccinations beyond the programmes provided for in Ireland. The Faculty of Public Health Medicine of Royal College of Physicians in Ireland noted in 2016 that vaccinations which fall outside pre-existing national programmes, such as the Immunisation Schedule and Schools Immunisation Programme, are not funded in primary care.⁸²

Simply granting asylum-seeking children access to healthcare on an equitable basis to Irish citizen children does not adequately respond to their healthcare needs. By virtue of their vulnerable position in Irish society and pre-migration experiences, specialised services are required to ensure the enjoyment of the highest attainable standard of health as provided for by the UNCRC.

(3) Inadequate Medical Assessment

Asylum seekers may avail of a basic medical screening while at the Baleskin Reception Centre on arrival, which is primarily used to detect infectious diseases. The lack of a psychological assessment at point of arrival has been criticised by the College of Psychiatrists of Ireland⁸³ and by the Joint Committee on Justice and Equality on Direct Provision.⁸⁴ A major issue in this regard is the reliance by RIA on the management of Direct Provision centres to detect and report potential mental health issues of residents.⁸⁵ A proper vulnerability assessment mechanism beyond the initial, basic medical screening process that takes place on arrival is essential to identify health risks, particularly mental health issues, in order to facilitate early intervention and supports. The failure to provide adequate vulnerability assessment mechanisms is explored in depth in Chapter Four of this report.

(4) Social Exclusion

While the National Action Plan for Social Inclusion, calls for the encouragement of ‘social inclusion, equality, diversity,’⁸⁶ nowhere does it mention asylum seekers or residents of Direct Provision centres.

Feelings of isolation and loneliness are common among people living in Direct Provision, with residents reporting impacts on their mental health and wellbeing. The Joint Committee on Justice and Equality recognised that the system of Direct Provision has a ‘negative influence on the mental health and wellbeing of all persons.’ They noted reports of ‘significant mental health issues as a result of living in grouped housing in large centres with little to no privacy, isolation from the wider community, a lack

⁸¹ This limited access to mental health support services has been criticised by the Edmund Rice Schools Trust Joint, See Edmund Rice Schools Trust, ‘Futures on Hold. A Position Paper on Direct Provision and Its Impact on Learning and Wellbeing for Students and Young People’ (June 2019), 15; Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), 30 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁸² Faculty of Public Health Medicine (Royal College of Physicians of Ireland), ‘Migrant Health – The Health of Asylum seekers, Refugees and Relocated Individuals’ (June 2016) available at: <https://rcpi-live-cdn.s3.amazonaws.com/wp-content/uploads/2016/06/Migrant-Health-16062016.pdf>.

⁸³ College of Psychiatrists of Ireland ‘Mental Health Service Requirement in Ireland for Asylum seekers, Refugees and Migrants from Conflict Zones’ Position Paper EAP/01/17 (March 2017) available at: <https://www.irishpsychiatry.ie/wp-content/uploads/2016/10/Mental-Health-Service-requirements-for-asylum-seekers-refugees-and-immigrants-150517-1.pdf>

⁸⁴ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), 31 available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

⁸⁵ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), at p 31, available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

⁸⁶ Department of Social Protection, ‘The Updated National Action Plan for Social Inclusion. 2015-2017’, 10.

of integration, a lack of ability to work or study and a lack of personal autonomy.⁸⁷ This is often compounded by centres located in remote areas, which social workers have identified as a barrier to families living in Direct Provision coming forward for support services.⁸⁸

As Doras puts it, 'geographic isolation compounds the social exclusion, mental health issues and stigmatisation experienced by people living in DP centres.'⁸⁹ Institutionalisation and isolation specifically impact the mental wellbeing and development of children and adolescent children.⁹⁰ Feelings of dependency were noted by parents, along with the impact of children growing up in an institutional setting. It was also recognised that remote locations of the centres were inhibiting involvement in community life.⁹¹ Owing to the institutional nature of Direct Provision, some social workers have reported that they were 'unable to affect significant change for families', and were required to work 'within the constraints of the rules of the centre, in spite of their impact on children's welfare and rights'.⁹²

(5) Feeling of Imprisonment

The McMahon report noted a strong sense of imprisonment from residents. Residents reported a lack of freedom and the little means available for them to better themselves.⁹³ This can be exacerbated by the length of time in the system, with residents reporting the conditions being more oppressive as time goes on, 'As we kill time, time kills us.'⁹⁴ In many centres, residents have little control over the most basic aspects of daily life. For example, in 8 of the 18 centres accommodating families with children, residents cannot control heating in their rooms.⁹⁵ Similarly, only 7 of the 18 centres accommodating families with children stated that their residents were entitled to a key to the main

⁸⁷ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019), 29.

⁸⁸ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 14. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁸⁹ Doras, 'Submission on Direct Provision and International Protection Application Process' (December 2019), Doras 242.

⁹⁰ Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion' (n 143) 16–20, 22–24; Edmund Rice Schools Trust, 'Futures on Hold. A Position Paper on Direct Provision and Its Impact on Learning and Wellbeing for Students and Young People' (June 2019) 13; Faculty of Paediatrics, Royal College of Physicians of Ireland (n 144) 11.

⁹¹ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 25.

⁹² Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 17, emphasis added. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁹³ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers, Final report ('McMahon report') (June 2015), 59.

⁹⁴ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 63, 64.

⁹⁵ This information is accurate as per RIA's inspection reports. The following list of centres where all residents, at time of inspection, could not control heating in their rooms does not include centres accommodating children whose inspection report has not been published on the RIA website: Knockalisheen, Atlantic Lodge, Montague, Old Convent (Mayo), St Patrick's, Globe House, Bridgewater House, Ocean View, Birchwood, Clonea Stand Hotel, Temple Accommodation and Athlone Accommodation Centre.

[1] This information is accurate as per RIA's inspection reports. The following list of centres where all residents, at time of inspection, could not control heating in their rooms does not include centres accommodating children whose inspection report has not been published on the RIA website: Davis Lane, Old Convent (Mayo), Mosney, Globe House, Bridgewater House, Birchwood, and Clonea Stand Hotel.

door or gate, with others guarded by security.⁹⁶ Control over the most mundane aspects of daily life cause MASI to compare Direct Provision centres to ‘open prison conditions’.⁹⁷

Dignity violations and cruel, inhuman or degrading treatment have been recorded in Direct Provision centres.⁹⁸ According to the Irish Council for Civil Liberties and the Irish Centre for Human Rights, Direct Provision amounts to ‘de facto deprivation of liberty’, because the people it accommodates are in practice not free to leave, are socially isolated and are under constant supervision and control.⁹⁹ In fact, ‘people in Direct Provision feel, and are effectively, living in punitive detention.’¹⁰⁰ The Edmund Rice Schools Trust has pointed out that the living conditions in Direct Provision can have a very negative impact on children’s resilience.¹⁰¹ Additionally, personnel working with asylum seekers are not adequately trained in working with vulnerable people.¹⁰²

(6) Friendships and Wellbeing

The DCYA identify friendships as ‘essential for the psychological, emotional and social development of children and adolescent children’.¹⁰³ The ‘ability to develop and maintain friendship’ is further described as a means of supporting positive mental health, and educational outcomes.¹⁰⁴ However, it can be difficult for children and adolescent children resident in Direct Provision to develop and maintain friendships owing to their living situation.

In the interest of other residents’ rights, and child protection standards, unless a resident has own-door accommodation visitors must remain in communal areas only and are not allowed to enter private living spaces, such as bedrooms.¹⁰⁵ When consulted by the DCYA, children noted their inability to have friends in their rooms and staff ‘monitoring their movements’.¹⁰⁶ Similarly, it can be difficult for children to cement friendships outside of school through activities such as sleepovers, as, if children are to be away from the centre overnight, parents are required to provide the reason for the child’s absence, the duration of absence, and the name, address and contact number of the person caring for the child.¹⁰⁷

As previously mentioned, the RCD (recast) requires Member States to provide an adequate standard of living which protects applicants’ physical and mental health. It is evident from the above discussion that not only does the system of Direct Provision fail to protect asylum seekers’ mental health, the Direct Provision system actively damages the mental health of applicants, particularly children.

⁹⁶ This information is accurate as per RIA’s inspection reports. The following list of centres where all residents, at time of inspection, could not control heating in their rooms does not include centres accommodating children whose inspection report has not been published on the RIA website: Davis Lane, Old Convent (Mayo), Mosney, Globe House, Bridgewater House, Birchwood, and Clonea Stand Hotel.

⁹⁷ Movement of Asylum seekers in Ireland (MASI), ‘Submission to Justice & Equality Joint Committee’ (27th May 2019) 27. Available at: <http://www.masi.ie/wp-content/uploads/2019/09/MASI-SUBMISSION-final-original-copy-29.05.2019.pdf>

⁹⁸ Irish Council for Civil Liberties and Irish Centre for Human Rights page 4.

⁹⁹ *Ibid* 10–11.

¹⁰⁰ *Ibid* 3.

¹⁰¹ Edmund Rice Schools Trust, ‘Futures on Hold. A Position Paper on Direct Provision and Its Impact on Learning and Wellbeing for Students and Young People’ (June 2019), 13.

¹⁰² Faculty of Paediatrics, Royal College of Physicians of Ireland, ‘Children in Direct Provision’ (December 2019) Faculty of Paediatrics, Royal College of Physicians of Ireland (n 144) 14; Irish Refugee Council, ‘Submission to the United Nations Committee against Torture on the Examination of Ireland’s National Report’ (June 2017) 13.

¹⁰³ Department of Children and Youth Affairs, ‘Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020’ (2014) 101. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

¹⁰⁴ Department of Children and Youth Affairs, ‘Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020’ (2014) 101. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

¹⁰⁵ Reception and Integration Agency (RIA), ‘House Rules, Revised’ (January 2019) 23.

¹⁰⁶ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 24.

¹⁰⁷ Reception and Integration Agency, ‘Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA) and Centres under contract to RIA’, see Appendix 5.

Furthermore, the McMahon report noted that children often couldn't participate in after school activities or ordinary leisure activities with their friends, particularly those in remote areas.¹⁰⁸ It was noted that children were bored and that this often led to fighting among children, again this is compounded by cramped living conditions.¹⁰⁹

(7) Emergency Accommodation

Medical Screening

As previously mentioned, basic medical screenings are usually conducted at the Baleskin Reception Centre, however, due to the over-capacity of Direct Provision centres, many asylum seekers are not entering through the Reception Centre at Baleskin and instead are being placed directly in emergency accommodation.¹¹⁰ To facilitate medical screenings of persons in emergency accommodation the DJE has contracted Safetynet's mobile health screening service, with the DJE 'confident' that all persons in emergency accommodation have received an assessment,¹¹¹ although no data was provided to confirm this.

Previous research has found that access to comprehensive health screening, assessment and treatment is crucial to ensure the physical and mental health of asylum-seeking children.¹¹² An initial basic medical screening such as those offered at Baleskin, and in emergency accommodation through Safetynet has been regarded as insufficient to identify specific vulnerabilities and health needs.¹¹³

Access to Medical Card

To apply for a Medical Card, asylum seekers must hold a temporary residence certificate and a PPS Number,¹¹⁴ and these documents are also required to access the Daily Expenses Allowance.¹¹⁵ In July 2019, the Irish Refugee Council noted a worrying trend whereby people were receiving an initial interview with the International Protection Office immediately, upon claiming asylum.¹¹⁶ In these instances asylum seekers were not being issued with a temporary residence certificate or PPS number.¹¹⁷ These documents are usually provided to asylum seekers when they arrive at Baleskin Reception Centre, however, as many asylum seekers are placed directly in emergency accommodation a vicious cycle emerges whereby asylum seekers need to travel to receive a temporary residence certificate and apply for a PPS number in order to apply for the Daily Expenses Allowance and Medical Card but lack the funds to do so.¹¹⁸ This situation can also impact asylum seekers' ability to access other health services.

¹⁰⁸ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers, Final report ('McMahon report') (June 2015) 175.

¹⁰⁹ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 5.

¹¹⁰ Joint Committee Report 31

¹¹¹ Joint Committee, 32.

¹¹² Sandahl et al., 2013; Watts et al., 2012; Raman et al., 2009 Safe Haven

¹¹³ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (2019), available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf, 32. Discussed further Vulnerability section

¹¹⁴ Irish Refugee Council, The Reception Conditions Directive: One Year On (July 2019), 25, Available at: <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=096fdab0-bac5-4273-9fdd-6e517f62a8d4>

¹¹⁵ The Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019' (2020), 24.

¹¹⁶ Irish Refugee Council, The Reception Conditions Directive: One Year On (July 2019), 25, Available at: <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=096fdab0-bac5-4273-9fdd-6e517f62a8d4>

¹¹⁷ *Ibid*, 26.

¹¹⁸ *Ibid*, 26.

(8) Maternal and Infant Care in Direct Provision

The means by which infant formula and associated feeding utensils are made available differs between Direct Provision centres. According to published inspection reports, in which only 28 of Ireland's 39 Direct Provision centres are documented,¹¹⁹ 18 of these centres were intended for the accommodation of families with children.¹²⁰ In reviewing these inspection reports, clear disparities appear in the section 'Facilities for Feeding Babies',¹²¹ which shows that, for example, bottle warmers were not available in 10 of the 18 centres accommodating families with children.¹²² Inspection reports also show that sterilisers for infant bottles were not provided by three of the centres,¹²³ one of which stated that sterilisers are made available by the public health nurse.¹²⁴

The inspection reports also showed a lack of clarity regarding the provision of infant formula. Where formula is provided directly by centre management, there are discrepancies as to whether the formula is made available on a weekly or biweekly basis, or whether it is available upon request. Inspection reports from two centres indicate that formula is available at the 'site shop'.¹²⁵ However, it is not detailed in the inspection report, and seemingly not even asked of managers, whether residents are expected to purchase formula using cash, vouchers, or via a points system, and how vouchers or points are allocated under such a system. Inspection reports of Direct Provision centres also do not detail whether other materials required by parents of young children, such as buggies and nappies, are provided by centres.

Regarding breastfeeding, mothers in the accommodation centres often come from countries where breastfeeding is a strong prolonged tradition.¹²⁶ It was urged that centres should 'provide comfortable chairs with good back support in both public and private areas' in order to make it more relaxing to breastfeed an infant.¹²⁷ However, there has been no mention of comfortable chairs with good back support and some mothers do not even have a private area to breastfeed.

(9) Period Poverty

The issue of 'period poverty' may have a particular impact on the health and development of teenagers living in Direct Provision. The United Nations Population Fund (UNFPA) defines 'period poverty' as 'the struggle many low-income women and girls face while trying to afford menstrual

¹¹⁹ RIA 'RIA Inspections' available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

¹²⁰ This information is accurate as per RIA's inspection reports. The following discussion does not consider centres accommodating children whose inspection report has not been published on the RIA website. The following is a list, by county, of centres accommodating children whose inspection reports will be analysed: Clare: Knockalisheen, Davis Lane, Clonakilty Lodge; Galway: Eglinton; Kerry: Atlas House Killarney, Atlantic Lodge, Eyre Powell, Montague; Mayo: Old Convent; Meath: Mosney; Monaghan: St Patrick's; Sligo: Globe House; Tipperary: Bridgewater House, Ocean View, Birchwood, Clonea Stand Hotel; Westmeath: Temple Accommodation; Athlone Accommodation Centre.

¹²¹ Information under the section 'Facilities for Feeding Babies' is missing from inspection reports of 3 centres accommodating children with families: Davis Lane, Atlantic Lodge, and Mosney.

¹²² Bottle warmers were not reported as available in Knockalisheen, Clonakilty Lodge, Atlas House, Eyre Powell, Montague, Globe House, Bridgewater House, Ocean View, Birchwood, and Temple Accommodation Centre.

¹²³ Centres that did not provide infant bottle sterilisers include Knockalisheen, Eyre Powell, and Temple Accommodation Centre,

¹²⁴ Stated in the report for Knockalisheen.

¹²⁵ Centres providing infant formula from a 'site shop' are Montague and Globe House.

¹²⁶ Health Service Executive, *Infant Feeding Guidelines for Direct Provision Centres in Ireland* (October 2005) 2., Available: <http://www.ria.gov.ie/en/RIA/Infant%20Breast.pdf/Files/Infant%20Breast.pdf>

¹²⁷ *Ibid*, page 18

products' including 'the increased economic vulnerability women and girls face due the financial burden posed by menstrual supplies'.¹²⁸

Under the inspection process, managers are asked to list toiletries provided to residents in each centre, generally including soap, shampoo, toothpaste etc. None of the 18 centres accommodating families with children reviewed for this report indicated that sanitary products are provided to residents, as per their inspection reports.¹²⁹

In March 2019, the Oireachtas Women's Parliamentary Caucus proposed a motion for the Government to provide 'free, adequate, safe and suitable sanitary products' in a number of public buildings and residential settings, including schools, Direct Provision centres, refuges, and homeless services, in tandem with a series of educational and affordability measures to tackle period poverty.¹³⁰ On proposing the motion, Deputy Catherine Martin estimated the annual cost sanitary products and associated pain relief as €208.¹³¹ With a child's current Direct Provision allowance amounting to €29.80 per week, following Deputy's Martin's figures, approximately 13.4% of a teenager's state allowance would be required to cover the annual cost of menstruation. Responding to Deputy Martin's motion, Deputy Marcella Corcoran Kennedy described 'the provision of sanitary products' in Direct Provision centres as 'patchy... where available'.¹³² During the same debate, Deputy Denise Mitchell similarly noted that several Direct Provision centres were not providing sanitary products to residents.¹³³ The motion has passed but is yet to be implemented.

In December 2019, the Minister for Health, Simon Harris, noted that the appointed Sub-Committee was required to identify 'the population cohorts most at risk' in relation to period poverty.¹³⁴ As the Sub-Committee, at the time of writing, has yet to return with its findings it is unclear the extent to which Direct Provision residents will be included in a national policy on period poverty.

1.1.4 Incoming National Standards

Concerning mental health, information and supports are required in order to access supports for their health, wellbeing and development.¹³⁵ Supports for health, wellbeing and development are difficult to access, this includes mental health.

(1) Provision of Healthcare Services

Standard 9.2 states that 'the service provider makes available in the accommodation centre services which support residents' physical and psychological, health, wellbeing and development, and promote a self-care approach'.¹³⁶ However when looking at the National Standards and what actually takes place in Direct Provision, the accommodation centre services do not support physical and

¹²⁸ United Nations Population Fund (UNFPA), 'Menstruation and human rights - Frequently asked questions,' May 2019. Available at: <https://www.unfpa.org/menstruationfaq#Period%20Poverty>.

¹²⁹ RIA inspection reports available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>.

¹³⁰ 'Period Poverty: Motion', Oireachtas, 13th March 2019. Available at: <https://www.oireachtas.ie/en/debates/debate/dail/2019-03-13/30/>

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Oireachtas Committee 'Period Poverty', Available at: <https://www.oireachtas.ie/en/debates/question/2019-12-17/439/>.

¹³⁵ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 58. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>

¹³⁶ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 60 Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>

psychological, health, wellbeing and development, and promote a self-care approach and can often act as a catalyst for mental health problems, particularly among children.

A major issue with the above provisions of the incoming National Standards is the lack of reference to RIA or the Department of Justice and Equality's involvement in providing services to promote health, wellbeing, or development. While private actor service providers should be encouraged to facilitate services and supports for health and wellbeing in Direct Provision centres, but it is unclear the extent to which service providers, as opposed to RIA, are responsible for organising such services and supports.

(2) Access to Healthcare Services

As outlined above many of the issues relating to access to healthcare services relates to the remote location of many Direct Provision centres. This issue is of particular concern for children and adolescents who are reliant on parents or guardians to accompany them to healthcare services. While Standard 7.2 of the incoming National Standards requires service providers to make transport that meets the reasonable needs of residents for *inter alia* medical and healthcare, no specific guidance is provided on what constitutes 'reasonable needs.'¹³⁷ The vague provision in relation to transport in the incoming National Standards may lead to continued infrequent and ad hoc transport facilities.

(3) Access to Healthcare Goods

Under the National Standards, the service provider should make sufficient provision of non-food items to ensure personal hygiene, health and wellbeing.¹³⁸ The service provider is required to make available appropriate toiletries, including feminine hygiene products, nappies, wipes and lotions and other items assessed as necessary.¹³⁹ Bedding and towels in good condition should also be provided.¹⁴⁰ With regard to contraception the National Standards require service providers to facilitate access to free contraception either through a local service provider if available or on request.¹⁴¹

The provision of contraception on request is a particularly troublesome standard particularly in the context of adolescents. The expectation on asylum-seekers to request contraception from a service provider is wholly incompatible with a persons' right to respect of private and family life. Such a requirement is likely to deter asylum-seeking adolescents from seeking out contraception.

The provision of non-food items is qualified as being provided 'as necessary' or 'on request', however the manner in which asylums seekers may make requests for such items is not clarified by the incoming National Standards. The decision to continue to provide essential items in kind rather than through a sufficient Daily Expenses Allowance places asylum-seekers, particularly families, in an undignified position of constantly having to request essential items. Previous research has

¹³⁷ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 52 Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹³⁸ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 4.9. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹³⁹ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 4.9. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹⁴⁰ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 4.9. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹⁴¹ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 4.9.3. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

demonstrated the power imbalance in Direct Provision centres created by this allocation of essential items and the ability of staff and management to abuse such power.¹⁴²

(4) Emergency Accommodation

Emergency accommodation is not under the remit of RIA, therefore emergency accommodation is beyond the scope of the National Standards. This generates an issue for children trying to access supports for their mental health, and health in general. Since emergency accommodation is only contracted on bed and board basis, it remains unclear how such provisions would be made to asylum seekers living in emergency accommodation.

1.2 FOOD & NUTRITION

Providing children with adequate food and nutrition is vital to ensuring enjoyment of the highest attainable standard of health, in addition to supporting survival and development. The manner in which food is prepared, allocated and consumed is particularly important in developing familial relationships as well as developing a child's social development.¹⁴³ Forced disruption to such social patterns can negatively impact nutrition and overall health of asylum-seekers.¹⁴⁴

The following sections look at the inadequate standards of nutrition provided to asylum-seeking children as a breach of human rights law and best practice in reception conditions for asylum-seekers.

1.2.1 Legal Framework

(1) Domestic Legislation

Under Irish law, the Children's Act 2001 describes the failure to provide 'adequate food' for a child as an act of neglect.¹⁴⁵

The Supreme Court judgment emphasised in *G v An Bord Uchtála [1980]* the existence of the 'right to maintain one's life at a proper human standard in matters of food'.¹⁴⁶

(2) European Legislation

Reception Conditions Directive (recast)

As per the material reception conditions provided for under the RCD (recast), EU Member States must supply food,¹⁴⁷ either in-kind, or through the use of financial allowances or vouchers, which must be

¹⁴² Salome Mbuga, 'Am Only Saying It Now': *Experiences of Women Seeking Asylum in Ireland*, (AkiDwA 2010), 16. Available at: <http://akidwa.ie/publications/AmOnlySayingItNowAkiDwA.pdf>; Keelin Barry, *What's Food Got to Do With it: Food Experiences of Asylum-seekers in Direct Provision* (NASC 2014) 37. Available at: <http://www.nascireland.org/wp-content/uploads/2014/05/WhatsFoodFINAL.pdf>; Ronan McGreevy, 'Mother in direct provision denied food at night for sick child', *The Irish Times* (Dublin, 2 November 2018).

¹⁴³ Keelin Barry, *What's Food Got to Do With it: Food Experiences of Asylum-seekers in Direct Provision* (NASC 2014) 37. Available at: <http://www.nascireland.org/wp-content/uploads/2014/05/WhatsFoodFINAL.pdf>

¹⁴⁴ Mary Manandhar and others, 'Food, Nutrition and Poverty Among Asylum-Seekers in North-West Ireland' (Combat Poverty Agency 2006).

¹⁴⁵ Children's Act 2001, 246(5)(a) 'For the purposes of this section a person shall be deemed to have neglected a child in a manner likely to cause the child unnecessary suffering or injury to his or her health or seriously to affect his or her wellbeing if the person fails to provide adequate food, clothing, heating, medical aid or accommodation for the child'.

¹⁴⁶ *G v An Bord Uchtála [1980]* 1 I.R. 32, Walsh J.

¹⁴⁷ RCD (recast), art 2(g)

sufficient to provide an adequate standard of living to applicants and protect their physical and mental health.¹⁴⁸

(3) International Obligations

UN Convention on the Rights of the Child

There are many provisions in the UNCRC concerning food and nutrition, Article 24 requires States Parties to progressively ensure the combatting of diseases and malnutrition through nutritious foods;¹⁴⁹ Article 27 requires States to achieve the conditions of living necessary for the child's development and aiding parents regarding nutrition;¹⁵⁰ and Article 6 instructs States to protect the child's right to life, survival and development.¹⁵¹ In order to implement child rights into early childhood, States should guarantee that the 'highest attainable standard of nutrition' is accessible during their early years in order to combat and decrease infant mortality and provide a healthy and enjoyable start in life for children.¹⁵² The Committee on the Rights of the Child's General Comment No. 7 states that,

'Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential.'¹⁵³

The Committee proceeds by placing the onus on State Parties to implement the child's right to health by *inter alia*, 'encouraging education in child health and development', with regard to the advantages of nutrition, breastfeeding, hygiene, and sanitation.¹⁵⁴ According to the Committee's General Comment No.15 on Implementing Child Rights in Early Childhood, every child has a right to non-discrimination of any kind, but discrimination can also take the form of reduced levels of nutrition. States must ensure access to '*nutritionally adequate, culturally appropriate and safe food*'.¹⁵⁵

International Covenant on Economic, Social and Cultural Rights

Article 11 in the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizes the right to an adequate standard of living, including adequate food, and the right to be free from hunger.¹⁵⁶ The ICESCR obligates States to take necessary action to alleviate hunger. The Committee describes the core content of the right adequate food as implying,

¹⁴⁸ *Ibid*, art 17(2).

¹⁴⁹ UN General Assembly, *Convention on the Rights of the Child*, art 24 (2)(c) 'To combat disease and malnutrition, including within the framework of primary healthcare through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution',

¹⁵⁰ *Ibid*, art 27(3) 'States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'

¹⁵¹ *Ibid*, art 6(2) 'States Parties shall ensure to the maximum extent possible the survival and development of the child'.

¹⁵² UN Committee on the Rights of the Child (CRC), *General comment No. 7 (2005): Implementing Child Rights in Early Childhood*, 20 September 2006, CRC/C/GC/7/Rev.1, available at: <https://www.refworld.org/docid/460bc5a62.html>, page 12, para 27(a).

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid*, para 27(b).

¹⁵⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17 April 2013, CRC/C/GC/15, available at: <https://www.refworld.org/docid/51ef9e134.html>, page 11, para 43.

¹⁵⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, art 11.

'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.'¹⁵⁷

Furthermore, everyone under the jurisdiction of the State should have access to the minimum essential food, which is 'sufficient, nutritionally adequate and safe, to ensure their freedom from hunger'.¹⁵⁸

1.2.2 Policy Framework

(1) Domestic Policy

As per the RIA House Rules, Direct Provision centres must provide a 'healthy, varied and nutritious packed lunch for school-going children where necessary,' along with 'varied and nutritious' meals for all residents.¹⁵⁹ A priority for the State, as outlined in the National Policy Framework for Children and adolescent children, is the promotion of healthy behaviour and the disruption of 'poor outcomes such as diet-related non-communicable diseases'.¹⁶⁰ The goal is to be attained through the promotion of healthier lifestyles, and engaging the community in healthier and more active lifestyles.¹⁶¹ The government commits to improving the health of children by safeguarding that all state institutions providing children with food and drink have a Healthy Foods policy and that the food provided 'meets basic nutritional standards'.¹⁶²

The Department of Health's *Healthy Ireland Framework for Improved Health and Wellbeing* acknowledges that 'low fruit and vegetable intake and physical activity'¹⁶³ are two of the seven leading factors contributing to 60% of the disease in Europe and recognises that 'eating recommended amounts of fruit and vegetables'¹⁶⁴ could immensely improve health. The policy establishes the State goal to 'remove or at least minimise all practical barriers that impede [people's] ability to make healthy choices'.¹⁶⁵ The prohibition on residents in certain centres to cook their own food is a clear 'practical barrier' to achieving this goal.

(2) European Policy

EASO Guidelines

EASO recommends that children are served at least five meals a day,¹⁶⁶ including milk for minors and infants when needed.¹⁶⁷ The meals should ensure a balanced and varied diet based on cereals, bread and rice, fruit and vegetables, milk, dairy products, meat, eggs or fish.¹⁶⁸ Residents with special dietary

¹⁵⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, available at: <https://www.refworld.org/docid/4538838c11.htm>, para 8.

¹⁵⁸ *Ibid*, para 14.

¹⁵⁹ Reception and Integration Agency (RIA), 'House Rules, Revised' (January 2019) 14.

¹⁶⁰ Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020' (2014) xii. Available at: <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/>.

¹⁶¹ Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020' (2014) xii. Available at: <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/>.

¹⁶² *Ibid*, 57.

¹⁶³ Department of Health, *Healthy Ireland: A Framework for improved health and wellbeing* (2013) 14.

¹⁶⁴ *Ibid*, 49.

¹⁶⁵ *Ibid*, 14.

¹⁶⁶ EASO Guidelines, Indicator 21.2.

¹⁶⁷ *Ibid*, Indicator 21.3.

¹⁶⁸ *Ibid*, Indicator 21.3.

needs, such as pregnant and breastfeeding women and those with specific illnesses and food allergies, should be catered for as well as those with dietary restrictions due to cultural background or being vegetarian/vegan.¹⁶⁹

EASO additionally considers it good practice for Member States and service providers to facilitate applicants cooking for themselves in order to promote autonomy, a feeling of normality and structure.¹⁷⁰ EASO also encourages Member States and service providers to allow applicants to be served separately cooked or reheated meals where they have missed the regular mealtime.¹⁷¹

The right to food is not explicitly provided for in European human rights instruments, however it is closely linked to the right to an adequate standard of living¹⁷² and heavily protected by international instruments.

1.2.3 Situation in Direct Provision

(1) Substandard Provision of Food

As Direct Provision centres are privately contracted on behalf of the Minister for Justice and Equality, they do not come within the scope of the Health Act 2007 and are not considered a state institution.¹⁷³ As such, centre managers' obligations, for example concerning a Healthy Foods policy, are unclear.

The McMahon report raised numerous issues pertaining to food provision, with some children reporting being hungry and not being given enough food.¹⁷⁴ Residents noted monotony of food, a lack of provision of nutritional foods and unsuitable foods for medical conditions.¹⁷⁵ More recently, the DCYA in 2017 noted the insufficient quality of food provided by some centres, bad quality food, food of low nutritional value and undercooked food.¹⁷⁶ Of particular concern was the statement that food is often poorly cooked to the point of being dangerous to one's health.¹⁷⁷ Availability and quality of food were issues raised by the before the Oireachtas Committee on Justice and Equality in 2019.¹⁷⁸ RIA state that all residents are to be provided with three meals daily,¹⁷⁹ and is therefore inconsistent with EASO's recommended five meals per day.

Non-governmental organisations have raised similar concerns. In its 2012 report on child poverty in Direct Provision, the Irish Refugee Council pointed out that the result of the inadequate provision of food has been: instances of malnutrition among children and expectant mothers, ill health related to

¹⁶⁹ *Ibid*, Indicator 21.5 and 21.6.

¹⁷⁰ *Ibid*, 26.

¹⁷¹ *Ibid*.

¹⁷² Discussed below Chapter 3.

¹⁷³ Section 2(1)(b)(ii) of the Health Act 2007 excludes 'an institution managed by or on behalf of a Minister of the Government' from the Act's remit. As Direct Provision centres are contracted out and managed on behalf of the Minister for Justice and Equality, they do not come within the scope of the Act. Emergency accommodation centres would also appear to be excluded, however this is less clear, as emergency accommodation centres operate under ad hoc arrangements as opposed to contracts.

¹⁷⁴ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum-seekers, Final report ('McMahon report') (June 2015) 173.

¹⁷⁵ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum-seekers, Final report ('McMahon report') (June 2015) 173.

¹⁷⁶ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017), 7-8, 31.

¹⁷⁷ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017), 8.

¹⁷⁸ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019), 5.

¹⁷⁹ Reception and Integration Agency, 'House Rules, Revised' (January 2019) 14.

diet among babies and young children, weight loss among children, hunger among adults (as a result of family rationing), and chronic gastric illness among children of all ages.¹⁸⁰

More recent non-governmental reports reiterated that the quality of the food that is provided lacks nutritional value and that parents do not have the financial means to purchase extra food for themselves and their family.¹⁸¹ The CRC has also recommended that Ireland takes measures to ensure that food in Direct Provision centres is of 'adequate quality'.¹⁸²

The RIA House Rules, which contain guidelines for residents and centre staff in relation to the standard of services to be made available, were revised in 2019.¹⁸³ Despite the well-documented issues regarding food provided in Direct Provision centres, detailed above, the RIA House Rules maintain that residents are not permitted to store food or cook in their rooms.¹⁸⁴ This restriction is an existing 'practical barrier' that is required to be removed under the *Healthy Ireland Framework*, as it impedes '[people's] ability to make healthy choices'.¹⁸⁵ This policy conflicts with EASO's stance that allowing residents to cook for themselves constitutes good practice.¹⁸⁶ The issue of residents keeping cooking utensils, such as rice cookers, in their rooms arose in RIA inspection reports of six centres intended to accommodate families with children.¹⁸⁷ However, the reports show no record of further enquiry into *why* residents felt the need to cook in their rooms, or whether there was an issue with meals provided in those centres.

1.2.4 Incoming National Standards

Service providers are to ensure that the '[f]ood preparation and dining facilities meet the needs of residents, support family life and are appropriately equipped and maintained'. This is to be achieved through residents having access to 'cooking and sufficient food storage'.¹⁸⁸ The food storage should include refrigeration and dry storage facilities. In self-catering centres, the prohibition on residents storing food in their rooms makes it very difficult to provide each resident with 'sufficient food storage'.¹⁸⁹

¹⁸⁰ Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion. The Case of Children in State Accommodation for Asylum-seekers' (September 2012) 20.

¹⁸¹ *Ibid* 20 – 22, 99; Children's Rights Alliance, 'Are We There Yet? Parallel Report to Ireland's Third and Fourth Combined Report under the UN Convention on the Rights of the Child' (September 2015) 99; Doras Luimní, 'Submission on Direct Provision and International Protection Application Process' (December 2019) 241; Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) 11.

¹⁸² UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Ireland*, 29 January 2016, CRC/C/IRL/CO/3-4, available at: <https://www.refworld.org/docid/56c17f574.html>, para 65

¹⁸³ Reception and Integration Agency, 'House Rules, Revised' (January 2019).

¹⁸⁴ Reception and Integration Agency, 'House Rules, Revised' (January 2019) 20.

¹⁸⁵ *Ibid*, 14.

¹⁸⁶ *Ibid*, 26.

¹⁸⁷ Inspection reports for 28 of Ireland's 39 Direct Provision centres are available on RIA's website:

<http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>. This information is accurate as per RIA's inspection reports. The following discussion does not consider emergency accommodation or centres accommodating children whose inspection report has not been published on the RIA website. The following is a list, by county, of the 18 centres accommodating children whose inspection reports will be analysed: Clare: Knockalisheen, Davis Lane, Clonakilty Lodge; Galway: Eglinton; Kerry: Atlas House Killarney, Atlantic Lodge, Eyre Powell, Montague; Mayo: Old Convent; Meath: Mosney; Monaghan: St Patrick's; Sligo: Globe House; Tipperary: Bridgewater House, Ocean View, Birchwood; Waterford: Clonea Stand Hotel; Westmeath: Temple Accommodation; Athlone Accommodation Centre. Centres where the issue of cooking in rooms arose upon inspection include Knockalisheen, Eyre Powell, St Patrick's, Globe House, Birchwood and Eglinton, where the issue was described as 'constant'.

¹⁸⁸ Standard 5.1

¹⁸⁹ National Standards 5.1.1

Where self-catering facilities are not available, ‘the service provider takes concrete steps, within a reasonable timeframe, to make facilities available for cooking.’¹⁹⁰ It is not specified what a ‘reasonable time period’ means. Certain centres have been in operation for years and are still failing to provide the self-catering facilities.

The service provider is to promote the ‘health and development’ of the residents. One of the methods of achieving this will be through ‘diet and nutrition’.¹⁹¹ It is not specified what diet and nutritional standard is to be provided by service providers to positively effect a person’s wellbeing. This results in different standards of food being provided throughout centres.

In practice, these standards are insufficient to ensure an adequate level of food and nutrition across all centres. There are still centres which do not provide self-catering facilities for residents. The prohibition on residents storing food makes it difficult for centres to provide all residents with food storage. These standards do not reflect the realities of food conditions within centres.

Due to emergency accommodation being beyond the scope of the National Standards, there is a lack of a common standard to be adhered to across the Direct Provision Asylum-seeker system.

1.3 RECREATION

Play is recognised as a basic human right for all children and necessary for their development. Play positively assists physical, social and emotional and cognitive development.¹⁹² The lack of opportunities to play, due to the communal nature of, and limited space in Direct Provision centres negatively impacts on the right of the child to play.

1.3.1 Legal Framework

(1) Domestic Legislation

The Constitution

According to the Irish Constitution, the ‘state shall...as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social’.¹⁹³ The Supreme Court judgment in *G v. An Bord Uchtála* [1980] emphasised a child’s right ‘to rest and recreation’.¹⁹⁴

(2) European Obligations

In recognition of the significance of recreation and leisure to child development, the RCD (recast) requires Member States to ensure that children have access to leisure activities and open-air activities appropriate to their age within the premises of their accommodation centres.¹⁹⁵ EASO recommends that the cost of leisure activities is considered when determining the daily expenses allowance.¹⁹⁶ In

¹⁹⁰ National Standard 5.1.2.

¹⁹¹ National Standards 9.1.4

¹⁹² Kane, C. ‘A Right to Play: A Study of the Care and Education Needs of Asylum-Seeking Children and their Families’, Mayo County Childcare Committee (2008) available at: <http://www.mayochildcare.ie/en/media/Media,8688,en.pdf>

¹⁹³ Irish Constitution, art 42.3.2°.

¹⁹⁴ Walsh J. *G v An Bord Uchtála* [1980] 1 I.R.32 at 69. 4-12

¹⁹⁵ RCD (recast), Art 23(3).

¹⁹⁶ EASO Guidelines, Indicator 28.4

addition to this, EASO recommends that Member States ensure sufficient space exists in the centre for leisure and group activities taking into consideration gender, age and cultural/ religious needs of the applicants.¹⁹⁷

According to EASO, housing which hosts children should have a safe room/ area to play and engage in open air activities in the facility or within a public space nearby.¹⁹⁸ When determining the location of housing for applicants, Member States should ensure effective geographic access to, inter alia, leisure activities.¹⁹⁹ Effective geographic access means the facility is either located within a reasonable walking distance and that walk is safe, services are accessible by a reasonable length public transport journey or are accessible through organised transport provided by the Member State.²⁰⁰

(3) International Obligations

, Article 31 UNCRC enshrines the right of the child to engage in play and recreational activities.²⁰¹ Governments should respect, promote, and encourage the right with equal opportunities. Recreation, play, physical and cultural activities are required for children in order to assist their development and socialization.²⁰² It is important that there is time and space for spontaneous play, recreation, and creativity, as it is a crucial part of the child's health and childhood. The CRC notes in its General Comment No.17, that children living in poverty lack access to facilities, and action is required to ensure opportunities and access exist for all children.²⁰³ Restricted opportunities for playing can also represent discrimination.²⁰⁴ The Committee raises concerns about children in institutions, recognising that opportunities for play, recreation and artistic and cultural life may be limited or denied.²⁰⁵ It states that measures should be adopted to ensure that such 'institutions guarantee both spaces and opportunities for children to associate with their peers in the community, to play, and to participate in games, physical exercise, culture and artistic life', but that ultimately the State should work towards the de-institutionalisation of children.²⁰⁶ In 2016, the CRC raised concerns regarding the inadequate facilities for children in numerous centres and recommended that the State must ensure that the accommodation centres have, '[F]acilities, including recreation areas, that are appropriate for young children and families'.²⁰⁷

1.3.2 Policy Framework

¹⁹⁷ *Ibid*, Indicator 13.1

¹⁹⁸ *Ibid*, Indicator 13.3

¹⁹⁹ *Ibid*, Standard 1

²⁰⁰ *Ibid*, Indicator 1.2

²⁰¹ UN General Assembly, *Convention on the Rights of the Child*, art 31.

²⁰² UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, available at: <https://www.refworld.org/docid/4ae562c52.html>, page 25, para 115; 'Play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, and physical, social cognitive and emotional strength and skills', UN Committee on the Rights of the Child (CRC), *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, 17 April 2013, CRC/C/GC/17, available at: <https://www.refworld.org/docid/51ef9bcc4.html>, page 4, para 9.

²⁰³ UN Committee on the Rights of the Child (CRC), *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, 17 April 2013, CRC/C/GC/17, available at: <https://www.refworld.org/docid/51ef9bcc4.html>, page 15, para 49.

²⁰⁴ *Ibid*, page 5, para 11.

²⁰⁵ *Ibid*, page 16, para 51

²⁰⁶ *Ibid*, page 16, para 51

²⁰⁷ UN Committee on the Rights of the Child (CRC) n28, para 66

(1) Domestic Policy

A government priority, in compliance with the *National Policy Framework on Children and Young Persons*, is to ensure that all children ‘are enjoying play, recreation, sport, arts, culture and nature’.²⁰⁸ The government recognises under this policy that recreation is ‘an immensely important part of the lives of children and adolescent children’.²⁰⁹ It appreciates that recreation is a crucial factor for emotional stability, intellectual and social developments and the ‘overall wellbeing’ of the child.²¹⁰ The state vows therein to continue ‘to develop play and recreation spaces for both children and adolescent children’.²¹¹ Furthermore, according to the RIA Child Safeguarding Statement, ‘all children living in RIA/ERO accommodation should have space for play, study and recreation that is separate from adult recreation areas’.²¹²

The objective of the National Play Policy is ‘to ensure children's play needs are met through the development of a child friendly environment’.²¹³ It aims to maximise play opportunities available, especially to marginalised and disadvantaged children. It draws attention to the disadvantage that some children face in accessing such public and commercial play facilities, making specific reference to children living in temporary and emergency accommodation whose parents experience financial burdens and are ‘often unable to afford toys or participation in clubs or after school activity’.²¹⁴ The Policy highlights that there are often no play areas within accommodation centres, and any play areas which are available are ‘usually within very confined spaces’ and lack the ‘appropriate space for children to play’.²¹⁵ The policy sees it as ‘essential that facilities and opportunities for play are provided which are easily accessible and free of charge, so that they can be used by children experiencing poverty’.²¹⁶

1.3.3 Situation in Direct Provision

(1) Poor Facilities

Research shows that recreational spaces and facilities are inconsistent and lacking across Direct Provision centres, despite being vital for the physical health and development of the child. According to the DCYA’s report, the lack of recreational facilities for adults obstructs space available to children, and it is suggested that adults often dominate designated play spaces and computers, making it difficult for children to access the facilities.²¹⁷

Doras, the Irish Human Rights and Equality Commission (IHREC), the Irish Refugee Council (IRC) and the Irish Council for Civil Liberties (ICCL), have repeatedly pointed out that there are insufficient play and recreational facilities available for children and adolescent children in Direct Provision

²⁰⁸ Department of Children and Youth Affairs, ‘Better Outcomes, Brighter Futures: The National Policy Framework for Children and adolescent children, 2014-2020’ (2014) 49. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

²⁰⁹ *Ibid*, 56.

²¹⁰ *Ibid*, 56.

²¹¹ *Ibid*, 58.

²¹² RIA, ‘Children’s First Safeguarding Statement’. Available at: <http://www.ria.gov.ie/en/RIA/Pages/Children's%20First%20Safeguarding%20Statement>

²¹³ Ready Steady Play! A National Play Policy 2004-2008, 9.

²¹⁴ Ready Steady Play! A National Play Policy 2004-2008, 31.

²¹⁵ *Ibid*, 31.

²¹⁶ *Ibid*, 30.

²¹⁷ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017), 16 & 20.

centres.²¹⁸ The Irish Council for Civil Liberties noted that the lack of recreational facilities is intrinsic to violations of the right to respect for private and family life in Direct Provision.²¹⁹ Concerns regarding the lack of 'play space' and inadequate recreational spaces for teenagers were also raised in the McMahon Report, by the Joint Committee on Justice & Equality, and by the DCYA.²²⁰

RIA have stated that there must be appropriate spaces for young children, children under 12 and teenagers, yet there is no evidence to this effect.²²¹ The appropriate recreational spaces differ with respect to different age groups. The DCYA report of 2017 noted that the play and outdoor spaces in centres are often sub-standard with 'few toys and broken swings'.²²² In 2019, the Ombudsman for Children noted football pitches with no nets and broken, unsecured play areas.²²³ It was also reported by the DCYA in 2017 that playrooms and homework rooms were often locked, with statements from residents indicating that they were locked until there was a visit or inspection. Children expressed that they 'often have nothing to do, when recreational facilities are inadequate or lacking entirely'.²²⁴ RIA confirmed that outdoor play space is required but if local facilities such as a playground are available, the contractor need not provide outdoor space.²²⁵ While local facilities may be available, access to such can be impeded through other restrictions in the centres such as supervision of other children, work hours, and the availability and cost of transport.

1.3.4 Incoming National Standards

The accommodation centres are to provide 'adequate and accessible facilities, including dedicated child-friendly, play and recreation facilities'.²²⁶ To achieve this, residents are to be consulted in the designing and planning of recreational and multipurpose facilities. There is no evidence to suggest that any centre has consulted with residents during the building of such facilities.

The centre should provide 'appropriate, secure and adequate play, sports and recreation spaces'.²²⁷ The outdoor play areas are not to be placed close to the road and are to have secure gates. The aforementioned RIA rules which contend that the contractor need not provide outdoor space where local facilities are available stands in contradiction with this national standard.²²⁸

Children in accommodation centres in Ireland should have access to a range of 'age-appropriate' toys.²²⁹ The condition of these toys is to be inspected regularly and an adequate supply should be maintained, in order to 'meet the developmental and play/creative needs of children and adolescent

²¹⁸ Doras Luimní (n 144) 240–41; Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion' (n 143) 24–26; Irish Human Rights and Equality Commission, 'Report to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports' (December 2015) 41; Irish Council for Civil Liberties and Irish Centre for Human Rights, 'Submission to Oireachtas Justice Committee Consultation on Direct Provision' (June 2019) 4.

²¹⁹ Irish Council for Civil Liberties and Irish Centre for Human Rights, 4, See, Article 8 of the European Convention on Human Rights.

²²⁰ *Ibid.*

²²¹ See: The Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019).

²²² Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 23.

²²³ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 5.

²²⁴ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 8, 31.

²²⁵ The Office of the Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019) 10.

²²⁶ National standards 4.5.

²²⁷ National standards 4.5.2.

²²⁸ The Office of the Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019) 10.

²²⁹ National Standards 4.5.3.

children.²³⁰ Adequate facilities inside the centre are to be provided to accommodate youth club meetings for children and adolescent children and 'events of significance'.²³¹

Transport provided for children in the centre is to 'take into account' the range and type of social and recreational activities in which children and adolescent children participate.²³² Advising that the transport in the centre 'take into account' rather than obliging centres to 'accommodate' these activities grants the centre manager with discretion to choose which activities outside the centre will be provided with transport.

All play and recreational facilities are to be cleaned, regularly maintained, and sufficiently furnished.²³³

The lack of specificity of the National Standards makes the standards insufficient in ensuring that children and adolescent children can enjoy play and recreation inside and outside of the centre.

1.4 SEXUAL EXPLOITATION

Children living in Direct Provision accommodation centres are at a potential risk of sexual exploitation and harassment.²³⁴ While living in the accommodation centres, their vulnerability increases to the abuses of power and authority, lack of support services, and increased poverty²³⁵. This can occur from staff members and adult non-family member residents. The frequent use of shared and communal spaces has been identified as a risk in particular where children can be left unsupervised with older children or adults.²³⁶

1.4.1 Legal Framework

(1) Domestic Legislation

Under the Children First Act 2015, Direct Provision accommodation centres satisfy the criteria of a relevant service.²³⁷ The relevant service provider is to undertake a potential risk assessment within 3 months of the commencement of the service.²³⁸ The service provider must also include the principles and procedures in place ensuring that 'a child, while availing of the service, is safe from harm'.²³⁹ Article 14 requires that a mandated person report to the Child and Family Agency if the mandated person 'knows, believes or has reasonable grounds to suspect', or the child has voiced concerns to the person that the child has been harmed, is currently being harmed or is at risk at being harmed.²⁴⁰

²³⁰ National standards 4.5.3.

²³¹ National Standards 4.5.5.

²³² National Standards 4.5.7 and 7.3.4.

²³³ National Standards 4.5.11.

²³⁴ AkiDwa, 'No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland' (October 2012) 8. Available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>; Rape Crisis Network Ireland, 'Asylum-seekers and refugees surviving on hold' (2014) <https://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>

²³⁵ Rape Crisis Network Ireland, 'Asylum-seekers and refugees surviving on hold' (2014) <https://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>

²³⁶ OHCHR, 'Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material: Visit to Ireland' (15 November 2019) UN Doc A/HRC/40/51/Add.2, para 36.

²³⁷ Children First Act 2015 Schedule 1(1)(g); Children Act 2001 Article 245(c) states that a person is defined to have care over the child if they are 'exercising authority over or having actual control of a child'.

²³⁸ Children First Act 2015 Article 11.

²³⁹ Children First Act 2015 Article 11(b).

²⁴⁰ Children First Act 2015 Article 14

The Children Act 2001 states that any person who has custody, charge or care of a child and who wilfully assaults, ill-treats, neglects or exposes a child or allows a child to be assaulted, ill-treated, neglected or exposed will be convicted of a criminal offence, and may be imprisoned for up to 7 years.²⁴¹

(2) European Obligations

The RCD (recast) requires Member States to consider safety and security issues, in particular where there is a risk the minor being a victim of human trafficking, when assessing the best interests of the child.²⁴² Specific recommendations on safety and security issues are outlined by EASO.

The EASO recommends when ensuring sufficient security measures, a regular risk assessment should be carried out, considering external and internal risks.²⁴³ As previously mentioned, specific arrangements must be made for the protection of applicants with special reception needs, including children.²⁴⁴ In training staff, EASO recommends that particular regard be paid to child protection and safeguarding standards for children.²⁴⁵ A minimum of training provided to staff must include gender and age-specific concerns and the situation of applicants with special needs. Good practice with regards to training staff would include training with relevant actors such as universities, lawyers and psychologists.²⁴⁶

Under Article 24 of the CFREU, children have the right to protection and care as is necessary for their well-being, with this right extending to asylum-seeking children in the application of EU law by Member States. The EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography²⁴⁷ and the EU directive on Combating Trafficking in Human Beings and Protecting its Victims,²⁴⁸ into which Ireland has opted, largely focus on the criminalisation of sexual exploitation and human trafficking of children.

As per the ECSR, children have the right to be especially protected from physical or moral dangers.²⁴⁹ In 2019, the ECSR highlighted concerns regarding the absence of regularly gathered comprehensive data on the scope and varying forms of sexual abuse and exploitation of children in Ireland. The ECSR noted in particular the lack of disaggregated data which hinders identification of the specific vulnerabilities of certain groups of children, including children in Direct Provision.²⁵⁰

The ECtHR has interpreted Articles 3 and 8 of the ECHR as providing protection to children from sexual abuse.²⁵¹ Where children are in the care of institutions under their authority, the State has a clear duty and may be held responsible for such harm caused to a child in that institution under the ECHR.²⁵² The ECtHR has established that where children are in the care of institutions under their authority the State has a clear duty and may be held responsible for such harm caused to a child in that institution

²⁴¹ Children Act 2001 Article 245

²⁴² RCD (recast), art 23(2)(c).

²⁴³ EASO Guidelines, Indicator 11.1.

²⁴⁴ EASO Guidelines, Indicator 11.6.

²⁴⁵ EASO Guidelines, Indicator 38.4.

²⁴⁶ EASO Guidelines, Indicator 38.4.

²⁴⁷ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ 2011 L 335/1.

²⁴⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ 2011 L

²⁴⁹ European Social Charter (CoE) (18 October 1961) ETS 35, art 7(10).

²⁵⁰ European Committee on Social Rights (ECSR) 'Conclusions 2019: Ireland' (March 2020), 16.

²⁵¹ ECtHR, *M.C. v. Bulgaria*, No. 39272/98, 4 December 2003.

²⁵² ECtHR, *Nencheva and Others v. Bulgaria*, No. 48609/06, 18 June 2013.

under the ECHR.²⁵³ In *O’Keeffe v Ireland*, the ECtHR found that where harm is caused by private individuals in establishments run by non-state actors, the State cannot negate its responsibility to protect children by delegating public services to private actors.²⁵⁴ Ireland was found to be in breach of Article 3 of the ECHR for acts of abuse committed in a privately-run primary school during the 1970s as, at the time where the State should have been aware of the potential risk of sexual abuse in schools, no adequate reporting mechanism or supervision mechanism of staffs’ treatment of children existed.²⁵⁵ Section 6 of this report discusses the engagement with child protection policy and complaints mechanism in relation to Direct Provision, which leaves much to be desired.

(3) International Obligations

Article 16 of the UNCRC requires States to ensure that “[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation”.²⁵⁶ The environment which children are subject to in Direct Provision is in complete conflict with this article due to the institutional settings which breach privacy.

Article 19 of the UNCRC enshrines the right of the child to protection from abuse and neglect,²⁵⁷ Articles 34-36 confer protection from sexual and other forms of exploitation,²⁵⁸ and Article 39 provides the right to rehabilitative care.²⁵⁹ The Committee on the Rights of the Child, in light of Article 24 has urged governments to ‘protect adolescents from undue pressures, including psychosocial stress.’²⁶⁰ The Committee expressed extreme concern about the excessive and growing prevalence of mental health problems among children in many countries. It mentioned that it may be related to inter alia violence, ill-treatment, abuse and neglect including sexual abuse, bullying or hazing, ridicule or abuse in and outside school.²⁶¹ The CRC General Comment No.13 which elucidates the right of the child to freedom from all forms of violence, explained the term violence as ‘all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.’²⁶² Violence negatively impacts the child’s survival and, physical, mental, moral and

²⁵³ ECtHR, *Nencheva and Others v. Bulgaria*, No. 48609/06, 18 June 2013.

²⁵⁴ ECtHR, *O’Keeffe v. Ireland* [GC], No. 35810/09, 28 January 2014, para 150.

²⁵⁵ *Ibid.*

²⁵⁶ CRC, Article 16.

²⁵⁷ UNCRC, Article 19, ‘(1). States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child; (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement’.

²⁵⁸ *Ibid.*, Article 34, ‘States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials’.

Article 35, ‘States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’

Article 36, ‘States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare’.

²⁵⁹ *Ibid.*, Article 39, ‘States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child’

²⁶⁰ UN Committee on the Rights of the Child (CRC), General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4, available at: <https://www.refworld.org/docid/4538834f0.html>, page 8, para 22

²⁶¹ *Ibid.*

²⁶² UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, available at: <https://www.refworld.org/docid/4e6da4922.html>, page 4, para 4

social development.²⁶³ General Comment No.13 deeply urges that all States should develop a 'safe, well-publicized, confidential and accessible support mechanism for children, their representatives and other to report violence against children.'²⁶⁴ The Committee gives a clear guidance on how the training of the obtainment of the report should follow. Referrals may be made by trained professionals, administrators and specialised support services.²⁶⁵ Investigations must be undertaken by a qualified professional who have received 'role specific and comprehensive training and require a child rights-based and child-sensitive approach'²⁶⁶

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography recognises the 'right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'.²⁶⁷ Article 8 enunciates that parties should take 'appropriate measure' to protect the rights and interests of children.²⁶⁸

1.4.2 Situation in Direct Provision

In general terms, Tusla stresses the risks posed to children by adult non-family members who are either cohabiting with the child, or actively involved in the child's family life.²⁶⁹ While not expressly referenced by Tusla, in the context of Direct Provision, such risks can be applied to staff members of the centre in which the child resides, and adult non-family member residents of the centre. Research by AkiDwa details instances of sexual harassment by centre managers towards female residents; an abuse of authority which had lasting mental health impacts on some women.²⁷⁰ The institutional setting of Direct Provision likely increases asylum-seeking children's vulnerability to such an abuse of power.

²⁶³ *Ibid*, page 7, para 15 (a) 'The short- and long-term health consequences of violence against children and child maltreatment are widely recognized. They include: fatal injury; non-fatal injury (possibly leading to disability); physical health problems: cognitive impairment (including impaired school and work performance) psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem); mental health problems (such as anxiety and depressive disorders, hallucinations, memory disturbances and suicide attempts); and health-risk behaviours (such as substance abuse and early initiation of sexual behaviour); (b) Developmental and behavioural consequences'

²⁶⁴ *Ibid*, page 19-20, para 49, 'The establishment of reporting mechanisms includes: (a) providing appropriate information to facilitate the making of complaints; (b) participation in investigations and court proceedings; (c) developing protocols which are appropriate for different circumstances and made widely known to children and the general public; (d) establishing related support services for children and families; and (e) training and providing ongoing support for personnel to receive and advance the information received through reporting systems'.

²⁶⁵ *Ibid*, page 20, para 50

²⁶⁶ *Ibid*, page 20, para 51. Page 23, para 59 explains the definition of a child rights approach:

'Respect for the dignity, life, survival, wellbeing, health, development, participation and non-discrimination of the child as a rights bearing person should be established and championed as the pre-eminent goal of States parties' policies concerning children. This is best realized by respecting, protecting, and fulfilling all of the rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as 'objects' in need of assistance rather than as rights holders entitled to non-negotiable rights to protection. A child rights approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival, and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents, and community members, in line with children's evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems'

²⁶⁷ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263

²⁶⁸ *Ibid*, art 8.

²⁶⁹ Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018). Available at: https://www.Tusla.ie/uploads/content/CF_WelfarePracticehandbook.pdf.

²⁷⁰ AkiDwa, 'No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland' (October 2012) 8. Available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>

Tusla has identified the risk factors which may lead to the sexual exploitation of children as including, among others, living and growing up in poverty.²⁷¹ The neglect of a child's needs, arising in some cases as a direct result of conditions in the child's Direct Provision centres of residence, is considered a risk factor for organised child sexual exploitation.²⁷² Female asylum-seekers have expressed concerns that women living in Direct Provision are viewed by locals as 'available for sex', with some being followed by local men to and from their centre and offered work or money in exchange for sex.²⁷³

Asylum-seekers in Direct Provision have been identified as more vulnerable and at more risk to sexual violence in comparison to different groups in Ireland due to *being disproportionately young and vulnerable due to lack of support and increased poverty*.²⁷⁴ *By segregating asylum-seekers from society and continued enforced poverty,*²⁷⁵ *the Direct Provision system continues to aggravate such risks of sexual exploitation.*

The frequent use of shared and communal spaces has been identified as presenting a risk for children in Direct Provision, particularly where children may be unsupervised with adults or older children.²⁷⁶ The lack of competence of HIQA to inspect Direct Provision means a layer of supervision which would help identify risks for children is missing.²⁷⁷ The UN Special Rapporteur on the sale and sexual exploitation of children, name has recommended the Government analyse the vulnerabilities of, *inter alia*, children in Direct Provision and implement strategies to reduce factors that may put them at risk of sexual exploitation and abuse.²⁷⁸

1.4.3 Incoming National Standards

A service provider must ensure to *take* 'all reasonable steps to protect each child from abuse and neglect and children's safety and welfare is promoted.'²⁷⁹ To adhere to this standard, service providers must have 'policies and procedures in place to ensure children are protected from harm are in line with national policy and legislation' and parents must be given information on their right to contact Tusla.²⁸⁰ Staff and management are to work 'in partnership' with children and their families to ensure their wellbeing. The level of consultation and participation that children should have when making decisions ensuring their wellbeing is unclear.

Regarding allegations of abuse or neglect against a child, staff and management are to follow procedures and policies outlined in national policy and legislation and the RIA Child Protection Policy.²⁸¹ There is no provision ensuring that there is a confidential and safe complaints procedure for children in place. Each centre is to have a designated liaison person (DLP) who is resource for residents

²⁷¹ Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018) 59 Available at: https://www.Tusla.ie/uploads/content/CF_WelfarePracticehandbook.pdf.

²⁷² Sections 2.B and 5.A in Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018) 62. Available at: https://www.Tusla.ie/uploads/content/CF_WelfarePracticehandbook.pdf.

²⁷³ AkiDwa, 'No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland' (October 2012) 8. Available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>

²⁷⁴ Rape Crisis Network Ireland, 'Asylum-seekers and refugees surviving on hold' (2014) <https://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>

²⁷⁵ Outlined below section

²⁷⁶ OHCHR, 'Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material: Visit to Ireland' (15 November 2019) UN Doc A/HRC/40/51/Add.2, para 36.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid*, para 77(b).

²⁷⁹ National Standard 8.2

²⁸⁰ National Standard 8.2.1.

²⁸¹ National Standard 8.2.3

and staff with child protection concerns. The DLP is to report all concerns to the Gardai. The contact details of the DLP should be in a visibly displayed within the centre.²⁸²

Parents are to be facilitated with 'age appropriate' supervision and procedures should be in place in the case where a parent is absent.

Staff and managers are to manage and review 'adverse events in a timely manner'²⁸³. These events are to be treated 'sensitively and confidentially'.²⁸⁴ What constitutes an adverse event is unspecified and therefore, it is not clear whether the alleged sexual exploitation of children and the actual sexual exploitation comes within the definition. Furthermore, what constitutes a timely manner is not specified and leaves a level of discretion up to the managers and staff as of when to manage and evaluate such an event.

The lack of specificity in the national standards, grants the staff and management of the Direct Provision centres to have a level of discretion on how they deal with child protection issues. These standards are insufficient in providing the adequate level of protection from children being at risk of sexual exploitation.

CONCLUSION

Although in principle, there are positive legal obligations on the State to ensure that children enjoy the highest possible standards of health, and that it must be guaranteed to all children in the State, without discrimination, irrespective of a child's legal or migratory status.²⁸⁵ However, in practice they are subjected to a substandard provision of services that makes this unattainable.

Firstly in relation to physical health, the lack of access to specialist services when needed, along with the frequent disruption to continuity of care due to the DJE's practice of transferring asylum-seekers between centres across the country, highlight the lack of consideration given to an asylum-seeking child's health and development from the outset. This is further frustrated by a reliance on private service providers, who are not bound by the same international obligations as state actors.

Secondly, as illustrated above, there is a pervasive sense of alienation and imprisonment experienced by asylum-seeking children, due to the dispersed nature of Direct Provision centres, which creates additional barriers in accessing mental health services and social care. The ability for asylum-seeking children to have a normal childhood is also negated by virtue of this placement, the general lack of recreational facilities, and financial limitations caused by a meagre weekly allowance which cannot cover extracurricular and afterschool activities.

Thirdly, as few accommodation centres allow for self-catering, not only are the nutritional needs of an asylum-seeking child frequently not met through the provision of substandard, canteen-style food, but the social bonds and familial relationships developed through the passing-on of cultural heritage are hindered. Although the number of centres which do allow for self-catering has increased over the

²⁸² National Standard 8.2.5.

²⁸³ National Standard 8.3.

²⁸⁴ National Standard 8.3.2.

²⁸⁵ See, Article 2(1) of the CRC.

years, it is still not enough, and the weekly allowance cannot cover a grocery shop necessary for the highest attainable standard of nutrition for a child along with other living costs.²⁸⁶

Lastly, the risk of asylum-seeking children being exposed to sexual exploitation requires immediate attention from the DJE, Tusla, and other relevant actors, as interventions to date have been minimal. Furthermore, the National Standards do not adequately address or provide strict guidelines in ensuring the protection of asylum-seeking children from abuse whilst in Direct Provision.

²⁸⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 7 (2005): Implementing Child Rights in Early Childhood*, 20 September 2006, CRC/C/GC/7/Rev.1, available at: <https://www.refworld.org/docid/460bc5a62.html>, page 12, para 27(a).

CHAPTER 2: EDUCATION

Access to education is vital for the development of the child and key to their integration into society. The Irish state has committed to children 'achieving their full potential in all areas of learning and development.'²⁸⁷ While children in the protection process are allowed access to primary and secondary education, full engagement with education is impeded by Direct Provision. Cost is a major inhibiting factor. Despite the State having a free education system for primary and secondary school, the supplemental material and social costs can far exceed the supports provided. Furthermore, the centre conditions are often not conducive to children's learning due to the lack of study spaces and facilities. Limited public and centre-organised transport also continues to be a barrier to both children and adults accessing education.

Access to third level education is extremely limited due to costs and restrictions arising from residency status. The continued ineligibility for fee assistance through waivers and the Student Universal Support Ireland (SUSI) grant forces asylum seekers to depend on extremely limited 'sanctuary schemes' and prevents full educational development. While a Pilot Student Support Scheme exists to assist young people in the protection process with funding for higher education, it has thus far aided only a handful of young people.

Where children are caught up in transfers and emergency accommodation, their access to education is hampered even more. Emergency accommodation is being increasingly used to accommodate asylum seekers with some spending excessively long periods in these temporary settings. With little oversight, there may be children without access to education. Provision of emergency accommodation is not under the contract of RIA and therefore will not be bound by the National Standards. The use of on-site schools in some cases is also worrying given the long period of time spent in unrecognised schools.

3.1 Legal Framework

(1) Domestic Legislation

Irish Constitution

The Constitution provides that, the 'State shall...as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.'²⁸⁸ There is no definition, however, of what classifies as *minimum* education.

Education Act 1998

The Education Act 1998 makes provision for the education of every person in the State, and generally provides for primary, post-primary, adult and continuing educational and vocational education and training.²⁸⁹ People residing in the State should have access to a level and quality of education appropriate to their needs and abilities, as far as is practicable and having regard to available

²⁸⁷ Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020' (2014) 5. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

²⁸⁸ Irish Constitution, art 42.3.2°.

²⁸⁹ Education Act, 1998.

resources.²⁹⁰ Furthermore, ‘equality of access to and participation in education’ should be promoted.²⁹¹

Child and Family Agency Act 2013

The Child and Family Agency Act 2013 outlines the functions to be undertaken by Tusla under Section 10 of the Education (Welfare) Act 2000.²⁹² Responsibility therefore lies with Tusla to ensure that every child ‘attends a recognised school or otherwise receives a certain minimum education.’²⁹³ Under the Act, Tusla should provide educational welfare services to support and monitor attendance, participation and retention in education.²⁹⁴

European Communities (Reception Conditions) Regulations 2018

According to the European Communities (Reception Conditions) Regulations 2018, an applicant has the right to primary and post-primary education equally to that of an Irish Citizen.²⁹⁵ It is the responsibility of the Minister for Education and Skills to ensure that the necessary support services and language supports are provided to facilitate access and participation in education.²⁹⁶ Support services are to take the meaning as is provided under the Education Act,²⁹⁷ a list under which transport services are included.²⁹⁸

(2) European Obligations

EU Receptions Conditions Directive (Recast)

Article 14 of the RCD (recast) states that Member States must grant all minor children, either of applicants or as applicants in their own right, access to the education system under similar conditions as their own nationals.²⁹⁹ Education may be provided in accommodation centres. The RCD (recast) provides that access to education must be granted within 3 months of the date of application for asylum.³⁰⁰

Charter of Fundamental Rights of the European Union

According to the Charter of Fundamental Rights of the European Union (which is relevant where member states are acting within the realm of EU law) everyone has the right to education and to have access to vocational and continuing training,³⁰¹ including the possibility of receiving free compulsory education.³⁰²

European Convention Human Rights

Protocol No. 1 of the ECHR provides a right to education under Article 2. Coupled with Article 14 and Protocol No. 12 which prohibit discrimination on the basis of nationality, this means migrants including

²⁹⁰ *Ibid*, section 6(b).

²⁹¹ *Ibid*, section 6(c).

²⁹² Child and Family Agency Act, 2013, section 72(2).

²⁹³ Education (Welfare) Act, 2000, section 10 (1).

²⁹⁴ ‘About Us’ (Tusla - Child and Family Agency, no date) <<https://www.tusla.ie/about/>> accessed 1 May 2020.

²⁹⁵ European Communities (Reception Conditions) Regulations 2018, SI 2018/230, art 17(1).

²⁹⁶ *Ibid*, art 17 (2).

²⁹⁷ *Ibid*, art 17 (3).

²⁹⁸ Education Act, 1998, art 2 (1).

²⁹⁹ RCD (recast), art 14(1).

³⁰⁰ *Ibid*, art 14(2).

³⁰¹ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, art 14.1.

³⁰² *Ibid*, art 14.2.

asylum seekers have a right of access to education. The prohibition of discrimination in relation to education predominately applies to primary and secondary education.

European Social Charter

Article 17(2) of the revised ESC requires states to take appropriate measures to provide children and young persons with a free primary and secondary education.³⁰³ States should also take measures to encourage regular attendance at schools.³⁰⁴

(3) International Obligations

UN Convention on the Rights of the Child

Article 28 of the UNCRC stipulates that 'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.'³⁰⁵ States are obliged by the UNCRC to ensure that education is offered to all children with the objective of the 'holistic development of the full potential of the child, development of respect for human rights, an enhanced sense of identity and affiliation, and his or her socialization and interaction with others and with the environment.'³⁰⁶ It is in the best interests of children to have 'access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge.'³⁰⁷ The education should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.³⁰⁸

The UNCRC also provides that accessibility to higher education should be ensured 'on the basis of capacity by every appropriate means.'³⁰⁹

International Covenant on Economic, Social and Cultural Rights

The ICESCR recognises the right of everyone to education,³¹⁰ and in light of General Comment No. 13, education in all its forms and at all levels shall be accessible to everyone, without discrimination. Accessibility includes three dimensions; non-discrimination; physical accessibility within safe physical reach either by attendance, reasonably convenient geographic location or modern technology; and economic accessibility, meaning education has to be affordable to all.³¹¹ Primary education must be compulsory and free, and secondary education should be generally available and accessible.³¹² The ICESCR also states that higher education 'shall be made equally accessible to all, on the basis of capacity.'³¹³ General Comment No.13 also states that in respect to articles 13(2)(b) - (d), the 'State

³⁰³ European Social Charter, art 17(2).

³⁰⁴ *Ibid.*

³⁰⁵ UNCRC, art 28(1).

³⁰⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), art 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, available at: <https://www.refworld.org/docid/4538834d2.html>

³⁰⁷ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, available at: <https://www.refworld.org/docid/51a84b5e4.html>, para 79.

³⁰⁸ UNCRC, art 29(1).

³⁰⁹ *Ibid.*, art 28.1 (c).

³¹⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), art 13(1) "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

³¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para 6.

³¹² International Covenant on Economic, Social and Cultural Rights (ICESCR), art 13.2 (a)(b).

³¹³ *Ibid.*, art 13 2(c).

party has an immediate obligation ‘to take steps’... towards the realization of secondary, higher and fundamental education for all those within its jurisdiction.’³¹⁴ States are obliged to ensure an educational fellowship system is in place in order to support the disadvantaged and promote equality.³¹⁵

Convention Against Discrimination in Education

Regrettably, Ireland has not signed nor ratified the Convention Against Discrimination in Education 1960. Ratification of this Convention would aid in the protection of international protection applicants from discrimination in relation to accessing education at all levels.

Policy Framework

2.1 Domestic Policy

The National Policy Framework for Children and Young People

The Irish state has committed to children ‘achieving their full potential in all areas of learning and development.’³¹⁶ As stated in Section 2.E of the National Policy Framework for Children and Young People, the State considers friendships to be ‘essential for the psychological, emotional and social development of children and young people.’³¹⁷ Similarly, the State identifies a child or young person’s ‘ability to develop and maintain friendship’ as a means of supporting positive mental health, and educational outcomes.³¹⁸

National Action Plan for Social Inclusion

Under the National Action Plan for Social Inclusion, the State aims to ‘continue to invest in high-quality early years care and education for all children through free pre-school provisions, by supporting families with childcare costs, in particular families on low incomes, and by improving the quality of provision’.³¹⁹

RIA House Rules

As per the RIA House Rules, centre management or RIA may require residents to be moved to another centre, whether or not the resident is in agreement.³²⁰ The justification for transfers between Direct Provision centres is vague, and can be for reasons as arbitrary as ‘to support the efficient functioning of the reception system.’³²¹ Wording in the House Rules is blunt and direct, stating ‘No one has the right to live in a particular centre.’³²² While a resident is entitled to know why they have been transferred, the House Rules make no reference to an appeals procedure.³²³ Residents may request a

³¹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para 52.

³¹⁵ *Ibid*, para 26.

³¹⁶ Department of Children and Youth Affairs, ‘Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020’ (2014) 5. Available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

³¹⁷ *Ibid*, 101.

³¹⁸ *Ibid*.

³¹⁹ Department of Social Protection. *The Updated National Action Plan for Social Inclusion. 2015-2017*, 8.

³²⁰ Reception and Integration Agency, ‘House Rules, revised,’ 18. Available at: <https://perma.cc/Z2PC-JQKH>

³²¹ *Ibid*, 40.

³²² *Ibid*, 11.

³²³ Reception and Integration Agency, ‘House Rules, revised,’ 18.

transfer to another centre.³²⁴ However, if refused, this decision cannot be appealed through the RIA Complaints Procedure.³²⁵

(1) European Policy

EASO Guidelines

EASO's guidelines on reception conditions include provisions on the educational rights of the children arriving in the State. Children enrolled in school should be provided with adequate clothing and school accessories enabling them to fully participate in all educational school activities.³²⁶ Items to be provided to all school going children include school uniforms where mandatory, including sports clothes and shoes and a school bag with all items required by the school, such as textbooks, free of charge.³²⁷ Where these items are not provided in kind the daily expenses allowance must reflect, *inter alia*, the expense of school items and transport required to access education.³²⁸ States and service providers are recommended to ensure school-age children are provided with a table and chair to facilitate homework.³²⁹

EASO indicates that, where reallocating housing to a family with school children, it is good practice that the body take into consideration school holidays at the end of the school year.³³⁰ With regard to transferring applicants to another facility, this should only take place when necessary,³³¹ for example, where an applicant's special reception needs become apparent.³³²

2.2 Situation in Direct Provision

(1) School Costs

Material Cost

The Joint Committee on Education and Skills listed asylum seekers as a group to which the education system is currently 'unfair and unequal.'³³³ Despite free education in Ireland, social costs can exceed the supports provided 3 or 4 times.³³⁴ The Committee on Justice and Equality has also noted the high cost of education in Ireland as creating a barrier for children in Direct Provision centres. The Committee also noted the discontinuation of child benefit allowances for those in the international application process. This has greatly impacted children's ability to engage fully with schools. Moreover, the modest weekly stipend of €29.80 for children and €38.80 for adults does little to cover educational needs when it must also be used to provide for any other needs of the child. Most schools, particularly at secondary level, require students to purchase specific uniforms, including shoes and

³²⁴ *Ibid*, 11.

³²⁵ *Ibid*.

³²⁶ European Asylum Support Office (EASO) 'EASO Guidance on Reception Conditions: Operational Standards and Indicators,' (September 2016) Indicator 27, Available at: <https://www.easo.europa.eu/sites/default/files/EASO%20Guidance%20on%20reception%20conditions%20-%20Operational%20standards%20and%20indicators%5B3%5D.pdf>.

³²⁷ *Ibid*, Indicator 27.1 and Indicator 27.2.

³²⁸ *Ibid*, Indicator 28.4.

³²⁹ *Ibid*, Indicator 7.5.

³³⁰ *Ibid*, 16.

³³¹ *Ibid*, 15.

³³² *Ibid*, Indicator 3.2.

³³³ Joint Committee on Education and Skills, Report on Education inequality & disadvantage and Barriers to Education (May 2019) 21.

³³⁴ *Ibid*, 5.

jackets, regarding which there can be no non-compliance.³³⁵ Non-governmental organisations, such as the Irish Refugee Council and Edmund Rice Schools Trust, also stress the fact that access to education is limited by financial constraints. There are no free travel passes available for international protection applicants, and the allowance that families receive for school and clothing expenses is insufficient.³³⁶

The practical barriers to primary and secondary education for asylum seekers set out above can have significant impacts on children's engagement and attendance at school. Thus, Direct Provision negatively impacts a child's right to education as provided by Article 27 of the UNCRC and Article 17(2) of the European Social Charter. Furthermore, under EASO guidance, uniforms, sports clothes, shoes, school bags and other items needed for school should be provided free of charge.³³⁷ If these are not provided, the daily expenses allowance must be reflective *inter alia* of these expenses.³³⁸ Barnardos calculated an average annual cost of €340 for children starting in senior infants and €735 for a child starting in first year of secondary school.³³⁹ This is hardly reflected by the weekly allowance of €29.80 per child and €38.80 per adult.

Social Costs

The McMahon report noted that children in the Direct Provision system cannot access the same additional experiences as their peers,³⁴⁰ putting them at a heightened risk of stigmatisation. When consulted by the DCYA, older children noted the impossibility of going on foreign trips due to passports and the cost.³⁴¹ The Joint Committee on Justice and Equality also noted the difficulty in meeting the extracurricular costs of class trips and sports clubs.³⁴² This is not in accordance with the UNCRC's right for the child's education to be directed to the development of their personality, talents and mental and physical abilities to their fullest potential.³⁴³

It is also clear from non-governmental reports that the geographic location and financial burdens that children in Direct Provision face bring with them a serious social cost.³⁴⁴ As the Children's Rights Alliance has pointed out, 'children and young people in Direct Provision have spoken about the shame they have felt because they cannot afford to go to swimming lessons, on school trips or to birthday parties.'³⁴⁵ In its 2019 Position Paper, the Edmund Rice Schools Trust explained that 'many (students living in Direct Provision) say that they are ashamed about where they are living and that they would

³³⁵ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 38.

³³⁶ Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' (June 2019) 10; Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion,' 26–27; Edmund Rice Schools Trust, 14; Faculty of Paediatrics, Royal College of Physicians of Ireland, 11, 13; Doras Luimní, 240.

³³⁷ European Asylum Support Office (EASO) 'EASO Guidance on Reception Conditions: Operational Standards and Indicators,' (September 2016), Indicator 27.1 and Indicator 27.2.

³³⁸ *Ibid*, Indicator 28.4.

³³⁹ Barnardos, The Real Cost of School in 2019: School Costs Survey 2019 Briefing Paper (August 2019) 7, available at <https://www.barnardos.ie/media/5378/school-costs-briefing-2019.pdf>.

³⁴⁰ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 175.

³⁴¹ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 22.

³⁴² Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 38.

³⁴³ UNCRC, art 29(1).

³⁴⁴ Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) Faculty of Paediatrics, Royal College of Physicians of Ireland, 11; Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion,' 24–26.

³⁴⁵ Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on Direct Provision and the international protection process,' 161.

never invite their school friends to visit them.³⁴⁶ As State policy contends that friendships are essential to the psychological, emotional and development of children and young people, it is clear that policy does not equate to the situation in Direct Provision.

(2) Homework Space

The DCYA reported that teenagers stressed the need for homework clubs, noting difficulties in completing homework due to noise, space, lack of computers and WIFI.³⁴⁷ The Ombudsman for Children Office reported the annoyance of older children at not being allowed to access study rooms without supervision.³⁴⁸ The issue of children lacking a space where they can do their homework has been raised repeatedly by several organisations, including the Irish Refugee Council, Doras, and the Edmund Rice Schools Trust.³⁴⁹

RIA's House Rules make no reference to homework space. EASO guidance recommends that children should have a table and chair to allow them to complete their homework, yet the need for specific study spaces is evident. A Dáil adjournment motion in 2012 recommended that there be an adequate provision of homework spaces for children. This recommendation was stated to be 'an indication that the basic needs and fundamental standards must be adhered to in order to protect children.'³⁵⁰

(3) Transport & Rural Location of Centres

Transport to and from the centres is frequently raised as an issue across reports. The location of centres in rural areas makes transport particularly difficult. The Ombudsman noted a number of complaints referring to such; highlighting issues with bus times not coinciding with classes or courses, particularly in regard to newer centres. Complaints received also expressed that while access was available to local towns, there was no transport to larger towns, cities or to Dublin.³⁵¹ In its 2012 report on children in Direct Provision, the Irish Refugee Council already pointed out that transportation from Direct Provision centres to schools is challenging, because of the remoteness of many of these centres.³⁵² This concern was reiterated in 2019 in non-governmental submissions to the Oireachtas Justice Committee Consultation on Direct Provision.³⁵³

More recently, the 2019 update report by the Ombudsman acknowledged that transport can also be an issue for urban centres. A clause compels centres in remote locations to provide transport for residents based on reasonable needs, however no clause exists for those in urban centres.³⁵⁴ Moreover, the report notes reasonable transport needs should be met for all residents irrespective of centre location and residents should not have to use their weekly allowance of €38.80 towards public transport in order to access vital services, including language services.³⁵⁵

³⁴⁶ Edmund Rice Schools Trust, 15.

³⁴⁷ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017), 22.

³⁴⁸ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 5.

³⁴⁹ Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion,' 26–27; Doras, 240; Edmund Rice Schools Trust, 14.

³⁵⁰ Deputy Derek Nolan, Child Protection and Welfare in Direct Provision, 2012. Dáil Adjournment Motion. Accessed at http://www.ria.gov.ie/en/RIA/Pages/Dáil_Adjournment_Motion_Sept_2012_Child_Protection_RIA

³⁵¹ The Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019) 12.

³⁵² Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion,' 26–27.

³⁵³ Irish Council for Civil Liberties and Irish Centre for Human Rights, 15; Anti Racism Network, 'Submission on Direct Provision and the Asylum System to the Joint Oireachtas Committee on Justice and Equality' (December 2019) 73; Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' 22; Doras, 242.

³⁵⁴ The Ombudsman, The Ombudsman & Direct Provision: Update for 2019, (2020) 18.

³⁵⁵ *Ibid*, 18.

The eligibility criteria for children availing of the Bus Éireann Primary School Transport scheme includes children living 3.2 km or less from the nearest primary school and 4.8 km or less from a post-primary school. If an eligible student holds a valid General Medical Service Scheme Card, they are exempt from the annual transport charge.³⁵⁶ If there is no transport available for an eligible student or they must travel 3.2km or more to reach the pickup point, a student may avail of the Remote Area Grant. Eligible students in accommodation centres may not have the means to reach the pickup/set down points, especially since the RSA continue their refusal to grant driving licenses to Asylum Seekers. The Workplace Relations Commission recently deemed this practice to be a form of indirect discrimination.³⁵⁷ It is clear that the right to transportation to avail of education services, as provided by the Reception Conditions Regulations in line with the Education Act 1998, is not being fully adhered to.

(4) Transfer Between Centres

Transfers between centres were noted as the biggest reason for complaints against RIA to the Ombudsman in 2018.³⁵⁸ RIA's policy on inter-transfer between centres is based on 'exceptional need.' While the Ombudsman declared that 9 complaints were not upheld, following engagement with RIA, one resident was allowed to transfer for educational purposes and another to be reunited with family. Yet this only accounts for 11 of 32 complaints in regard to transfers.³⁵⁹ The Immigrant Council of Ireland and Edmund Rice Schools Trust have pointed out that the practice of moving families from centre to centre has an additional disruptive effect on children's education and integration.³⁶⁰

HIQAs consider families moving between Direct Provision centres and the related disruption to a child's schooling and friendship networks to be a child welfare concern.³⁶¹ In general terms, Tusla describes the 'persistent failure to attend school' as neglect of a child.³⁶² Similarly, RIA's Child Protection Policy gives the example of consistently missing school as potential deprivation of intellectual stimulation, which the Policy lists as a form of neglect.³⁶³

(5) Emergency Accommodation

The report by the Joint Committee on Justice and Equality expressed concern over the worsening situation of emergency accommodation and the fear of it becoming a more long-term practice.³⁶⁴ This is putting children at risk of being unable to access educational opportunities. The Committee

³⁵⁶ Asylum seekers will generally qualify for a medical card, but do not automatically do so as qualification is based on means testing. Reception and Integration Agency (RIA) 'Medical'. Available at: <https://perma.cc/3Q63-QPAY>.

³⁵⁷ The Workplace Relations Commission. ADJ-00017832 LC, 2019. Available at: <https://www.workplacerelations.ie/en/cases/2019/november/adj-00017832%20.html>.

³⁵⁸ This trend was observed in 2017 also. Refusal of transfers accounted for 32 of 59 complaints against RIA in 2018. The Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019) 12.

³⁵⁹ *Ibid*, 12-13.

³⁶⁰ Edmund Rice Schools Trust, 15; Immigrant Council of Ireland, 5.

³⁶¹ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 15. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

³⁶² Children First: National Guidance for the Protection and Welfare of Children, 2017, 8.

³⁶³ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 12. Available at <http://www.ria.gov.ie/en/RIA/Child%20Protection%20and%20Welfare%20Policy%202018%20KG%20FINAL.pdf/Files/Child%20Protection%20and%20Welfare%20Policy%202018%20KG%20FINAL.pdf>

³⁶⁴ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 26. The Ombudsman has also expressed concern that a 'two-tiered system' will become entrenched in the Direct Provision sector. The Ombudsman, The Ombudsman & Direct Provision: Update for 2019, (2020) 6.

recognised that there is a gap in the oversight of emergency accommodation due to the vacancy of a social worker within RIA,³⁶⁵ therefore it is uncertain whether children in this accommodation have access to education or support in finding schools.³⁶⁶ Children could be in this type of accommodation for any length up to 9 months.³⁶⁷ The Ombudsman noted in his 2019 update report, that the families of eight school children have been in emergency accommodation for over a year,³⁶⁸ highlighting the severity of the issue of inhibition to accessing education and integration. The Ombudsman also noted that it is 'far from ideal that a child would be enrolled in school only to be relocated elsewhere during a school year... this was a less unpalatable option than having a child miss out on school altogether.'³⁶⁹

Several non-governmental organisations have also reported that living in Direct Provision poses significant challenges to the right to education, particularly for children in emergency accommodation.³⁷⁰ Numbers in emergency accommodation have rocketed from 196 in November 2018, to 936 as of July 2019,³⁷¹ and to 1389 as of September 2019.³⁷² In November 2019, it was reported that over 20 children living in an emergency accommodation centre had not been attending school; three of whom reportedly had not been to school since their arrival in Ireland two months prior.³⁷³

(6) Emergency Reception and Orientation Centres

The Emergency Reception and Orientation Centres (EROCs) were established to accommodate asylum seekers for 3 to 4 months during their initial processing period. However, due to delays in the system some families have been in the system, for example in the Roscommon centre, for an excess of 9 months.³⁷⁴ The publication by the Department of Education and Skills reported that children in 3 centres have had difficulty accessing education due to lack of spaces in schools and fear of a 'churning' effect.³⁷⁵ EROC schools were developed on-site to provide education, but do not have many resources and do not facilitate integration with other children. There are also few subjects available to those at the post-primary level.³⁷⁶ EROC schools are not recognised under the meaning of the Education Act 1998 and do not have roll numbers, causing teachers difficulties in accessing assistance and Continuing

³⁶⁵ As highlighted by the Children's Rights Alliance.

³⁶⁶ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 39.

³⁶⁷ As of the 21st of May 2019, the length of stay for those in emergency accommodation centres varied from less than a month, to 9 months. Dáil Debate, 28 May 2019, parliamentary question no 162 by Dep. Catherine Connolly, available at: <https://www.oireachtas.ie/en/debates/question/2019-05-28/162/>.

³⁶⁸ The Ombudsman, The Ombudsman & Direct Provision: Update for 2019, (2020) 17.

³⁶⁹ *Ibid*, 17.

³⁷⁰ Irish Council for Civil Liberties and Irish Centre for Human Rights, 4.

³⁷¹ Irish Refugee Council, The Reception Conditions Directive: One Year On (July 2019) 4, <https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=096fdab0-bac5-4273-9fdd-6e517f62a8d4>.

³⁷² Dáil Debate, 3 October 2019, parliamentary question, by Dep. Jim O'Callaghan, available at: <https://www.oireachtas.ie/en/debates/question/2019-10-03/3/>.

³⁷³ Jack Quann, 'Exclusive: Up to 30 asylum seeking children receiving no education at centre in Carrickmacross', Newstalk, (25th November 2019). Available at: <https://www.newstalk.com/news/exclusive-30-asylum-seeking-children-receiving-no-education-centre-carrickmacross-928330>.

³⁷⁴ Department of Education and Skills, Findings of Joint Inspectorate and NEPS Visits to Education Settings in Emergency Reception and Orientation Centres (EROCs), (June 2018) 2, available at <https://www.education.ie/en/Publications/Inspection-Reports-Publications/Evaluation-Reports-Guidelines/findings-of-joint-inspectorate-neps-visits-to-erocs.pdf>.

³⁷⁵ The 'churning effect' is considered the situation whereby new and unsettled pupils would be constantly arriving for enrolment throughout the school year. *Ibid*, 2-3.

³⁷⁶ *Ibid*.

Professional Development (CPD)³⁷⁷ from the Department of Education's support services.³⁷⁸ The schools are not recognised by the National Council for Special Education and therefore have no special needs assistants.³⁷⁹ There is uncertainty about the regulation of schools due to lack of recognition. Under the Child and Family Agency Act of 2013, much of Tusla's responsibility is to children in 'recognised' schools, thereby complicating the monitoring of enrolment and attendance by the Education Welfare Officers of Tusla.³⁸⁰

The Ombudsman for Children has criticised the use of EROC schools, due to the length of time being spent in these education centres designed purposely for short periods, stating that attendance at EROC schools should not exceed 3 months.³⁸¹ While the RCD (recast) permits Member States to provide education to minors in accommodation centres, the National Educational Psychological Service recommends that the use of on-site schools should be limited to a maximum of three months for primary school children, while secondary school-aged children should be enrolled in mainstream schools after a 'very short period of familiarisation at an EROC school.'³⁸² The European Social Committee has recently sought information from the Government on the implementation of such measures.³⁸³ Moreover, while the RCD (recast) allows the provision of on-site education, it also states that those in the protection process must have access to the education system under 'similar conditions' as their own nationals.³⁸⁴ The schools are unrecognised under the Education Act 1998, do not take attendance and lack monitoring and assistance, further hindered by the lack of subjects and resources. Thus, it can be assumed that these EROC schools do not meet the 'similar conditions' of recognised schools attended by nationals, nor do they equate to accessing education to the 'manner and extent of Irish citizens' as provided by the Reception Condition Regulations.³⁸⁵ The National Educational Psychological Service suggested introducing temporary roll numbers, clarifying the regulatory periods of schools and allowing teachers to access CPD and other supports. Should this prove unfeasible, EROC schools could become satellites of existing schools for roll numbers and CPD support.³⁸⁶ In any case, attendance at EROC schools must not exceed the maximum specification of 3 months. To do so would be contrary to the child's right to education to the equivalence of their Irish citizen counterparts under the Reception Condition Regulations.³⁸⁷

³⁷⁷ Continuing Professional Development (CPD) Needs are those required by teachers in the challenge of providing to children and young people with a diversity of social, emotional, behavioural and educational needs.

³⁷⁸ Department of Education and Skills, Findings of Joint Inspectorate and NEPS Visits to Education Settings in Emergency Reception and Orientation Centres (EROCs), (June 2018), 7, available at <https://www.education.ie/en/Publications/Inspection-Reports-Publications/Evaluation-Reports-Guidelines/findings-of-joint-inspectorate-neps-visits-to-erocs.pdf>.

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*

³⁸¹ Ombudsman for Children, Equal Education for Refugee Children (20 February 2019) < <https://www.oco.ie/news/equal-education-for-refugee-children-ombudsman-for-children/> > accessed 01 April 2020.

³⁸² Department of Education and Skills, Findings of Joint Inspectorate and NEPS Visits to Education Settings in Emergency Reception and Orientation Centres (EROCs), (June 2018) 14, available at <https://www.education.ie/en/Publications/Inspection-Reports-Publications/Evaluation-Reports-Guidelines/findings-of-joint-inspectorate-neps-visits-to-erocs.pdf>.

³⁸³ ECSR, 'Conclusions 2019: Ireland' (March 2020), 42.

³⁸⁴ RCD (recast), art 14(1).

³⁸⁵ European Communities (Reception Conditions) Regulations 2018, SI 2018/230, art 17 (1).

³⁸⁶ Department of Education and Skills, Findings of Joint Inspectorate and NEPS Visits to Education Settings in Emergency Reception and Orientation Centres (EROCs), (June 2018), 7.

³⁸⁷ European Communities (Reception Conditions) Regulations 2018, SI 2018/230, art 17 (1).

(7) Third Level Education

Eligibility Criteria and Sanctuary Schemes

International protection applicants are not entitled to the waiver of third level tuition fees that Irish citizens, EU/EEA citizens, and those who have officially been granted protection by the State can avail of.³⁸⁸ International protection applicants are also not eligible for funding from Student Universal Support Ireland (SUSI).³⁸⁹ Without a grant or scholarship scheme, international protection applicants are charged as international students, on a non-EU rate of fees averaging €10,000–€15,000 per year.³⁹⁰ According to the Irish Refugee Council, international protection applicants with a work permit are eligible to apply for a post leaving cert course (PLC).³⁹¹ Issues regarding the right to work and issuing of work permits will be discussed in detail in Chapter Four. Researchers from University College Dublin have noted that access to education for adults is extremely limited, with many only able to access courses up to FETAC³⁹² Level 4.³⁹³ This had resulted in many people doing courses far below their level of prior education and for some, completing courses they had no interest in just to stay occupied from the monotonous life and stresses in Direct Provision.³⁹⁴

According to the Irish Refugee Council, 11 higher education institutions currently offer scholarship schemes at undergraduate and postgraduate levels for international protection applicants, often described as 'sanctuary schemes'.³⁹⁵ While these schemes are welcomed and necessary, and often include a bursary, stipend or subsistence grant, places are limited and often include eligibility criteria, or prioritise applicants in certain circumstances.³⁹⁶ For example, Dublin City University offers 5 campus-based undergraduate scholarships, giving priority to applicants aged under 23, however those under 23 must have completed either the Leaving Certificate or a fulltime QQI/FETAC Level 5 qualification.³⁹⁷

³⁸⁸ Irish Refugee Council, 'The Education System in Ireland: A guide for people seeking asylum, those with refugee status, subsidiary protection or permission to remain' (July 2019) 8. Available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/2019-IRC-Education-Information-Issue-6-11-July-2019.pdf>. Those without Irish citizenship who are also entitled to a fee waiver include EU, EEA and Swiss citizens, those with official refugee status per the Refugee Act 1996, a family member of a refugee granted permission to live in the State, those with Humanitarian Leave to Remain (pre-Immigration Act 1999), those with Permission to Remain (under section 3 of the Immigration Act 1999), those granted Subsidiary Protection. Note that in Ireland a fee waiver does not equate to 'free fees', as a 'student contribution' charge of approx. €3,000 must be paid by students.

³⁸⁹ Student Universal Support Ireland (SUSI), 'Nationality Criteria'. Available at: <https://susi.ie/eligibility/nationality-criteria/>. Those eligible include those with official refugee status per the Refugee Act 1996, those with Humanitarian Leave to Remain (pre-Immigration Act 1999), those with Permission to Remain (under section 3 of the Immigration Act 1999), those granted Subsidiary Protection, and dependent children of naturalized Irish citizens residing in the State.

³⁹⁰ Irish Refugee Council, 'The Education System in Ireland: A guide for people seeking asylum, those with refugee status, subsidiary protection or permission to remain' (July 2019) 8. Available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/2019-IRC-Education-Information-Issue-6-11-July-2019.pdf>.

³⁹¹ *Ibid*, 5.

³⁹² Further Education and Training Awards Council (FETAC) courses can be undertaken as a means of access to University for adults who have not completed the Leaving Certificate. The term FETAC is still commonly used despite being replaced several years ago by the Quality and Qualifications (QQI) system, but they are essentially the same thing.

³⁹³ Muireann Ní Raghallaigh and others, 'Transition from Direct Provision to Life in the Community' (Technical Report, Research Repository UCD June 2016), 50. Available at <http://hdl.handle.net/10197/8496>.

³⁹⁴ *Ibid*.

³⁹⁵ Irish Refugee Council, 'The Education System in Ireland: A guide for people seeking asylum, those with refugee status, subsidiary protection or permission to remain' (July 2019) 9. Available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/07/2019-IRC-Education-Information-Issue-6-11-July-2019.pdf>. Higher education institutions currently offering scholarship schemes for international protection applicants include: NUI Galway, DCU, UL, UCD, UCC, AIT, LIT, TCD, ITC, IADT and CIT.

³⁹⁶ *Ibid*, 12-21. Examples of additional criteria include: TCD Asylum Seeker Access Provision (ASAP) Scholarships are limited to applicants who have completed the Leaving Cert. or a QQI/FETAC full award within the last two years and are living within a 'commutable distance' of Dublin; UCD Full-time Undergraduate & Postgraduate Scholarship prioritise those who have completed the UCD Access Programme, which in turn restricts eligibility to those over the age of 22.

³⁹⁷ *Ibid*, 12.

The former European Commission of Human Rights permitted difference in fees for non-nationals and nationals on the basis that the host country is justified in wishing for the positive effects of tertiary education to remain in their own economy.³⁹⁸ Yet, based on this reasoning, the difference in fees for national and asylum seekers is illogical as many asylum seekers seeking to access tertiary education have grown up in Ireland and are likely to contribute to the Irish economy following tertiary education.

Prohibitive Cost

Third level education is a privilege that most in the protection process cannot avail of, particularly because of the high fees and additional costs. Young people approaching the Leaving Certificate have expressed concern over access to third level education and the cost.³⁹⁹ Most applicants do not qualify for funding and are often considered international students due to their pending refugee status and lack of residency. Several non-governmental organisations have pointed out that access to third level education is 'essentially non-existent' for young people in the international protection process.⁴⁰⁰ In its submission to the Joint Committee on Education and Skills, An Cosán noted that the cost of non-EU fees for asylum seekers to access higher education averages four times higher than those of Irish/EU citizens.⁴⁰¹

The Government provides a Pilot Student Support Scheme for eligible school leavers in the protection process,⁴⁰² but applicants must have attended three academic years in the Irish school system.⁴⁰³ Moreover, according to the Irish Refugee Council, only 5 out of 59 applications to the Pilot Student Support Scheme were granted over 3 years.⁴⁰⁴ Even where applicants are granted financial assistance, they may still struggle to afford basic necessities such as laptops, books, stationery and student levies.

According to the ICESCR, higher education 'shall be made equally accessible to all, on the basis of capacity.'⁴⁰⁵ Similarly, the UNCRC provides that higher education should be accessible to all on the basis of capacity by 'every appropriate means.'⁴⁰⁶ Yet, if costs can amount to four times that of Irish/EU citizens it can be determined that third level education is not equally accessible to all. Furthermore, under the ICESCR, States are obliged to ensure support to the disadvantaged through an educational fellowship system. While the Pilot Student Support Scheme has been established to assist students in the protection process, the low approval rate of applications for the scheme demonstrates the lack of access to any higher education funding for the majority of people in the protection process. The requirement of having attended three academic years in the Irish school system is arbitrary and a further hindrance, particularly given the current use of EROC schools and the practice of housing

³⁹⁸ European Commission of Human Rights, *Karus v. Italy* (dec.), No. 29043/95, 20 May 1998.

³⁹⁹ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 6.

⁴⁰⁰ Faculty of Paediatrics, Royal College of Physicians of Ireland, 11, 14; Doras Luimní, 240; Edmund Rice Schools Trust, 15; Immigrant Council of Ireland, 9.

⁴⁰¹ An Cosán, Education Inequality and Disadvantage, 2018/39b, 6, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-06-05_report-on-education-inequality-disadvantage-and-barriers-to-education_en.pdf.

⁴⁰² Those eligible include asylum applicants, subsidiary protection applicants and leave to remain applicants. Department of Education and Skills, Ministers announce Student Support Scheme for Asylum Seekers to continue for coming year (June 2019) <<https://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-06-04.html>> accessed 1 April 2020.

⁴⁰³ Department of Education and Skills, Higher Education Pilot Support Scheme, (2019) 9. Available at <https://www.education.ie/en/Learners/Services/Pilot-Support-Scheme/Higher-Education-Pilot-Support-Scheme.pdf>.

⁴⁰⁴ The three years spanned from 2015 to 2018. Updated statistics as of 2019 could not be found. Irish Refugee Council, "IRC Education Fund highlights barriers in access to further education for people seeking asylum," (28 November 2018), <https://www.irishrefugeecouncil.ie/news/education-fund-highlights-barriers-in-access-to-further-education-for-people-seeking-asylum/6788>.

⁴⁰⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR), art 13 2(c).

⁴⁰⁶ UNCRC, art 28.1 (c).

people in emergency accommodation where they may not have access to school, which can add to the time not spent in recognised education.

2.3 Incoming National Standards

(1) Cost

While the National Standards require that the accommodation centre makes available 'appropriate and sufficient materials, equipment and on-line IT resources to support learning and schoolwork',⁴⁰⁷ nowhere in the guidelines is there any provision for an allowance or contribution to the costs associated with education. The National Standards are ambiguous and do not detail whether materials would include provision of the basic necessities for school. As outlined above, cost is a significant impediment to accessing education for school aged children. Without an increased allowance for uniforms, books, stationary and other needs, the National Standards will not benefit children's access to or full involvement with education. Similarly, there is no provision for any allowance to enhance children's abilities to participate in school trips and activities.

(2) Study Facilities

Scope for discretion by centre managers exists for a number of services. There is ambiguity regarding the provision of study facilities. Children and young people living in Direct Provision can now avail of appropriate and adequate study spaces under the National Standards.⁴⁰⁸ However, detail regarding the provision of 'appropriate and sufficient materials' is again vague; without specific reference to laptops, printers, or desk lighting among others, the quality of service provision is again left to the discretion of centre managers.⁴⁰⁹

(3) Access to Further Education

The obligation to provide access to education and training under Standard 9.3 is particularly weak. The indicators specify only that the service provider should 'enable and support' and 'facilitate' access to education, training, supports and study facilities.⁴¹⁰ No detail is provided on what facilitating access should entail and no specification is given regarding the provision of materials that would be needed to participate in further education and training.⁴¹¹ Given that access to higher education is limited by the prohibitive cost and limited access via sanctuary schemes, these Standards will be of no assistance in increasing access. The provision of standards for study spaces and facilities is meaningless if students cannot avail of higher education in the first place.

(4) Transport

The standards for the provision of transport are outlined under Standard 7.2, with a specific provision dedicated to transport for children and young people. Indicator 7.2.7 states that transport shall be specifically provided, where necessary, to meet the reasonable needs of children attending off-site crèche, pre-school, extra-curricular and socialisation activities, including youth groups.⁴¹² However,

⁴⁰⁷ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 38. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*, 61.

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*, 52.

the inclusion of ‘where necessary’ leaves room for discretion by centre managers in deciding what constitutes as *necessary*, similarly there is scope for ‘reasonable needs’ to be misconstrued. It is unclear whether ‘socialisation activities’ includes play dates and friends’ parties. Furthermore, as noted above, children have expressed their shame in living in Direct Provision stating that they would not invite their friends to visit them. The Standards make no change to the fact that children are growing up in an institutionalised environment, prohibiting them from engaging in the ordinary activities associated with school and growing up.

(5) Emergency Accommodation

As emergency accommodation is not under the remit of RIA, the Standards are not applicable to people in emergency accommodation, thereby creating a significant gap for children and young people residing outside of Direct Provision. The growing number of families being placed in temporary accommodation makes this a cause for concern as there is no monitoring of access to education. Even if children residing in emergency accommodation enrol in their local schools, they are likely to be inhibited by the reasons outlined above, such as costs and transport. There is no provision of study materials, facilities, study spaces or clubs in emergency accommodation as emergency accommodation is contracted on a bed and board basis only.

CONCLUSION

Life in Direct Provision does not allow for equal access to educational services compared to that of an Irish citizen. While international protection applicants are not explicitly prohibited from accessing educational facilities, the barriers outlined serve to inhibit both child and adult access to and full integration with the services enjoyed by Irish citizens.

Where asylum-seeking children have access to educational services, they are inhibited from full engagement due to the prohibitive material and social costs associated with education in Ireland. They often do not have adequate access to the spaces need to study from home, further impeding their learning. Many adolescents and adults do not have the opportunity to learn or further their skills due to restrictive transport options to and from the Direct Provision centre. Moreover, the costs associated with further education in Ireland are exclusionary with little means of access to funding.

The use of emergency accommodation is extremely problematic. There is no oversight of the access of children in emergency accommodation to education. Living in hotels and B&B’s is not conducive to a child’s learning with no home facilities, funding or means of transport. The use of EROC schools for extended periods of time similarly highlights the inadequacy of the Direct Provision system. It is another reason why right of the child to a primary and secondary education equivalent to the ‘manner and extent of Irish citizens’⁴¹³ is not being upheld.

Abolishment of the system of Direct Provision is necessary to prevent further violation of the rights of asylum-seeking children. The issues outlined are largely cumulative and fixing one issue does not necessarily protect the individual from facing other barriers. The incoming National Standards will do little to rectify the issues faced with regard to education for people in Direct Provision. The provisions lack clarity and even where one issue may be seemingly addressed by the National Standards, the child or young adult will continue to face additional barriers. Cost is a major barrier for all international

⁴¹³ European Communities (Reception Conditions) Regulations 2018, SI 2018/230, art 17 (1).

DIRECT PROVISION'S IMPACT ON CHILDREN

protection applicants in accessing education, with no mention of provision of funding in the incoming National Standards.

CHAPTER 3: PRIVATE AND FAMILY LIFE

Life in Direct Provision and emergency accommodation are detrimental to the private and family life of those who live there. Barriers to the right to work contribute to the poverty in which many families are forced to live. The temporal and industry restrictions attached to the right to work for asylum seekers, alongside noted difficulties in setting up bank accounts, render this right one in name only for many living in Direct Provision, including for parents of children and young people when they are no longer in school. Due to the lack of childcare facilities in centres, and the high cost of private childcare in Ireland, single-mother asylum seekers are particularly impacted by this with their children experiencing greater risk of poverty. Restrictions on self-catering and culturally- and dietary-specific food result in families being unable to pass on their cultural heritage to their children.

Privacy is virtually non-existent since residents have to share rooms and centre management may enter rooms unannounced should they believe there is an immediate health and safety risk. This leads to concerns regarding the potential for abuse of this power, given that people living in Direct Provision are under constant supervision and control of centre managers, have relatively little freedom and are unlikely to complain. As spotlighted by the COVID-19 crisis, the active practice of overcrowding is a serious threat to the development and safeguarding of children in Direct Provision, with the social distancing required to prevent the spread of viruses and infectious diseases impossible when having to share bedrooms, recreational and eating facilities.

3.1 Legal Framework

(1) Domestic Legislation

Irish Constitution

The Irish Constitution ‘recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.’⁴¹⁴ Furthermore, it provides that ‘The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.’⁴¹⁵ As the Irish Human Rights and Equality Commission notes, due to the wording of Article 41.3.1, the Supreme Court has traditionally interpreted the references to family in Article 41 of the Irish Constitution as the family based on marriage; however, some recent cases have demonstrated the possibility that the Courts are prepared to widen that understanding.⁴¹⁶

The right to privacy is an unenumerated right under the Constitution, as declared by the Supreme Court in *McGee v Attorney General*.⁴¹⁷

⁴¹⁴ Constitution of Ireland 1937, art 41(1).

⁴¹⁵ *Ibid*, art 42(1).

⁴¹⁶ Irish Human Rights and Equality Commission, ‘Article 41.2 of the Constitution of Ireland’ (June 2018), 3, <https://www.ihrec.ie/app/uploads/2018/07/IHREC-policy-statement-on-Article-41.2-of-the-Constitution-of-Ireland-1.pdf> citing *RX, QMA & CX v Minister for Justice Equality and Law Reform* [2010] IEHC 446.

⁴¹⁷ *Mary McGee v. The Attorney General and The Revenue Commissioners* [1971] Irish Supreme Court 2314 P.

European Communities (Reception Conditions) Regulations 2018

In accordance with the RCD (recast), anyone who has been in the protection process for 9 months may be granted permission to enter the labour market while their claim is processed if a first instance decision on their application has not been made.⁴¹⁸

(2) European Obligations

EU Reception Conditions Directive (recast)

The RCD (recast) states that,

where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants.⁴¹⁹

When deciding on housing arrangements, due consideration should be taken of the best interests of the child in addition to particular circumstances of an applicant who is dependent on family members already present in the State.⁴²⁰ Article 17 of the RCD (recast) requires Member States to ensure that all asylum seekers are provided with an adequate standard of living which guarantees their subsistence and protects their physical and mental health.⁴²¹ The CJEU has held that while Member States determine the mode of reception and amount of financial aid, the material reception provisions must ensure a dignified standard of living, adequate for ensuring the health and subsistence.⁴²² In addition, material reception conditions must be sufficient to preserve family unity and the best interests of the child.⁴²³ The RCD (recast) does not provide a definition or guidelines as to what constitutes an adequate standard of living. However, the Directive must be implemented in accordance with European and International Human Rights Law,⁴²⁴ which defines an adequate standard of living as encompassing basic rights concerning an individual's mental and physical health such as food, clothing, housing and medical care.⁴²⁵

Charter of Fundamental Rights of the European Union

The CFREU guarantees respect for private and family life⁴²⁶ and requires that in all actions relating to children the child's best interests are a primary consideration.⁴²⁷ In addition, the CFREU recognises the need to combat social exclusion and poverty, and as such a duty is placed on Member States to respect the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with EU and national laws.⁴²⁸

⁴¹⁸ Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (2019) 15-16, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf

⁴¹⁹ RCD (recast), art 18(1).

⁴²⁰ *Ibid*, Recital 22.

⁴²¹ *Ibid*, art 17(2); See Chapter One of this report for discussion.

⁴²² Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others [2014] CJEU C-79/13, para 37.

⁴²³ *Ibid*, para 41.

⁴²⁴ RCD (recast), Recital 9 and 10.

⁴²⁵ ICESCR, art 11; UDHR, art 25. For discussion on this see Chapter One of this report.

⁴²⁶ Charter of Fundamental Rights of the European Union, art 7.

⁴²⁷ *Ibid*, art 24.

⁴²⁸ Charter of Fundamental Rights of the European Union, art 34(3).

European Social Charter

Under the European Social Charter children, young persons⁴²⁹ and families⁴³⁰ have the right to social, legal and economic protection. The ECSR has noted the criticism of Direct Provision particularly in relation to the unsuitability of Direct Provision accommodation and has questioned the extent to which the government has addressed these concerns and ensured that children are accommodated in an appropriate setting.⁴³¹

European Convention on Human Rights

Article 8 of the ECHR explicitly provides that ‘Everyone has the right to respect for his private and family life, his home and his correspondence.’⁴³²

The ECtHR has clarified that Article 8 does not solely compel the State to abstain from interfering in the private and family life of those under its jurisdiction. Indeed, ‘there may be positive obligations inherent in an effective "respect" for family life.’ Accordingly, the ECtHR has pointed out States ‘must act in a manner calculated to allow those concerned to lead a normal family life.’ When formulating domestic legal systems.⁴³³

While an interference with private or family life may be permitted where it is in accordance with law and necessary in pursuit of the listed legitimate aims,⁴³⁴ the ECtHR has found that any margin of appreciation in relation to rights of vulnerable groups is much narrower than in relation to the rights of others.⁴³⁵ Children are consistently deemed particularly vulnerable by the ECtHR due to their age and personal situation.⁴³⁶ This vulnerability is enhanced when a child is seeking asylum.⁴³⁷ The vulnerability of asylum-seeking children has led to the ECtHR finding a breach of Article 3 where the level of severity did not cause a breach for an asylum-seeking adult.⁴³⁸

(3) International Obligations

UN Convention on the Rights of the Child

The UNCRC states that ‘No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.’⁴³⁹ Children also have the right to be heard,⁴⁴⁰ and the right to seek, receive or impart

⁴²⁹ European Social Charter, art 17(1).

⁴³⁰ *Ibid*, art 16.

⁴³¹ ECSR, ‘Conclusions 2019: Ireland’ (March 2020), 37.

⁴³² ECHR, art 8(1).

⁴³³ *Marckx v Belgium*, [1979] ECHR 6833/74, para 31.

⁴³⁴ ECHR, art 8(2).

⁴³⁵ *Bjedov v. Croatia* ECHR App [2012] ECHR 42150/09, paras 64 and 68; *Tarakhel v. Switzerland* [2014] ECHR 29217/12, paras.118 and 119.

⁴³⁶ CRC General Comment No. 14 (2013), para 6, available at: <https://www.refworld.org/docid/51a84b5e4.html>; *Rahimi v. Greece* [2011] ECHR 8687/080, para 87.

⁴³⁷ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* [2006] ECHR 13178/03, para. 55; *Popov v. France* [2012] ECHR 39472/07 and 39474/07, para. 91; *Tarakhel v. Switzerland* [2014] ECHR 29217/12, para. 99.

⁴³⁸ *Muskhadzhiyeva and Others v. Belgium*, [2010] ECHR 41442/07.

⁴³⁹ CRC, art 16.

⁴⁴⁰ *Ibid*, art 12(2): ‘The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.’

information and ideas.⁴⁴¹ Importantly, the UNCRC states that 'all children should be entitled to basic rights without discrimination.'⁴⁴²

Article 5 of the UNCRC pertains to responsibilities, rights and duties of parents being respected by the State.⁴⁴³ Article 18 concerns parents who work and their right to benefit from child-care services. It provides that States 'shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.'⁴⁴⁴ The Article further requires that States shall provide 'appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.'⁴⁴⁵

Furthermore, the UNCRC provides that 'States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.'⁴⁴⁶ In light of Article 24 of the ICCPR (see below), which deals with child rights and non-discrimination, CRC has recommended to 'proportionally increase the child allowance provided to asylum seekers to ensure that it correlates with the cost of living in the State Party.'⁴⁴⁷

In its General Comment No.7, the CRC has emphasised the need to respect 'variations in cultural expectations and treatment of children, including local customs and practices'.⁴⁴⁸ Further, it had stated that children should be able to participate in cultural life freely.⁴⁴⁹ The Committee has highlighted that children are 'active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Through these relationships, children construct a personal identity and acquire culturally valued skills, knowledge and behaviours.'⁴⁵⁰

International Covenant on Economic, Social and Cultural Rights

The ICESCR requires States to 'recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'⁴⁵¹ Additionally, it provides that 'to achieve the full realization of this right' States 'shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.'⁴⁵² The ICESCR stated in General Comment No.18 that 'the right to work contributes at the

⁴⁴¹ *Ibid*, art 13(1): 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.'

⁴⁴² *Ibid*, art 2.

⁴⁴³ CRC, art 5.

⁴⁴⁴ *Ibid*, art 18(3).

⁴⁴⁵ *Ibid*, art 18(2).

⁴⁴⁶ *Ibid*, art 26(1).

⁴⁴⁷ CRC, Concluding Observations on the combined third and fourth periodic reports of Ireland (2016), para 66(c), available at: <https://www.refworld.org/docid/56c17f574.html>.

⁴⁴⁸ CRC General Comment No. 7 (2005), para 2(e), available at: <https://www.refworld.org/docid/460bc5a62.html>.

⁴⁴⁹ *Ibid*, para 34.

⁴⁵⁰ CRC, General Comment No. 7 (2005), para 16, available at: <https://www.refworld.org/docid/460bc5a62.html>.

⁴⁵¹ ICESCR, art 6(1).

⁴⁵² ICESCR, art 6(2).

same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.⁴⁵³

Article 11 of the ICESCR provides that States ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’⁴⁵⁴ The CESCR has stated that ‘individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination.’⁴⁵⁵ The Committee has stated that the location of adequate housing must allow ‘access to employment options, health-care services, schools, childcare centres and other social facilities.’⁴⁵⁶

Article 15 of the ICESCR asserts that everyone has a right to take part in cultural life.⁴⁵⁷ The Committee in General Comment No.21 acknowledges and affirms that ‘cultural activities, goods and services have economic and cultural dimensions, conveying identity, values and meanings’, and ‘enable all cultures to express themselves’.⁴⁵⁸ Access to one’s own culture and linguistic heritage is a right of all persons in order to express and exercise their cultural practice and identity.⁴⁵⁹

International Covenant on Civil and Political Rights

Article 24 of the ICCPR provides that ‘every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.’⁴⁶⁰

International Convention on the Elimination of All Forms of Racial Discrimination

The ICERD requires that States ‘undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights’ in particular: ‘the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.’⁴⁶¹

3.2 Policy Framework

(1) Domestic Policy

National Policy Framework for Children and Young People

In the National Policy Framework for Children and Young People, the State recognises the long-term impacts of family life on child development and the child’s quality of life upon reaching adulthood:

⁴⁵³ CESCR, General Comment No. 18 (2006), para 1, available at: <https://www.refworld.org/docid/4415453b4.html>.

⁴⁵⁴ ICESCR, art 11(1).

⁴⁵⁵ CESCR, General Comment No. 4 (1991), para 6, available at: <https://www.refworld.org/docid/47a7079a1.html>.

⁴⁵⁶ *Ibid*, para 7 and para 8(f).

⁴⁵⁷ ICESCR, art 15(1)(a).

⁴⁵⁸ CESCR, General Comment No. 21 (2009), para 43, available at: <https://www.refworld.org/docid/4ed35bae2.html>.

⁴⁵⁹ *Ibid*, para 49.

⁴⁶⁰ ICCPR, art 24(1).

⁴⁶¹ ICERD, art 5(e).

The nature and quality of family life influences not only how a child copes with life growing up, but also helps determine the quality of their relationships, parenting and mental health in adulthood.⁴⁶²

The National Policy Framework highlights the negative impact of long-term unemployment on a young person's economic independence, self-confidence and mental health.⁴⁶³ Furthermore, it cites life skills such as cooking as central to a young person's development and their ability to live independently in adulthood.⁴⁶⁴

RIA House Rules

The RIA House Rules provide that Direct Provision centres should cater for 'ethnic food preferences' where 'possible and practical'.⁴⁶⁵ The House Rules also provide external websites for accessing advice on parenting, local child care options and how to contact family resource centres.⁴⁶⁶ There is no mention of coordination between centre management and residents to avail of such supports.

(2) European Policy

EASO Guidelines

When determining the daily expenses allowance, EASO recommends that the amount should reflect at a minimum the cost of essential items such as school items, personal hygiene products, the asylum procedure and legal assistance.⁴⁶⁷ EASO also recommends that the daily expenses allowance should be given at 'free disposal' and the amount should be set in light of needs beyond basic needs, such as engaging in cultural activities and games, and going out.⁴⁶⁸ Additionally, service providers should take into consideration eating preferences or dietary restrictions of specific groups for reason of specific religious or cultural background.⁴⁶⁹ EASO also states that applicants ought to be allowed to cook for themselves where possible to promote autonomy, routine and sense of home.⁴⁷⁰

3.3 Situation in Direct Provision

(1) Poverty and restrictive right to work

The UN Committee on Economic, Social and Cultural Rights has expressed its concern at 'the restrictions asylum seekers face in accessing employment, social security benefits, health-care services and education'.⁴⁷¹

The McMahon Report pointed out that those in the protection process are at risk of experiencing poverty and often experience social exclusion because of where they live.⁴⁷² More recent non-

⁴⁶² Department of Children and Youth Affairs, 'Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020' (2014) 77, available at: <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>.

⁴⁶³ *Ibid*, 92.

⁴⁶⁴ *Ibid*.

⁴⁶⁵ Reception and Integration Agency, 'House Rules, revised' (2019) 15, available at: <https://perma.cc/C4Y4-EZS5>.

⁴⁶⁶ Reception and Integration Agency, 'House Rules, revised' (2019) 11, available at: <https://perma.cc/C4Y4-EZS5>.

⁴⁶⁷ EASO Guidelines, Indicator 28.4.

⁴⁶⁸ *Ibid*, Indicator 28.3.

⁴⁶⁹ *Ibid*, Indicator 21.6.

⁴⁷⁰ *Ibid*, 26.

⁴⁷¹ CESCR, Concluding observations on the third periodic report of Ireland (2015), available at: https://www.ihrec.ie/app/uploads/download/pdf/un_committee_on_economic_social_and_cultural_rights_concluding_observations_on_the_third_periodic_report_of_ireland_8_july_2015.pdf.

⁴⁷² Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (2015) 52, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20includ>

governmental reports have recognised that poverty is a significant issue that impacts family life in Direct Provision on multiple levels. Parents do not receive Child Benefit and the Irish Refugee Council has observed that the Daily Expenses Allowance is not being monitored.⁴⁷³ The Children's Rights Alliance has pointed out that 'Children living in Direct Provision centres are at a high risk of consistent poverty although they are not counted in the official poverty statistics.'⁴⁷⁴ The Ombudsman's 2020 Report on Direct Provision raised the issue that his Office had received several complaints about delays in getting Personal Public Service Numbers (PPSNs). This has a significant impact on residents, because PPSNs are necessary for asylum seekers to get access to a Daily Expenses Allowance and a medical card.⁴⁷⁵

The risk of poverty faced by families living in Direct Provision is exacerbated by the many restrictions imposed on the right to work. The permit giving access to the labour market only grants permission to work for up to 6 months. This is a relatively short period particularly in the eyes of an employer, who may be reluctant to employ and train someone who may only be working there for 6 months. Furthermore, Mr Justice McMahon noted the problems faced in setting up a bank account, with anecdotal evidence to suggest that some banks will not accept a Direct Provision centre as a form of address.⁴⁷⁶ This creates a barrier to employment as most employers pay by transaction and would likely turn away a work applicant that cannot comply with this.

Access to work is further restricted for people living in centres in remote locations where there is a lack of transport. This can make it difficult to get to locations where work would be more readily available, to attend interviews and to work hours that are outside bus times. Furthermore, asylum seekers that had appealed their first instance decision before the new rules regarding employment came into place, do not have the right to work.⁴⁷⁷ As MASI has pointed out, there is now 'a situation

ing%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf.

⁴⁷³ Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' (2019) 10, available at:

<https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>; Doras Luimní, Submission on Direct Provision and International Protection Application Process (2019) 240, available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on Direct Provision and the international protection process' (2019) 161 available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁴⁷⁴ Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on Direct Provision and the international protection process' (2019) 161 available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁴⁷⁵ Office of the Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019. A Commentary by the Ombudsman' (April 2020) 24, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>.

⁴⁷⁶ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 34-35, available at:

<http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>.

⁴⁷⁷ Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 37, available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

where some asylum seekers are denied access to work because they are appealing a decision and some asylum seekers will be allowed work even though they are appealing a decision.⁴⁷⁸

The Ombudsman noted that in 2018, 1,845 out of 2,662 applicants were granted the right to work, meaning that 817 applicants were refused permission.⁴⁷⁹ For the year 2019, 765 refusals out of 2,561 applications were reported.⁴⁸⁰ The Ombudsman noted that many residents felt liberated that they were allowed to seek employment.⁴⁸¹ However, the right to work does not equate to full access to work. According to the latest available data, out of 3,414 applicants that were granted a work permit, 1,693 were employed.⁴⁸²

Non-governmental organisations have also expressed their concern about the restrictions and barriers to the right to work, including the lack of access to driving licenses and bank accounts, and the absence of preschool facilities.⁴⁸³ The Irish Council for Civil Liberties has pointed out that discrimination further prevents international protection applicants from finding employment.⁴⁸⁴ These barriers to employment significantly contribute to the poverty that families in Direct Provision face.

(2) Childcare

Ireland's provision of childcare is generally weak, with Irish childcare costs averaging the second highest amongst OECD countries.⁴⁸⁵ The Irish Human Rights and Equality Commission notes that Ireland has failed to accept Article 27(1)(c) of the European Social Charter, which would require the State to develop or promote childcare services.⁴⁸⁶ General findings from the Economic and Social Research Institute (ESRI) show that the cost of childcare in Ireland limits mothers' ability to engage in paid work,⁴⁸⁷ a barrier which disproportionately affects lone parents.⁴⁸⁸ However, families, and

⁴⁷⁸ MASI, 'MASI Statement 27.07.2018: Roadblocks on the Right to Work' (MASI, 27 July 2018) available

at: <https://www.masi.ie/2018/07/27/masi-statement-27-07-2018-roadblocks-on-the-right-to-work/> accessed 5 July 2020;

⁴⁷⁹ Office of the Ombudsman, 'The Ombudsman & Direct Provision: Update for 2018. A commentary by the Ombudsman' (2019) 6, available at: <https://www.ombudsman.ie/downloads/Direct-Provision-2018.pdf>.

⁴⁸⁰ Office of the Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019. A Commentary by the Ombudsman' (April 2020) 13, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>.

⁴⁸¹ Office of the Ombudsman, 'The Ombudsman & Direct Provision: Update for 2018. A commentary by the Ombudsman' (2019) 6, available at: <https://www.ombudsman.ie/downloads/Direct-Provision-2018.pdf>.

⁴⁸² Dáil Debate 14 November 2019, vol 989, no 3, parliamentary question no 89 by Dep. Michael Fitzmaurice, available at: <http://www.justice.ie/en/JELR/Pages/PQ-14-11-2019-89>.

⁴⁸³ Anti Racism Network, 'Submission on Direct Provision and the Asylum System to the Joint Oireachtas Committee on Justice and Equality' (2019) 72–73, available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Irish Council for Civil Liberties and Irish Centre for Human Rights, 'Submission to Oireachtas Justice Committee Consultation on Direct Provision' (June 2019) 12, available at: <https://www.iccl.ie/justice/iccl-ichr-submission-to-oireachtas-justice-committee-consultation-on-direct-provision/>; Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality'; Doras Luimní, 'Submission on Direct Provision and International Protection Application Process' (2019) 240, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁴⁸⁴ Irish Council for Civil Liberties and Irish Centre for Human Rights, 'Submission to Oireachtas Justice Committee Consultation on Direct Provision' (June 2019) 4, available at: <https://www.iccl.ie/justice/iccl-ichr-submission-to-oireachtas-justice-committee-consultation-on-direct-provision/>.

⁴⁸⁵ National Women's Council of Ireland (NWC), 'Shadow Report in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)', (January 2017), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fIRL%2f26285&Lang=en.

⁴⁸⁶ Irish Human Rights and Equality Commission (IHREC), 'Comments on Ireland's 16th National Report on the implementation of the European Social Charter' (May 2019) 1, available at: <https://www.ihrec.ie/app/uploads/2019/05/Comments-on-16th-National-Report-on-the-Implementation-of-the-European-Social-Charter-May-2019-1.pdf>.

⁴⁸⁷ H. Russell, F. McGinnity, É. Fahey and O. Kenny, 'Maternal Employment and The Cost of Childcare in Ireland' (September 2018) (ESRI Research Series Number 73), available at: <https://www.esri.ie/system/files?file=media/file-uploads/2018-11/RS73.pdf>.

⁴⁸⁸ M. Regan, C. Keane and J.R. Walsh, 'Lone-Parent Incomes and Work Incentives' (July 2018) (ESRI Budget Perspectives 2019: Paper 1), available at: <https://www.esri.ie/system/files?file=media/file-uploads/2018-07/BP201901.pdf>.

particularly lone parents, who are living in Direct Provision experience additional stressors and barriers to work owing to a lack of childcare options.

A 2014 study on parenting in Direct Provision reported that many lone parents live in ‘constant stress’ due to the burden of childcare, and, as a result, suffer social exclusion and were less likely to engage in services and volunteer opportunities.⁴⁸⁹ While private contractors are not required to provide childcare, such services are provided in certain centres.⁴⁹⁰ The variation between centres has, according to the Ombudsman, caused frustration for residents who cannot avail of in-centre childcare.⁴⁹¹

In their submission to the Justice and Equality Joint Committee, MASI noted the need for reception centres to provide childcare facilities run by trained specialists, independent of the Department of Justice and Equality.⁴⁹² The Irish Refugee Council cites the provision of childcare facilities for asylum seekers in Portugal as an example of good practice which should be replicated in Ireland.⁴⁹³

As such, many parents must resort to informal childcare arrangements with other residents.⁴⁹⁴ Owing to the failure of the State or centres to provide childcare, MASI regularly highlight the inability of many parents, particularly single mothers, to engage in work, volunteering or language classes.⁴⁹⁵ Rape Crisis Network Ireland have also highlighted the issue of childcare with regard to service users’ ability to attend appointments.⁴⁹⁶

(3) Cooking and Cultural Heritage

Dr Geoffrey Shannon, the previous State-appointed Special Rapporteur for Child Protection, recently described Direct Provision as an ‘unnatural family environment’ where ‘parents are unable to promote the rules and customs of their family in the upbringing of their children due to the restrictions of living in Direct Provision centres.’⁴⁹⁷ The Special Rapporteur has repeatedly called for the abolition of the Direct Provision system.⁴⁹⁸

⁴⁸⁹ Uchechukwu Ogbu, H. ‘Parenting in Direct Provision: Parents Perspectives Regarding Stresses and Supports’ (2014) 38, available at: <http://www.childandfamilyresearch.ie/media/unescchildandfamilyresearchcentre/documentspdf/P parenting-Direct-Provision-Full-Report.pdf>.

⁴⁹⁰ Office of the Ombudsman, ‘The Ombudsman & Direct Provision: The story so far. A commentary by the Ombudsman’ (2018) 11, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-and-direct/Direct-Provision-Commentary.pdf>.

⁴⁹¹ *Ibid.*

⁴⁹² Movement of Asylum Seekers in Ireland (MASI), ‘Submission to Justice & Equality Joint Committee’ (May 2019) 22, available at: <http://www.masi.ie/wp-content/uploads/2019/09/MASI-SUBMISSION-final-original-copy-29.05.2019.pdf>.

⁴⁹³ Irish Refugee Council, ‘Direct Provision and Dispersal: Is there an alternative?’ (2011) 7, available at:

<https://www.irishrefugeecouncil.ie/wp-content/uploads/2011/09/Direct-Provision-and-Dispersal-Is-there-an-alternative.pdf>.

⁴⁹⁴ Kane, C. ‘A Right to Play: A Study of the Care and Education Needs of Asylum-Seeking Children and their Families’, Mayo County Childcare Committee (2008) 22, available at: <http://www.mayochildcare.ie/en/media/Media,8688,en.pdf>; Health Information and Quality Authority (HIQA), ‘Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007’ (2014) 17, available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>.

⁴⁹⁵ MASI regularly appeal to their network via social media for assistance in providing English language classes to parents, particularly single mothers, who cannot attend formal classes on account of childcare issues. Examples of two such appeals for mothers residing in Baleskin reception centre can be found here: https://twitter.com/masi_asylum/status/1171496414372745216?s=20, https://twitter.com/masi_asylum/status/116897835795955720?s=20.

⁴⁹⁶ Rape Crisis Network Ireland, ‘Asylum seekers and refugees surviving on hold: Sexual violence disclosed to Rape Crisis Centre’ (October 2014) 20, available at: <https://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>.

⁴⁹⁷ Shannon, G. ‘Twelfth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas’ (2019) 77, available at: https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWDData/Library3/Documents%20Laid/pdf/CYAdocLaid231219_231219_121507.pdf.

⁴⁹⁸ See, for example: *Ibid.*, 17 and 81.

Children living in Direct Provision have raised a lack of culturally appropriate food as an issue.⁴⁹⁹ The ability to pass on cultural heritage to children is an issue for families, particularly for those that have travelled long distances to a country with a culture very different to their own. Families living in Direct Provision have little ability to do so. This concern was raised by the UN Committee on the Rights of the Child in 2016; the Committee did not consider that Ireland provides sufficient access to 'appropriate food in general,' and culturally appropriate food specifically.⁵⁰⁰ Residents' inability to cook in many centres also affects parents' capacity to infuse their traditions and culture in their children, as detailed in the McMahon report.⁵⁰¹

The frustration of residents not being able to cook their own food is frequently noted across reports, with the Ombudsman acknowledging that this remained the biggest issue which complaints to his office concerned in 2018.⁵⁰² As previously mentioned in Chapter One the issue of residents keeping cooking utensils, such as rice cookers, in their rooms arose in inspection reports of 6 centres intended to accommodate families with children.⁵⁰³ However, there is no record of further enquiry by RIA inspectors as to *why* residents felt the need to cook in their rooms, or whether there was an issue with meals provided in those centres.

In his report for 2019, the Ombudsman noted receiving complaints from emergency accommodation residents who were worried that the food they were being provided with was not culturally appropriate. The Ombudsman stated that after investigation of these complaints, it was concluded this was due to 'communication issues' between residents and staff.⁵⁰⁴ However, these complaints are illustrative of the concerns that residents have because of the lack of control they have over their food. The Ombudsman also mentioned that in those centres in which self-cooking facilities and residents' shops have been installed, 'residents and staff reported on the overall positive impact.'⁵⁰⁵ The Ombudsman goes on to say this 'demonstrates the positive effect that giving people more independence in how they conduct their daily living can have.'⁵⁰⁶ However, self-cooking facilities have only been installed in 18 out of 38 centres.⁵⁰⁷ Consequently, those residing in the 20 remaining centres

⁴⁹⁹ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 7, 8, 14, 16, http://www.justice.ie/en/JELR/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf/Files/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf

⁵⁰⁰ CRC, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) para 65, available at: <https://www.refworld.org/docid/56c17f574.html>.

⁵⁰¹ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 61, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>.

⁵⁰² The Ombudsman, The Ombudsman & Direct Provision: An Update for 2018 (2019) 10.

⁵⁰³ Inspection reports for 28 of Ireland's 39 Direct Provision centres are available on RIA's website: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>. This information is accurate as per RIA's inspection reports. The following discussion does not consider emergency accommodation or centres accommodating children whose inspection report has not been published on the RIA website. The following is a list, by county, of the 18 centres accommodating children whose inspection reports will be analysed: Clare: Knockalisheen, Davis Lane, Clonakilty Lodge; Galway: Eglinton; Kerry: Atlas House Killarney, Atlantic Lodge, Eyre Powell, Montague; Mayo: Old Convent; Meath: Mosney; Monaghan: St Patrick's; Sligo: Globe House; Tipperary: Bridgewater House, Ocean View, Birchwood; Waterford: Clonea Stand Hotel; Westmeath: Temple Accommodation; Athlone Accommodation Centre. Centres where the issue of cooking in rooms arose upon inspection include Knockalisheen, Eyre Powell, St Patrick's, Globe House, Birchwood and Eglinton, where the issue was described as 'constant'.

⁵⁰⁴ Office of the Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019. A commentary by the Ombudsman' (April 2020) 18–20, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>.

⁵⁰⁵ *Ibid.*, 14.

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ibid.*, 19.

as well as the approximately 1,087 people in emergency accommodation are unable to cook their own food.⁵⁰⁸

Several non-governmental organisations have raised the same concerns and emphasised that the lack of self-catering options impacts family life for those living in Direct Provision⁵⁰⁹ and that the food that is being served in these centres is often not culturally appropriate.⁵¹⁰ Moreover, as the Children's Rights Alliance has noted, 'parents in Direct Provision accommodation have reported feeling that their ability to nurture their children's development has been undermined and that they have felt disempowered by regulations in the centre.'⁵¹¹ HIQA considers 'limited choices of cultural appropriate food' and 'children not experiencing ordinary family life such as playing, parents cooking' to be a child welfare concern.⁵¹²

Restrictions on residents cooking for themselves systematically hinders the development of children and young people growing up in Direct Provision.

(4) Privacy and Overcrowding

The UN Committee on Economic, Social and Cultural Rights has expressed its concern at 'the poor living conditions and the lengthy stay of asylum seekers in Direct Provision centres.'⁵¹³

Cramped Conditions

Children have voiced their concern about not having any space to themselves, stating, for example: 'I hate sharing a room with my mother and small brother and big brother, I need my space.'⁵¹⁴ The lack of privacy for intimacy for adults is problematic, as children are at risk of being exposed to sexual behaviour and of becoming sexualised at a young age.⁵¹⁵ Non-governmental organisations have also

⁵⁰⁸ Dáil Debate 6 September 2019, parliamentary question no 575 by Dep. Catherine Murphy, available at: <https://www.oireachtas.ie/en/debates/question/2019-09-06/575/>.

⁵⁰⁹ Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) 13, available at: <https://rcpi-live-cdn.s3.amazonaws.com/wp-content/uploads/2019/12/Direct-provision-position-paper-full-final-PDF.pdf>; Edmund Rice Schools Trust, 'Futures on Hold. A Position Paper on direct provision and its impact on learning and wellbeing for students and young people' (June 2019) 14, available at: https://www.erst.ie/uploads/Futures_On_Hold_for_publication.pdf.

⁵¹⁰ Nasc, 'Working Paper on the Implementation of the McMahon Report' (December 2017) 4, available at: <https://nascireland.org/sites/default/files/Nasc-Working-Group-Report-Dec-2017.pdf>; Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) 11 and 13, available at: <https://rcpi-live-cdn.s3.amazonaws.com/wp-content/uploads/2019/12/Direct-provision-position-paper-full-final-PDF.pdf>; Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' (June 2019) 8, 11, available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>; Doras Luimní, 'Submission on Direct Provision and International Protection Application Process' (December 2019) 241, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Edmund Rice Schools Trust, 'Futures on Hold. A Position Paper on direct provision and its impact on learning and wellbeing for students and young people' (June 2019) 14, available at: https://www.erst.ie/uploads/Futures_On_Hold_for_publication.pdf.

⁵¹¹ Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on Direct Provision and the international protection process' (May 2019) 159, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

⁵¹² Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 15, available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁵¹³ CESCR, Concluding observations on the third periodic report of Ireland (2015), available at: https://www.ihrec.ie/app/uploads/download/pdf/un_committee_on_economic_social_and_cultural_rights_concluding_observations_on_the_third_periodic_report_of_ireland_8_july_2015.pdf

⁵¹⁴ Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision, (July 2017) 19.

⁵¹⁵ Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 166 and 191, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>; Files/Report%20to%20Government%20on%20Improve

repeatedly expressed concerns about the cramped living conditions and the lack of independent living and privacy in Direct Provision centres, including children and young people having to share bedrooms with their parents.⁵¹⁶ The Irish Council for Civil Liberties and the Irish Centre for Human Rights have pointed out that the living conditions in Direct Provision impinge on the right to respect for private and family life.⁵¹⁷

Some social workers have reported difficulty in hearing the views of children living in Direct Provision directly, for example on account of being unable to meet children in 'private in familiar surroundings due to their cramped living conditions.'⁵¹⁸ This would appear to be an infringement, if not an outright violation, of the child's right to be heard,⁵¹⁹ and the child's right to seek, receive or impart information and ideas⁵²⁰ under the CRC.

Living with Strangers

In his report for 2019 the Ombudsman stated that 'nobody should have to share a room with more than one stranger for anything other than a short period of time.'⁵²¹ Government reports frequently note privacy as an issue in the Direct Provision system.⁵²² While residents should be notified in advance of an inspection by staff or management, a manager may enter rooms unannounced should

ments%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf.

⁵¹⁶ Edmund Rice Schools Trust 'Futures on Hold. A Position Paper on Direct Provision and Its Impact on Learning and Wellbeing for Students and Young People' (June 2019) 14, available at: https://www.erst.ie/uploads/Futures_On_Hold_for_publication.pdf; Doras Luimní, 'Submission on Direct Provision and International Protection Application Process' (December 2019) 240–41, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Anti Racism Network, 'Submission on Direct Provision and the Asylum System to the Joint Oireachtas Committee on Justice and Equality' (December 2019) 74, available at:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-12-12_submissions-report-on-direct-provision-and-the-international-protection-application-process_en.pdf; Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' (June 2019) 8, 11, 15–16, 21–22, available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>; Irish Human Rights and Equality Commission (n 339) 40; Irish Council for Civil Liberties and Irish Centre for Human Rights (n 177) 16.

⁵¹⁷ Irish Council for Civil Liberties and Irish Centre for Human Rights (n 177) 4. 4.

⁵¹⁸ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 18, available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>.

⁵¹⁹ CRC, art 12(2): 'The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

⁵²⁰ UNCRC art 13(1): 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.'

⁵²¹ Office of the Ombudsman, The Ombudsman & Direct Provision: Update for 2019. A commentary by the Ombudsman, 9–10, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>.

⁵²² Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 29, 59, 164–166, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>; Department of Children and Youth Affairs, Consultations with children and young people living in Direct Provision (July 2017) 11, 14, 19, available at:

http://www.justice.ie/en/JELR/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf; Files/Report_of_DCYA_consultations_with_children_and_young_people_living_in_Direct_Provision.pdf; Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 25, 29, 47, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-12-12_report-on-direct-provision-and-the-international-protection-application-process_en.pdf.

they believe there is an immediate health and safety risk.⁵²³ Concerns have been expressed regarding the potential for centre managers and contracted staff to abuse this power.⁵²⁴

Furthermore, those who have previously experienced abuse and sexual violence have reportedly been re-traumatised by the ‘real and perceived danger’ of living with strangers, resulting in flashbacks, nightmares and suicidal thoughts.⁵²⁵ A review of Tusla’s operations by HIQA show that referrals of children living in Direct Provision for child protection reasons included ‘inappropriate contact’ between adults and some children, proximity of children to ‘unknown adults,’ and accidental injuries sustained by children on account of factors including ‘cramped living conditions.’⁵²⁶ Poor communication between Tusla, RIA and centre managers, to be outlined in more detail in Chapter 5 below, have on at least two occasions disrupted assessments by social workers in cases of alleged inappropriate contact between adults and children.⁵²⁷ One of these instances could not be investigated, owing to lack of coordination with Tusla when transferring the child and their family to alternate accommodation.⁵²⁸ HIQA expressed concern that ‘referrals arising from children’s living conditions... were outside of the control of the Child and Family Agency but had resulted in referrals to their service.’⁵²⁹

COVID-19

Covid-19 throws into sharp relief the unsuitability of Direct Provision as a means of accommodating asylum seekers. As outlined above, the majority of asylum seekers live in congregated, typically overcrowded, settings—including families, many of whom share one bedroom. Single applicants often share dormitory-style rooms.⁵³⁰ Asylum seekers are also required to share living spaces, bathrooms and dining areas. Without effective guidelines or measures being issued by the Department of Justice and Equality, major disparities appeared between centres with some ceasing all congregating in canteens and others continuing as normal.⁵³¹

The living arrangements in the Direct Provision system have made self-isolation and social distancing impossible for many asylum seekers with some persons having tested positive for Covid-19 still

⁵²³ Reception and Integration Agency (RIA), ‘House Rules, Revised’ (January 2019) 19, available at: <http://www.ria.gov.ie/en/RIA/House%20Rules%20revised%20January%202019.pdf/Files/House%20Rules%20revised%20January%202019.pdf>.

⁵²⁴ AkiDwa, ‘No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland’ (October 2012) 8, available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>.

⁵²⁵ *Ibid.*, 7.

⁵²⁶ Health Information and Quality Authority (HIQA), ‘Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007’ (2014) 4 and 14, available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>.

⁵²⁷ *Ibid.*, 24.

⁵²⁸ *Ibid.*, 4.

⁵²⁹ *Ibid.*

⁵³⁰ In April 2020, MASI reported that seven asylum seeking men were being forced to share a bedroom suitable for one person in a Direct Provision centre in Ennis: see Movement of Asylum Seekers in Ireland (MASI), ‘Statement on the announcement of additional Direct Provision beds to help with Covid19’ (MASI, 1 April 2020), <<http://www.masi.ie/2020/04/01/statement-on-the-announcement-of-additional-direct-provision-beds-to-help-with-covid19/>> accessed 30 April 2020.

⁵³¹ Movement of Asylum Seekers in Ireland (MASI), ‘Statement on the Irish government’s response to COVID-19 in Direct Provision’ (MASI, 27 March 2020) <[http://www.masi.ie/2020/03/27/statement-on-the-irish-governments-response-to-covid-19-in-direct-provision/](http://www.masi.ie/2020/03/27/statement-on-the-irish-governments-response-to-covid-19-in-direct-provision/http://www.masi.ie/2020/03/27/statement-on-the-irish-governments-response-to-covid-19-in-direct-provision/)> accessed 30 April 2020. This has included a centre calling an Garda Síochána and removing residents’ food from fridges and freezers in response to asylum seekers who chose to cook and eat in their rooms in order to social distance see Refugee and Migrant Solidarity Ireland ‘Letter regarding Ciúin House’ (no date). <https://docs.google.com/document/d/1CqQa3rJVwppaG2DVdZH-wnHSadmBvJ9kx_xTQ-3kFPA/edit> accessed 30 April 2020 and Cowman Sian, ‘Situation in CiúinHouse emergency accommodation’ (Twitter, 1 April 2020) available at: https://twitter.com/Sian_Cowman/status/1245423905189302278?s=20.

required to share a bedroom with others, including a mother and her child.⁵³² Due to the inability of the Direct Provision system to facilitate self-isolation at least two asylum seekers who had tested positive for Covid-19 were refused return to their accommodation centre and left homeless.⁵³³ In addition, persons working in frontline services continue to share bedrooms and communal spaces with others, putting those they share these spaces with and those they come into contact with at work and themselves in serious danger.⁵³⁴

In response to concerns raised regarding overcrowding and Covid-19 in Direct Provision the Department of Justice and Equality announced the availability of 650 new beds to help with social distancing measures.⁵³⁵ However these new beds continue to operate under shared living arrangements existing in the Direct Provision system. MASI has criticised this approach calling on the Department of Justice and Equality to protect and assist all asylum seekers during this pandemic. In addition, over 800 experts have recommended that the government provide own-door accommodation and individual sanitation and eating facilities to every family unit and single person in the international protection unit.⁵³⁶

3.4 Incoming National Standards

(1) Childcare

While MASI have called for in-centre childcare staffed by trained professionals to be made available,⁵³⁷ commitment to childcare in the National Standards is weak. The Standards detail a commitment to 'assist and enable' residents in accessing 'appropriate supports and services' such as childcare, which appears to operate as a referral mechanism rather than service provision.⁵³⁸ Provision of an on-site crèche is at the discretion of centre managers,⁵³⁹ thus failing to rectify the frustration currently felt by parents owing to unequal provision of childcare between centres.

(2) Cooking and cultural heritage

The level of discretion afforded to centre managers regarding service provision under the incoming National Standards is concerning. Under the Standards, residents are to be given a choice between cooking and catering, a welcome standardisation measure.⁵⁴⁰ However, those residents who choose

⁵³² Movement of Asylum Seekers in Ireland (MASI), 'Statement on the announcement of additional Direct Provision beds to help with Covid19' (MASI, 1 April 2020) < <http://www.masi.ie/2020/04/01/statement-on-the-announcement-of-additional-direct-provision-beds-to-help-with-covid19/> > accessed 30 April 2020; SORCHA POLLAK, 'Coronavirus: Calls for "Transparent" Testing Strategy for Direct Provision System', *The Irish Times* (5 May 2020) <<https://www.irishtimes.com/news/social-affairs/coronavirus-calls-for-transparent-testing-strategy-for-direct-provision-system-1.4245696>> accessed 5 July 2020.

⁵³³ Lorna Siggins, Noel Baker and Cormac O' Keefe, 'Asylum seekers left homeless after positive Covid-19 diagnosis' *Irish Examiner* (1 April 2020), available at: <https://www.irishexaminer.com/breakingnews/ireland/asylum-seekers-left-homeless-after-positive-covid-19-diagnosis-991568.html>.

⁵³⁴ Movement of Asylum Seekers in Ireland (MASI), 'Statement on the announcement of additional Direct Provision beds to help with Covid19' (MASI, 1 April 2020) < <http://www.masi.ie/2020/04/01/statement-on-the-announcement-of-additional-direct-provision-beds-to-help-with-covid19/> > accessed 30 April 2020.

⁵³⁵ Department of Justice and Equality, 'Ministers Flanagan and Stanton announce significant increase in Direct Provision accommodation as part of emergency response to COVID-19 pandemic' (31 March 2020), available at: <http://www.justice.ie/en/JELR/Pages/PR20000042>.

⁵³⁶ Dr Éidín Ní Shé and others, 'Open Letter to Government re: social distancing' (31 March 2020) <<https://docs.google.com/document/d/1ErM23muj7nWuaMhFZ51yy8VzSSmKBdfwdeyFzVHLhvk/edit>> accessed 30 April 2020.

⁵³⁷ Movement of Asylum Seekers in Ireland (MASI), 'Submission to Justice and Equality Joint Committee' (May 2019) 22.

⁵³⁸ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 65, available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>

⁵³⁹ *Ibid*, 38.

⁵⁴⁰ *Ibid*, 42.

to cook do not appear to be entitled to use cooking facilities at any time; such access is to be 'agreed in consultation with residents.'⁵⁴¹

(3) Privacy and overcrowding

Entitlements for families regarding bedrooms and living space are enhanced under the National Standards. Families should have access to a private living space separate from the bedroom, a designated private bathroom, and own-door accommodation with at a minimum some form of food preparation facilities.⁵⁴² However, the family's 'sleeping quarters' consists of one bedroom and 'may, in consultation, contain other rooms for children.'⁵⁴³ It is not stated whether families should be in consultation with their centre manager, RIA, the Reception Officer, or the Designated Liaison Person. Furthermore, the use of the word 'may', as opposed to 'shall' or 'should', is weak, providing little protection to children or families seeking to occupy more than one bedroom.⁵⁴⁴

While long overdue, it is important that the National Standards explicitly reject the use of bunkbeds for those over the age of 14, and include specific provisions for people with disabilities.⁵⁴⁵ However, the continuation of the practice of accommodating adult strangers together in one room is disappointing.⁵⁴⁶ So, too, is the Standards' new provision whereby residents can apply for a single room after 9 months which should be made available within 15 months,⁵⁴⁷ in lieu of guaranteeing privacy and individual accommodation for all residents. While bedrooms should have 'sufficient space,' this again appears to be at the discretion of centre managers, as the only hard limit is the requirement that there be a minimum space requirement of 4.65m² per resident per room.⁵⁴⁸ The Ombudsman has expressed his concerns about this 4.65m² space requirement, because this does not take into account that residents use their bedroom as a 'multipurpose' room, being the only private living space they can avail of.⁵⁴⁹ For context, the area of this minimum space requirement is just over a third of the size of a standard public car parking space.⁵⁵⁰

Continuing the practice of accommodating asylum seekers together in a room of strangers also appears to stand in direct conflict with the National Standard 6.2, regarding respect for and safeguarding of a resident's privacy.⁵⁵¹ It is difficult to understand how indicators 6.2.1 a, c and g – 'receiving visitors,' 'expressions of intimacy and sexuality', and 'access to bedrooms, toilets and bathrooms'⁵⁵² – can be fulfilled in such a setting.

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*, 35.

⁵⁴³ *Ibid.*

⁵⁴⁴ *Ibid.*

⁵⁴⁵ *Ibid.*, 33.

⁵⁴⁶ *Ibid.*, 32.

⁵⁴⁷ *Ibid.*, 34.

⁵⁴⁸ *Ibid.*, 32.

⁵⁴⁹ Office of the Ombudsman, The Ombudsman & Direct Provision: Update for 2019. A commentary by the Ombudsman, 9, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>; See also: Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, 'Final Report ('McMahon Report')' (June 2015) par. 453.

⁵⁵⁰ Recommended minimum dimension for public car parking spaces is 2.5m x 4.8m, totaling an area of 12m² as per the Irish Parking Association, 'Frequently Asked Questions', [parkingireland.ie](http://www.parkingireland.ie), available at: <http://www.parkingireland.ie/car-parking/frequently-asked-questions/>.

⁵⁵¹ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 47, available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

⁵⁵² *Ibid.*

(4) Unaccompanied minors transitioning at age 18 to Direct Provision

Unaccompanied minors arriving in Ireland are catered for through the mainstreamed foster and residential care channels. However, on turning 18, these asylum seekers are considered 'aged-out separated children', meaning they have grown too old to be accommodated through mainstreamed services for children, and must relocate to a Direct Provision centre. These young adults are particularly vulnerable, and often do not have their needs met while transitioning to Direct Provision.⁵⁵³ As predominantly single adults, aged-out unaccompanied minors are often moved to shared accommodation. While not directly a child welfare or child protection issue, it is important to highlight the issue of shared accommodation in the context of the particular vulnerability of these young people.

CONCLUSION

Families living in Direct Provision are at risk of experiencing structural poverty. Parents do not receive Child Benefit and the right to work is severely restricted, including due to the temporary nature of work permits, the remote locations of Direct Provision centres and the lack of childcare options. The lack of self-catering facilities in the majority of Direct Provision centres and in emergency accommodation prevents parents from passing on their cultural heritage to their children. Furthermore, the practice of overcrowding Direct Provision centres means children have to share a bedroom with their parents and privacy is non-existent, as highlighted by the current Covid-19 crisis. The incoming National Standards do not provide a solution for these interferences with the right to family life and privacy, as they afford a high level of discretion to centre management.

⁵⁵³ See, for example: Ní Raghallaigh, M., & Thornton, L. (2017). Vulnerable childhood, vulnerable adulthood: Direct provision as aftercare for aged-out separated children seeking asylum in Ireland. *Critical Social Policy*, 37(3), 386–404.

CHAPTER 4: ACCOUNTABILITY & CHILD PROTECTION

This chapter outlines issues of accountability and oversight in the management of Direct Provision centres. Inconsistencies between RIA policies concerning child protection and child welfare pose significant barriers to their effective implementation.

Direct Provision, at present,⁵⁵⁴ does not come within the statutory remit of HIQA, the State's independent inspection authority for health and social care services. This compounds existing oversight and accountability issues. We argue that these issues are not effectively addressed under the incoming National Standards, owing to the reliance on contractors and managers of Direct Provision centres to monitor their own operations, and to implement recommended improvements. The lack of oversight from Tusla with regard to staff and complaints leaves children in an institutional environment where risks to their safety are not being properly addressed. Issues regarding Tusla's poor service provision to children living in Direct Provision are also explored in the context of the agency's relationship with RIA and managers of Direct Provision centres.

We consider that auditing measures outlined under the incoming National Standards are not sufficient to ensure transparency in staff recruitment and training. The procedural safeguards for the adherence of staff at Direct Provision centres to internal policies are weak under the incoming National Standards. The complaints procedure for residents faces no reform, and will remain neither fair nor robust in ensuring that residents' concerns regarding service delivery in Direct Provision centres are addressed. Problems arising from the use of emergency accommodation are also explored. These issues stem primarily from the lack of baseline standards to which emergency accommodation providers must adhere, and the absence of accountability and oversight mechanisms.

The potential effects of the State's ongoing failure to conduct vulnerability assessments is discussed from a child welfare perspective. It is argued that the absence of a vulnerability assessment mechanism violates domestic and EU law, as any special reception needs a child may have cannot be routinely identified. Additional violations of the rights of children with disabilities, and children with mental health issues, which may result from the absence of a vulnerability assessment are also explored. The incoming National Standards' reliance on managers and contractors of Direct Provision centres to ensure special reception needs are met is argued to be an abdication of responsibility on the part of the Minister for Justice and Equality, which may violate the Minister's obligations under EU law.

4.1 CHILD PROTECTION/ INSPECTION

4.1.1 Legal and Policy Framework

⁵⁵⁴ While the Catherine Day review group 'understands' HIQA will be conducting inspections under incoming National Standards, this is yet to be confirmed at the time of writing.

(1) Domestic Legislation

Irish Constitution

The Irish Constitution recognises and reaffirms the natural rights of all children.⁵⁵⁵ By its laws, the State shall protect and vindicate the rights of children as far as practicable.⁵⁵⁶ In accordance with the Constitution, the State shall also strive to promote the welfare of the whole population, with justice informing all institutions of national life.⁵⁵⁷

European Communities (Reception Conditions) Regulations 2018

The best interests of the child must be a primary consideration when applying the Regulations.⁵⁵⁸ Upon assessing the best interests of the child, the possibility of family unity, the child's well-being and social development, safety, security, and the views of the child in accordance with their age should be considered.⁵⁵⁹ In addition to this, the accommodation centre to which a minor is designated must be 'suitable to meet all of the minor's needs and to allow the minor to avail of the benefits to which he or she is entitled under these Regulations'.⁵⁶⁰

Child and Family Agency Act 2013

Tusla, Ireland's Child and Family Agency, was established under the Child and Family Agency Act 2013.⁵⁶¹ Its functions, among others, are to support and promote the development, welfare and protection of children, to support and encourage the effective functioning of families, and to maintain and develop support services related to these functions.⁵⁶² Tusla's operations are subject to monitoring and inspection by HIQA, as per the Health Act 2007.⁵⁶³

Schedule 2 Part 20 of the Child and Family Agency Act 2013 amends Section 2(1)(b) of the Health Act 2007.⁵⁶⁴ This amendment relates to the definition of a 'designated centre' for which Tusla has responsibility. The amendment does not address Section 2(1)(b)(ii) of the Health Act 2007, which excludes 'an institution managed by or on behalf of a Minister of the Government' from the Act's remit. Direct Provision centres are therefore not considered 'designated centres' under the Child and Family Agency Act 2013. As such, Tusla has no statutory responsibility for ensuring child welfare and child protection standards are upheld by the contractors and managers who run Direct Provision centres.

In accordance with the Child and Family Agency Act 2013 specific functions or duties of other public bodies may be carried out by Tusla.⁵⁶⁵ In the context of Direct Provision this could include monitoring centres' adherence to child protection and safeguarding policies. However, despite this statutory discretion, Tusla has no role in overseeing the management or conditions of Direct Provision centres accommodating families with children.

⁵⁵⁵ Constitution of Ireland 1937, art 42(a).

⁵⁵⁶ *Ibid*, art 42(a).

⁵⁵⁷ *Ibid*, art 45(1).

⁵⁵⁸ *Ibid*, Regulation 9(1).

⁵⁵⁹ *Ibid*, Regulation 9(2).

⁵⁶⁰ *Ibid*, Regulation 7(3)(b).

⁵⁶¹ Child and Family Agency Act 2013 (Ireland 2013).

⁵⁶² *Ibid*, s 8(1)(b)(c)(d).

⁵⁶³ Health Act 2007, s 2(1)(a).

⁵⁶⁴ Child and Family Agency Act 2013, Sched. 2(20).

⁵⁶⁵ Child and Family Agency Act 2013, s 10(1), s 11(1).

Tusla is obliged to undertake or commission research into matters related to its functions.⁵⁶⁶ A disproportionately high number of children referred to Tusla's services live in Direct Provision centres.⁵⁶⁷ Although children living in Direct Provision account for a large proportion of Tusla's caseload, the Agency has not published a dedicated report or review concerning its engagement with children living in Direct Provision. Spanning from 2014-2018, the Agency's annual reports also fail to mention children living in Direct Provision.⁵⁶⁸

Children First Act 2015

The Children First Act 2015⁵⁶⁹ provides the statutory basis for child safeguarding, and the reporting of child welfare and child protection concerns, in Direct Provision centres which may accommodate children. Work or activity carried out by a person having access to children in a reception or accommodation centre which provides residential accommodation services to applicants for asylum under contract to the Department of Justice and Equality where children may be accommodated is listed as a 'relevant service' under the Act.⁵⁷⁰

Providers of relevant services mandated under the Act include managers of Direct Provision centres intended to accommodate children,⁵⁷¹ private contractors employing centre managers and other staff in Direct Provision centres intended to accommodate children,⁵⁷² and, it could be argued, the Minister for Justice and Equality as 'a person who, in respect of the provision of such relevant service permits one or more than one other person (whether or not for commercial or other consideration and whether or not as part of a course of education or training, including an internship scheme) to undertake any work or activity, on behalf of the person, that constitutes a relevant service'.⁵⁷³

When carrying out obligations under the Act, the best interests of the child should be 'the paramount consideration'.⁵⁷⁴ A provider of a relevant service must ensure insofar as possible that each child availing of the service from the provider is safe from harm while availing of that service.⁵⁷⁵ In accordance with the Act, harm of a child means assault, ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child's health, development or welfare.⁵⁷⁶ Ill-treatment of a child means to abandon or cruelly treat the child, or to cause or procure or allow the child to be abandoned or cruelly treated.⁵⁷⁷ Neglect of a child means to deprive the child of adequate food, warmth, clothing, hygiene, supervision, safety or medical care.⁵⁷⁸ Sexual abuse of a

⁵⁶⁶ *Ibid*, s 8(1)(f).

⁵⁶⁷ Health Information and Quality Authority, Assurance Programme report: The management of child protection and welfare concerns by the Child and Family Agency about children living in direct provision accommodation in Ireland, (May 2015) 3.

⁵⁶⁸ The Annual Reports do detail the circumstances of unaccompanied minors, for whom Tusla are statutorily responsible, and who are accommodated through mainstream childcare services. Unaccompanied minors do not reside in Direct Provision centres. See: Tusla, Annual Report 2018, (2018) <https://www.TUSLA.ie/uploads/content/Tusla-Annual-Report-2018-Online.pdf>, Tusla Annual Report 2017 (2017) https://www.TUSLA.ie/uploads/content/Tusla_2017_Annual_Report_final_13.07.18.pdf, Tusla, Annual Report 2016 (2016) https://www.TUSLA.ie/uploads/content/4153_Tusla_AnnualPlan_p08.pdf, Tusla, Annual Report 2015 (2015) https://www.TUSLA.ie/uploads/content/Tusla_Annual_Report_2015_WEB.PDF, Tusla, Annual Report 2014 (2014) https://www.TUSLA.ie/uploads/content/Tusla_Annual_Report_-_English.pdf

⁵⁶⁹ Children First Act 2015.

⁵⁷⁰ *Ibid*, ss 2, Schedule 1(1)(g).

⁵⁷¹ *Ibid*, s 8(a).

⁵⁷² *Ibid*, s 8(b)(i).

⁵⁷³ *Ibid*, s 8(b)(iii).

⁵⁷⁴ *Ibid*, s 7.

⁵⁷⁵ *Ibid*, s 10.

⁵⁷⁶ *Ibid*, ss 2, Schedule 2(15)(c).

⁵⁷⁷ *Ibid*.

⁵⁷⁸ *Ibid*.

child, which includes wilful sexual activity in the presence of the child, is also listed as a form of harm.⁵⁷⁹

The Act names the 'manager of asylum seeker accommodation (direct provision) centre' as a mandated person.⁵⁸⁰ Mandated persons must report to Tusla if they know, believe or have reasonable grounds to suspect that a child has been harmed, is being harmed, or is at risk of harm,⁵⁸¹ or if such a disclosure is made to a mandated person by a child.⁵⁸²

Within 3 months of operation as a Direct Provision centre, a provider of a relevant service must undertake a child risk assessment, prepare a child safeguarding statement, and appoint a relevant person as the first point of contact in respect of the provider's child safeguarding statement.⁵⁸³ This also applies to Direct Provision centres in operation when the Act was introduced, who were obliged to conduct a risk assessment and prepare a child safeguarding statement within 3 months of Act commencing.⁵⁸⁴

A Direct Provision centre's child safeguarding statement must be written in accordance with guidelines issued by Tusla and the Minister for Children and Youth Affairs.⁵⁸⁵ Procedures to be detailed in the child safeguarding statement include a written risk assessment, management of identified risk, reporting of concerns by staff to Tusla, and appointment of a relevant person to the safeguarding statement.⁵⁸⁶ The child safeguarding statement must also detail selection and recruitment of staff in reference to their suitability to working with children, means for the provision of information, instruction and training to staff regarding identification of risk, and steps taken should a staff member come under investigations regarding an act, omission or circumstance concerning a child availing of services related to Direct Provision centres.⁵⁸⁷ A Direct Provision centre's child safeguarding statement should be reviewed at intervals of no more than 24 months.⁵⁸⁸ It should also be displayed prominently in the Direct Provision centre.⁵⁸⁹

A Direct Provision centre's child safeguarding statement should be available to Tusla, members of staff, parents, guardians and members of the public upon request.⁵⁹⁰ Should a service provider fail to provide a copy of the service's safeguarding statement following repeated requests from Tusla, the provider may be served with a non-compliance notice.⁵⁹¹ The service should also be added to a register of non-compliance notices, maintained by Tusla, and available to members of the public.⁵⁹² As Tusla has no statutory responsibility for monitoring a Direct Provision centre's child protection and welfare policies,⁵⁹³ it is unclear how breaches of the above requirements in Direct Provision centres would come to the attention of Tusla.

⁵⁷⁹ *Ibid.*

⁵⁸⁰ *Ibid.*, s 2.

⁵⁸¹ *Ibid.*, s 14(1).

⁵⁸² *Ibid.*, s 14(2).

⁵⁸³ *Ibid.*, s 11(1).

⁵⁸⁴ *Ibid.*, s 11(2).

⁵⁸⁵ *Ibid.*, s 11(4).

⁵⁸⁶ *Ibid.*, s 11(3).

⁵⁸⁷ *Ibid.*, s 11(3).

⁵⁸⁸ *Ibid.*, s 11(7).

⁵⁸⁹ *Ibid.*, s 11(6).

⁵⁹⁰ *Ibid.*, s 11(5).

⁵⁹¹ *Ibid.*, s 12(6).

⁵⁹² *Ibid.*, s 13(1), s 13(5).

⁵⁹³ Child and Family Agency Act 2013, Sched. 2(20).

Hotels, B&Bs and short lets used as emergency accommodation are arranged on an ad hoc basis, and are not contracted by the Department. They also do not fall within the other categories of work or activity listed as relevant services under the Act.⁵⁹⁴ As such, there appears to be no statutory basis for child safeguarding, and the reporting of child welfare and child protection concerns, in lodgings used as emergency accommodation for asylum seeking families with children.

(2) Domestic Policy

RIA Child Protection and Welfare Policy Document

The 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality' (hereafter 'RIA Child Protection Policy') provides the policy framework for child protection obligations to which Direct Provision centres must adhere in accordance with the Children First Act 2015, and the National Guidance.⁵⁹⁵ This document was revised and updated in 2018, and should be read in conjunction with the RIA Child Safeguarding Statement.⁵⁹⁶ Its function is to guide and direct the Designated Liaison Persons (DLPs) in RIA and Direct Provision centres.⁵⁹⁷ The Policy reaffirms that all children living in Direct Provision are in the care of their parent or guardian.⁵⁹⁸

The RIA Child Protection Policy applies to all persons resident in accommodation centres under contract to RIA, all RIA and centre staff, and all those delivering services to clients in RIA accommodation centres.⁵⁹⁹ Its scope includes children who are present in a centre at any time but are not resident, and resident children missing from the centre.⁶⁰⁰ The RIA Child Protection Policy clarifies that employees of Direct Provision centres are employed or sub-contracted by the proprietor with whom the Department has a contract.⁶⁰¹ A condition of each contract to provide accommodation services is that the RIA Child Protection Policy must apply to all staff and residents.⁶⁰² All staff must sign a declaration stating they have read, understood and will adhere to the RIA Child Protection Policy.⁶⁰³

The RIA Child Protection Policy defines child abuse, neglect, emotional abuse, physical abuse, sexual abuse and harm of a child in accordance with the National Guidance.⁶⁰⁴ Chapter 5 details how to recognise abuse.⁶⁰⁵ It is acknowledged that children living in Direct Provision may be particularly vulnerable to abuse on account of dependence on service providers, frequent turnover of staff, fear and uncertainty regarding the future, previous experience of abuse, fear of not being believed, and

⁵⁹⁴ A full list of relevant services is outlined in Children First Act 2015 ss 2, Schedule 1.

⁵⁹⁵ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6.

⁵⁹⁶ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 6.

⁵⁹⁷ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 9.

⁵⁹⁸ *Ibid.*, 6.

⁵⁹⁹ *Ibid.*, 8.

⁶⁰⁰ *Ibid.*, 9.

⁶⁰¹ *Ibid.*, 6.

⁶⁰² *Ibid.*

⁶⁰³ *Ibid.*

⁶⁰⁴ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 11-14.

⁶⁰⁵ *Ibid.*, 16-18.

language difficulties, among others.⁶⁰⁶ Other issues of concern that do not constitute abuse, such as a child being missing from a Direct Provision centre, or suspected child trafficking, must also be reported in accordance with the procedure outlined in the RIA Child Protection Policy.⁶⁰⁷

The Child and Family Services Unit, under RIA, is tasked with managing, coordinating, monitoring and planning all matters relating to child and family services for all persons residing in RIA accommodation centres.⁶⁰⁸ It must ensure that the child protection policy of a Direct Provision centre is adhered to by providing 'advice and support' to a centre's DLP, and following up with a Direct Provision centre's DLP and duty social work team with respect to child protection and child welfare referrals.⁶⁰⁹ Representatives of the Child and Family Services Unit should also attend case conferences and review meetings arising from child protection referrals.⁶¹⁰ According to RIA's website, the Child and Family Services Unit should comprise two junior civil servants and a manager, who is to be seconded from the HSE and have expertise in the area of child welfare and protection. The position of manager is, according to the website, currently vacant.⁶¹¹

RIA Safeguarding Statement

The Children First Act 2015 provides the statutory basis for child safeguarding and the reporting of child welfare and child protection concerns in Direct Provision centres which may accommodate children.⁶¹² Under the Act, the Minister for Justice and Equality could be considered a provider of a relevant service.⁶¹³ A provider of a relevant service which pre-existed the Act was required to prepare a child safeguarding statement within three months of the Act commencing.⁶¹⁴ While the Act commenced in full in December 2017, the Department of Justice and Equality's Child Safeguarding Statement covering RIA and the Irish Refugee Protection Programme, (hereafter 'RIA Safeguarding Statement') was not published until January 2019.⁶¹⁵ While not stated in the RIA Safeguarding Statement, as per the Children First Act 2015 and the RIA Child Protection Policy, each Direct Provision centre is required to have their own safeguarding statement, which must be displayed prominently in the centre.⁶¹⁶ The RIA Child Protection Policy should be read in conjunction with the RIA Safeguarding Statement.⁶¹⁷

⁶⁰⁶ *Ibid*, 16.

⁶⁰⁷ *Ibid*, 14.

⁶⁰⁸ Reception and Integration Agency, 'Child & Family Services' (Department of Justice and Equality Reception and Integration Agency, no date) <http://www.ria.gov.ie/en/RIA/Pages/Child_Family_Services>

⁶⁰⁹ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 20.

⁶¹⁰ *Ibid*, 20.

⁶¹¹ Reception and Integration Agency, 'Child & Family Services' (Department of Justice and Equality Reception and Integration Agency, no date) <http://www.ria.gov.ie/en/RIA/Pages/Child_Family_Services>

⁶¹² Children First Act 2015 ss 2, Schedule 1(1)(g).

⁶¹³ As noted previously, a provider of a relevant service includes 'a person who, in respect of the provision of such relevant service permits one or more than one other person... to undertake any work or activity, on behalf of the person, that constitutes a relevant service'. *Ibid*, 8(b)(iii).

⁶¹⁴ The Children First Act was commenced in full on 11th December, 2017. *Ibid*, s 11(2).

⁶¹⁵ Department of Justice and Equality, 'Child Safeguarding Statement' (2019).

⁶¹⁶ Children First Act 2015 s 11(2), 11(6); Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6.

⁶¹⁷ *Ibid*, 6.

The scope of the RIA Child Protection Policy includes children who are present in a centre at any time but are not resident.⁶¹⁸ However, each of the risks identified in the RIA Safeguarding Statement address only a 'child resident' of an accommodation centre.⁶¹⁹ Under the Children First Act 2015 work or activity which involves having access to, or contact with, children in Direct Provision centres which may accommodate children is not restricted to only those children resident in the centre.⁶²⁰ As such, the risk assessment contained in the RIA Safeguarding Statement is not compliant with the Act, in that it does not extend to non-resident children visiting a Direct Provision centre which may accommodate children. Non-resident children's right to protection from abuse or neglect, in accordance with the UNCRC,⁶²¹ is therefore not sufficiently protected under the RIA Safeguarding Statement.

The RIA Child Protection Policy lists a child being absent from a Direct Provision centre as a safeguarding issue.⁶²² In accordance with the RIA Child Protection Policy, if there is a suspicion that a child is away from their parents and no reasonable explanation is offered, the case must immediately be referred to Tusla and An Garda Síochána.⁶²³ A child being away from their parents, or missing from their Direct Provision centre, is not identified as a risk under the RIA Safeguarding Statement. Suspected trafficking of a child is also listed as a safeguarding issue under the RIA Child Protection Policy.⁶²⁴ Child trafficking is considered to be a serious child protection issue, and requires urgent contact with Gardaí.⁶²⁵ However, child trafficking is also not identified as a risk in the RIA Safeguarding Statement. As such, there are no safeguarding measures in place to specifically protect children living in Direct Provision from trafficking, despite regional and international obligations for the State to do so.⁶²⁶

While 'all staff' working in RIA centres are regularly referenced throughout the RIA Safeguarding Statement, the third identified risk, that a 'child resident may be subject to abuse or harm perpetrated by centre staff', appears to exclude contracted staff.⁶²⁷ Abuse or harm perpetrated by a contracted staff member is not listed under any other identified risk in the RIA Safeguarding Statement. All staff working in a Direct Provision centre, including those sub-contracted, are subject to the RIA Child Protection Policy and must be Garda vetted.⁶²⁸ However, sub-contracted or external staff are informed of the RIA Child Protection Policy through 'ongoing engagement' with staff of the Direct Provision centre.⁶²⁹ They are not obliged to receive training on, or even to read, the RIA Child Protection Policy. Each Direct Provision centre should have a Code of Conduct, however, this applies only to their direct employees.⁶³⁰ The RIA Safeguarding Statement therefore fails to address the risk of abuse or harm to

⁶¹⁸ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 9.

⁶¹⁹ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 3-5.

⁶²⁰ Children First Act 2015 ss 2, Schedule 1(1)(g).

⁶²¹ UNCRC, art 19(1).

⁶²² Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 11.

⁶²³ *Ibid*, 15.

⁶²⁴ *Ibid*, 11.

⁶²⁵ *Ibid*, 15.

⁶²⁶ Charter of Fundamental Rights of the European Union, art 5(3); CRC, art 24.

⁶²⁷ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 4.

⁶²⁸ *Ibid*, 2; Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6.

⁶²⁹ *Ibid*, 7.

⁶³⁰ *Ibid*, 23.

a child perpetrated by a contracted or external staff member, breaching the State's international obligations to take effective measures to prevent such harm.⁶³¹

(3) European Obligations

EU Reception Conditions Directive (recast)

When implementing provisions of the RCD (recast) concerning minors specifically, the best interests of the child must be the primary consideration.⁶³² In assessing the best interests of the child, Member States must take due account of the possibility of family reunification, the minor's well-being and social development, safety and security considerations, and the views of the minor in accordance with their age and maturity.⁶³³

European Social Charter

In accordance with the European Social Charter, children have the right to special protection against physical and moral hazards to which they are exposed.⁶³⁴ Children have the right to appropriate social, legal and economic protection.⁶³⁵ In particular, children are to be protected against negligence, violence or exploitation.⁶³⁶ In accordance with the European Social Charter, everyone has the right to benefit from any measures enabling them to enjoy the highest attainable standard of health.⁶³⁷ The European Social Charter protects the right of persons with disabilities to independence, social integration and participation in life of the community, irrespective of age and the nature of a person's disability.⁶³⁸ Rights set forth in the European Social Charter should be enjoyed in accordance with the principle of non-discrimination on grounds of national extraction or social origin, health, birth or other status.⁶³⁹

Charter of Fundamental Rights of the European Union

Human dignity must be respected and protected in accordance with Article 1 of the Charter of Fundamental Rights (hereafter 'the Charter')⁶⁴⁰ Inhuman or degrading treatment,⁶⁴¹ and trafficking⁶⁴² are prohibited under the Charter. The Charter also recognises the right to security of person.⁶⁴³ In the implementation of all European Union policies and activities, including the EU asylum *acquis*, a high level of human health protection must be ensured.⁶⁴⁴ In accordance with the Charter, discrimination on the grounds of race, ethnic or social origin, disability, age or sexual orientation, among others, is prohibited.⁶⁴⁵ The rights of the child are protected under Article 24 of the Charter.⁶⁴⁶ The best interests of the child must be a primary consideration in all actions taken in relation to children by public

⁶³¹ CRC, art 19(1); CRPD, art 16(1).

⁶³² RCD (recast), art 23(1).

⁶³³ *Ibid*, art 23(2).

⁶³⁴ European Social Charter, recital 7, art 7(10).

⁶³⁵ *Ibid*, recital 17, art 17.

⁶³⁶ *Ibid*, art 17(1)(a).

⁶³⁷ *Ibid*, recital 11.

⁶³⁸ *Ibid*, recital 15, art. 15.

⁶³⁹ *Ibid*, art. E.

⁶⁴⁰ Charter of Fundamental Rights of the European Union, art 1.

⁶⁴¹ *Ibid*, art 4.

⁶⁴² *Ibid*, art 5(3).

⁶⁴³ *Ibid*, art 6.

⁶⁴⁴ *Ibid*, art 35.

⁶⁴⁵ *Ibid*, art 21(1).

⁶⁴⁶ *Ibid*, art 24.

authorities and private institutions.⁶⁴⁷ Children have the right to the protection and care necessary for their wellbeing.⁶⁴⁸ A child's views must be taken into consideration on matters which concern them, in accordance with the child's age and maturity.⁶⁴⁹ In accordance with Article 26 of the Charter, the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community, is respected and protected.⁶⁵⁰

(4) International Obligations

UN Convention on the Rights of the Child

In accordance with UNCRC, the best interests of the child should be a primary consideration in all actions concerning children undertaken by private or public institutions.⁶⁵¹ A child who is capable of forming their own views must be assured the right to express those views freely in all matters affecting the child.⁶⁵² State Parties must ensure the child has the protection and care necessary for their wellbeing, taking all appropriate legislative and administrative measures to meet this end,⁶⁵³ and is protected from inhuman and degrading treatment.⁶⁵⁴ A child has the freedom to seek, receive and impart information orally, in writing, in print, through art, or through any other media.⁶⁵⁵ State Parties must give appropriate assistance to parents and legal guardians in the performance of their child-rearing duties.⁶⁵⁶

In accordance with the UNCRC, State Parties must take all appropriate legislative and administrative measures to protect the child from all forms of abuse, injury, neglect or negligent treatment while in the care of their parents or any other person.⁶⁵⁷ All appropriate national measures to prevent the trafficking of children must be taken.⁶⁵⁸

State Parties must recognise the right of the child to the enjoyment of the highest attainable standard of health.⁶⁵⁹ State Parties should strive to ensure that no child is deprived of their right to access health care services, for the treatment of illness or rehabilitation of health.⁶⁶⁰ The promotion of physical and psychological recovery of child victims of any form of neglect, exploitation, abuse, torture, or any other form of cruel, inhuman or degrading treatment is also required in accordance with the UNCRC.⁶⁶¹

4.1.2 Situation in Direct Provision

⁶⁴⁷ *Ibid*, art 24(2).

⁶⁴⁸ *Ibid*, art 24(1).

⁶⁴⁹ *Ibid*, art 24(1).

⁶⁵⁰ *Ibid*, art 26.

⁶⁵¹ UNCRC, art 3(1).

⁶⁵² *Ibid*, art 12(1).

⁶⁵³ *Ibid*, art 3(2).

⁶⁵⁴ *Ibid*, art 37(a).

⁶⁵⁵ *Ibid*, art 13(1).

⁶⁵⁶ *Ibid*, art 18(2).

⁶⁵⁷ *Ibid*, art 19(1).

⁶⁵⁸ *Ibid*, art 35.

⁶⁵⁹ *Ibid*, art 24.

⁶⁶⁰ *Ibid*, art 24(1).

⁶⁶¹ *Ibid*, art 39.

(1) Lack of a Comprehensive Child Protection Strategy

In its 2020 Report card, the Children's Rights Alliance called for a comprehensive child welfare and protection strategy to safeguard the rights and welfare of children seeking asylum.⁶⁶² This echoes the UN Committee on the Rights of the Child's recommendation that Ireland adopt a comprehensive legal framework in accordance with international human rights standards to address the needs of migrant children in the State.⁶⁶³ Omissions in the RIA Child Safeguarding Statement, and inconsistencies between it and the RIA Child Protection Policy, give rise to a number of issues including limited scope, staff training, accountability, oversight, and non-compliance with obligations under the Children First Act 2015, as detailed in the following sections.

(2) Oversight of RIA Child Protection and Safeguarding Policies

The template for RIA's inspection reports of Direct Provision centres is available on RIA's website.⁶⁶⁴ Section 8 of the inspection report concerns child protection, requiring tick-the-box confirmation that measures are in place to inform staff and visitors of the RIA Child Protection Policy, that visitors are required to sign a declaration of understanding regarding the policy, that the centre's DLP has received HSE training, and that notices detailing the DLP's name are on display. The inspection report does not require the inspector to confirm that a Direct Provision centre has a child safeguarding statement, that this statement is displayed prominently, that staff and/or residents are aware of the safeguarding statement, that a person has been appointed as the first point of contact regarding the safeguarding statement, or that a mandated person is named and identifiable by staff, residents and/or the DLP. A service provider's adherence to their obligations under the Children First Act 2015 regarding a Direct Provision centre's safeguarding statement is therefore not subject to monitoring and oversight.

The National Guidance also provides weak procedural safeguards in the context of Direct Provision centres. In accordance with the National Guidance, should a mandated person fail to report a concern of harm, Tusla may make a complaint to the Fitness to Practice Committee of the mandated person's regulatory body, or inform the National Vetting Bureau, whereby the failure to report could be disclosed through Garda Vetting.⁶⁶⁵ This procedure is also outlined in the RIA Child Protection Policy.⁶⁶⁶ There is, however, no regulatory body regarding the fitness of Direct Provision staff or managers to carry out their duties. In light of the poor channels of communication between Tusla, RIA and Direct Provision centres as reported by HIQA,⁶⁶⁷ there is no guarantee that Tusla would even become aware of a Direct Provision centre manager, or any other mandated person in a Direct Provision centre, failing to report harm.

The National Guidance recommends that obligations concerning mandated reporting feature in codes of conduct, so that failure to report may be considered a disciplinary matter.⁶⁶⁸ However, this is reflected in neither the RIA Safeguarding Statement nor the RIA 'Code of Behaviour for Persons

⁶⁶² Children's Rights Alliance, 'Report Card 2020' 141.

⁶⁶³ UN Committee on the Rights of the Child, 'Concluding observations on the combined third and fourth periodic reports of Ireland' (March 2016) para 68(a).

⁶⁶⁴ Reception and Integration Agency (RIA), 'RIA Inspections'. Available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

⁶⁶⁵ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 27.

⁶⁶⁶ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 28.

⁶⁶⁷ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 25.

⁶⁶⁸ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 27.

Working in Accommodation Centres’. The only disciplinary procedure or accountability mechanism detailed in the RIA Child Protection Policy is the above stated risk that a complaint may be made to a Fitness to Practice Committee, or that the National Vetting Bureau may be informed.⁶⁶⁹ Under the RIA Child Protection Policy, neither RIA nor managers of Direct Provision centres are required to have in place a disciplinary procedure with regard to safeguarding child protection and child welfare, or the reporting of concerns. The RIA Child Protection Policy also states that it is not the purpose of the document to outline the HR procedure should an employee be subject to a complaint.⁶⁷⁰ Nowhere in the RIA Child Protection Policy, or any other RIA documents, is there the requirement for a Direct Provision centre to have a written HR or disciplinary procedure, or for any such procedure and record of its implementation to be subject to inspection by RIA.

(3) Tusla Child Protection and Welfare Practices Handbook

As detailed in the earlier ‘Domestic Legislation’ subsection, Direct Provision centres, and children living in Direct Provision as a collective, do not come within the statutory remit of Tusla. However, children living in Direct Provision are referred to Tusla’s services on an individual basis at a disproportionately high rate; in 2014, 14% of children living in Direct Provision were referred to the agency, compared to only 1.6% of children among the general population.⁶⁷¹

Tusla has no policy concerning children living in Direct Provision. Tusla’s ‘Child Protection and Welfare Practices Handbook 2’ (hereafter ‘the Tusla Practices Handbook’) is intended to support best practice in frontline child protection and child welfare work undertaken by social workers in Tusla. Subsection 17 of the Tusla Practices Handbook, ‘Children from Abroad Needing Protection’, makes no reference to accompanied children seeking international protection or children living in Direct Provision.⁶⁷² Only unaccompanied minors, and children arriving with adults lacking documented guardianship rights, are addressed.

In general terms, prompt referral of children experiencing mental health difficulties, and urgent referral in cases where a child expresses thoughts of self-harm or suicide, is a key component of the Tusla Practices Handbook.⁶⁷³ Tusla further advise that parents should be given advice regarding the supervision of children with mental health difficulties, and environment management.⁶⁷⁴ Tusla also stress the impact of parental mental health on a child’s wellbeing. Poor parental mental health may result in the often unintended neglect of a child’s physical and emotional needs.⁶⁷⁵ Most notably, Tusla recommend that professionals provide background information regarding the young person’s situation to the child’s medical practitioner, so as to assist in diagnosis and the development of a treatment plan, and so as to be used to inform any future plans.⁶⁷⁶

⁶⁶⁹ Department of Justice and Equality, ‘Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality’, (May 2018) 28.

⁶⁷⁰ *Ibid*, 22.

⁶⁷¹ Health Information and Quality Authority (HIQA) ‘Assurance Programme report: The management of child protection and welfare concerns by the Child and Family Agency about children living in direct provision accommodation in Ireland’ (May 2015) 3.

⁶⁷² Tusla, ‘Child Protection and Welfare Practices Handbook 2’ (2018) 75. Available at: https://www.TUSLA.ie/uploads/content/CF_WelfarePracticehandbook.pdf.

⁶⁷³ *Ibid*, 50-53.

⁶⁷⁴ *Ibid*, 50, 55.

⁶⁷⁵ *Ibid*, 13-15.

⁶⁷⁶ *Ibid*, 56.

Also in general terms, Tusla identify children with disabilities as being at greater risk of abuse and neglect, with the presence of multiple disabilities increasing this risk.⁶⁷⁷ The agency advise that those working with disabled children be alert to signs and symptoms of abuse.⁶⁷⁸ Factors which increase children with disabilities' risk to abuse include social isolation, vulnerability to bullying and intimidation and communication or language needs.⁶⁷⁹ Tusla further note that disabled children are 'accustomed to being directed' and 'are rarely offered choices', meaning they may be 'less able to recognise abusive situations'.⁶⁸⁰

(4) HIQA's Assessment of Services Provided by Tusla to Children in Direct Provision

As outlined in detail in the section 'Domestic Legislation', under the Health Act 2007 Direct Provision centres do not come within the remit of the Health Information and Quality Authority (HIQA).⁶⁸¹ Upon visiting Ireland in 2019, the UN Special Rapporteur on the sale and sexual exploitation of children stated that, because Direct Provision centres are excluded from HIQA's remit, 'a layer of supervision is missing that would help identify risks for children'.⁶⁸²

While HIQA has no statutory obligation to monitor or inspect Direct Provision centres, Tusla's operations are subject to monitoring and inspection by HIQA.⁶⁸³ Direct Provision centres,⁶⁸⁴ and children living in Direct Provision as a collective,⁶⁸⁵ do not come within the statutory remit of Tusla. However, services provided by Tusla to children living in Direct Provision referred to the Agency on an individual basis can be reviewed by HIQA.

Between August 2013 and August 2014 children living in Direct Provision were disproportionately overrepresented among children referred to Tusla's services; 14% of children living in Direct Provision were referred, compared to only 1.6% of children among the general population.⁶⁸⁶ In 2014 HIQA published a report dedicated to the inspection of child protection and welfare services provided by Tusla to children living in Direct Provision centres,⁶⁸⁷ followed by a 2015 assurance programme report on Direct Provision.⁶⁸⁸ HIQA's 2015 annual overview report also referenced services provided by Tusla to children living in Direct Provision centres.⁶⁸⁹ No further reports on services provided to children living in Direct Provision have been published on HIQA's website. HIQA's more recent overview reports make no reference to services provided by Tusla to children living in Direct Provision centres.

⁶⁷⁷ *Ibid*, 46-48.

⁶⁷⁸ *Ibid*.

⁶⁷⁹ *Ibid*.

⁶⁸⁰ *Ibid*.

⁶⁸¹ Health Act 2007, s2(1)(b)(iii).

⁶⁸² De Boer-Bugicchio, M. 'Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material', A/HRC/40/51/Add.2 (15th November 2019) para 36. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/325/66/PDF/G1932566.pdf?OpenElement>

⁶⁸³ Health Act 2007, 2(1)(a).

⁶⁸⁴ 'Designated centres' for which Tusla has responsibility are in accordance with the Health Act 2007. The Act excludes 'an institution managed by or on behalf of a Minister of the Government' from the Act's remit. See: Health Act 2007, 2(1)(b)(ii).

⁶⁸⁵ Child and Family Agency Act 2013, 8(2); under this section a function of Tusla is 'providing for the protection and care of children in circumstances where their parents have not given, or are unlikely to be able to give, adequate protection and care', thus excluding children in the care of their parents who have not been referred to Tusla's services.

⁶⁸⁶ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1)(c) of the Health Act 2007' (2014) 3. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁶⁸⁷ *Ibid*.

⁶⁸⁸ Health Information and Quality Authority, Assurance Programme report: The management of child protection and welfare concerns by the Child and Family Agency about children living in direct provision accommodation in Ireland, (May 2015) 3.

⁶⁸⁹ Health Information and Quality Authority (HIQA), 'Annual overview report on the inspection and regulation of children's services — 2015' (June 2016). Available at: <https://www.hiqa.ie/sites/default/files/2017-01/Childrens-Services-Overview-2015.pdf>.

Overall, HIQA considered the quality of Tusla's child protection and welfare services for children and families living in Direct Provision to be inconsistent, and varying between service areas.⁶⁹⁰ Risks posed to children living in Direct Provision were 'not always addressed' by Tusla.⁶⁹¹ HIQA noted with particular concern that Tusla had no strategic plan to identify and meet the needs of children and families living in Direct Provision, who HIQA considered to be a 'particularly vulnerable group'.⁶⁹² In addition, HIQA found that a number of Tusla's child protection cases concerning children living in Direct Provision centres were closed 'even though incomplete checks had been completed'.⁶⁹³

HIQA also criticised the lack of an effective data-collection mechanism, and the fact that there was no process to identify, at a strategic level, the risks posed to children living in Direct Provision.⁶⁹⁴ The fact that there was no analysis of emerging trends in the referral or initial assessment of children and families living in Direct Provision was also highlighted.⁶⁹⁵ HIQA was informed by managers in Tusla that they were therefore unable to carry out a needs analysis as a means of informing the design and provision of suitable services.⁶⁹⁶ These criticisms of Tusla's service provision were considered in the context of children living in Direct Provision being referred to Tusla at a higher than average rate.⁶⁹⁷

A number of Tusla social work teams reported that they had not received cultural awareness training from Tusla.⁶⁹⁸ Tusla social workers stressed their need for training on Ireland's international protection process, and how social work interventions may differ in these circumstances, giving the example of the anxieties experienced by families living in Direct Provision who face deportation.⁶⁹⁹ Insufficient training of staff in Direct Provision centres on these issues has also been highlighted elsewhere.⁷⁰⁰ None of the Tusla social work teams interviewed by HIQA had specific training on working with families living in Direct Provision, or the impact of their experiences prior to arriving in Ireland to seek asylum.⁷⁰¹ HIQA similarly highlighted that knowledge of the cultural and religious backgrounds of families living in Direct Provision 'did not systematically inform child protection practice'.⁷⁰²

HIQA reported that there was no protocol for coordination or sharing of information between Tusla and Direct Provision centre managers.⁷⁰³ Tusla social workers were also concerned about the lack of a standardised protocol on how TUSLA and managers of Direct Provision centres should work together.⁷⁰⁴ On one occasion detailed in the report, poor communication between Tusla social workers and Direct Provision centre managers caused delays in referring a child with significant physical disabilities to respite services.⁷⁰⁵ HIQA also report instances of families being transferred

⁶⁹⁰ *Ibid*, 33.

⁶⁹¹ *Ibid*.

⁶⁹² *Ibid*, 5.

⁶⁹³ *Ibid*, 22.

⁶⁹⁴ *Ibid*, 5.

⁶⁹⁵ *Ibid*.

⁶⁹⁶ *Ibid*.

⁶⁹⁷ *Ibid*.

⁶⁹⁸ *Ibid*, 28.

⁶⁹⁹ *Ibid*, 19.

⁷⁰⁰ Irish Network Against Racism, 'Alternative Report on Racial Discrimination in Ireland, to the Committee on the Elimination of Racial Discrimination (CERD) for Its Consideration of the Combined Fifth to Ninth Periodic Reports of Ireland' (November 2019) 26.; Doras, 'Submission on Direct Provision and International Protection Application Process' (December 2019), 239.

⁷⁰¹ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 28. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁷⁰² *Ibid*.

⁷⁰³ *Ibid*, 28.

⁷⁰⁴ *Ibid*, 23.

⁷⁰⁵ *Ibid*, 24.

between Direct Provision centres, granted leave to remain, or deported without social workers being notified by either RIA or managers of Direct Provision centres.⁷⁰⁶

HIQA further stated the 'need to improve communication between Tusla and RIA'.⁷⁰⁷ This recommendation was on account of delays which impacted the 'timeliness and effectiveness of some social work interventions' which 'potentially placed some children at risk'.⁷⁰⁸ HIQA noted that one regional team of Tusla social workers were unaware of the role of RIA's Child and Family Services Unit.⁷⁰⁹ This caused inconsistencies in communication and co-ordination, and resulted in Tusla representatives missing a number of inter-agency meetings.⁷¹⁰ From the limited information available on the Child and Family Service Unit's website and other RIA materials, it appears that no additional procedures have been put in place to rectify this.

HIQA report that, on account of miscommunication regarding a family's transfer between Direct Provision centres, Tusla could not complete their investigation into 'inappropriate contact' between a child and adult at the centre.⁷¹¹ On foot of this finding, HIQA recommended that Tusla conduct an audit to ensure that no child is at risk of harm as the result of an incomplete assessment following their transfer to another centre.⁷¹² No record of any such audit could be found.

(5) RIA Child and Family Services Unit

The RIA Child and Family Services Unit is tasked with ensuring child protection and child welfare procedures are followed in Direct Provision centres, providing advice and support to the Direct Provision centre, and recording child protection and child welfare concerns referred by DLPs and Direct Provision centre managers.⁷¹³ The Child and Family Services Unit should monitor the files of children and families living in Direct Provision about whom child protection and child welfare concerns have been raised, in order to identify emerging patterns or issues of concern.⁷¹⁴

The RIA Child Protection Policy details several procedures for communication and coordination between the Child and Family Services Unit, and Direct Provision centre managers and DLPs.⁷¹⁵ However, there is no protocol for communication between the Child and Family Services Unit and Tusla. Poor communication between RIA, which encompasses the Child and Family Services Unit, and Tusla was identified as a key issue by HIQA, and resulted in delays which may have placed some children at risk.⁷¹⁶ Should a family move between Direct Provision centres, or leave Direct Provision, any associated files and documents held by the DLP or centre staff should be transferred to the Child

⁷⁰⁶ *Ibid.*

⁷⁰⁷ Health Information and Quality Authority (HIQA), 'Annual overview report on the inspection and regulation of children's services — 2015' (June 2016) 33.

⁷⁰⁸ *Ibid.*

⁷⁰⁹ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 25.

⁷¹⁰ *Ibid.*

⁷¹¹ *Ibid.*, 28.

⁷¹² *Ibid.*

⁷¹³ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018), 20.

⁷¹⁴ *Ibid.*

⁷¹⁵ *Ibid.*, 19-21.

⁷¹⁶ Health Information and Quality Authority (HIQA), 'Annual overview report on the inspection and regulation of children's services — 2015' (June 2016) 33.

and Family Services Unit.⁷¹⁷ Efficient communication between Tusla and the Child and Family Services Unit is therefore vital to ensure that Tusla have access to records of previous concerns regarding a child or family, should they be referred to Tusla's services at a later date.

According to RIA's website, the Child and Family Services Unit should comprise two junior civil servants and a manager, who is to be seconded from the HSE and have expertise in the area of child welfare and protection.⁷¹⁸ When questioned regarding the position of manager of the Child and Family Services Unit being vacant, then-Minister of State for Equality, Immigration and Integration, David Stanton, claimed that he expected the position would be filled by the end of June 2019.⁷¹⁹ According to its website, the Child and Family Services Unit is still without a manager.⁷²⁰

According to the RIA Child Protection Policy, the manager of the RIA Education Unit deputises while the manager of the Child and Family Services Unit is on annual leave.⁷²¹ The procedure in place should the position of Child and Family Services Unit manager be vacant is not outlined. While it is stated that the manager of the RIA Education Unit has undertaken Children First training,⁷²² this is the same basic training which all staff of a Direct Provision centre are required to undertake. In the absence of a child protection and child welfare expert leading the Child and Family Services Unit, it is unclear how the Child and Family Services Unit, RIA, and the former Department of Justice and Equality had continued to meet their child protection obligations towards children living in Direct Provision, in accordance with the UNCRC.⁷²³

4.2 VULNERABILITY ASSESSMENTS

4.2.1 Legal Framework

(1) Domestic Legislation

European Communities (Reception Conditions) Regulations 2018

A recipient with special reception needs is an asylum seeker who is vulnerable and has been assessed as being in need of 'special guarantees' so as to ensure the enjoyment of their entitlements under the Reception Conditions Regulations.⁷²⁴ A person who is a minor, a person with a disability, an elderly person, a pregnant woman, a single parent of a minor, a victim of human trafficking, a person with a serious illness, a person with a mental disorder, and a person who has been subjected to torture, rape or other forms of serious psychological, physical or sexual violence is considered a 'vulnerable person' under the Regulations.⁷²⁵

⁷¹⁷ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 19.

⁷¹⁸ Reception and Integration Agency, 'Child & Family Services' http://www.ria.gov.ie/en/RIA/Pages/Child_Family_Services.

⁷¹⁹ Houses of the Oireachtas, Dáil Éireann Debate, Questions (164), (28 May 2019) <https://www.oireachtas.ie/en/debates/question/2019-05-28/164/?highlight%5B0%5D=catherine&highlight%5B1%5D=connolly&highlight%5B2%5D=justice&highlight%5B3%5D=vacant#pq-answers-164>.

⁷²⁰ Reception and Integration Agency, 'Child & Family Services', http://www.ria.gov.ie/en/RIA/Pages/Child_Family_Services.

⁷²¹ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 20.

⁷²² *Ibid*, 20.

⁷²³ UNCRC, art 19(1).

⁷²⁴ *Ibid*, Regulation 2(1), 8.

⁷²⁵ *Ibid*, Regulation 2(5).

The Minister for Justice and Equality must assess whether a recipient has special reception needs and, if so, the nature of these needs, within 30 days of a recipient applying for international protection.⁷²⁶ The Minister must take account of any special reception needs of a vulnerable recipient, assessed in accordance with the Regulations, when designating accommodation.⁷²⁷

(2) European Obligations

EU Reception Conditions Directive (recast)

RCD (recast) differentiates between a medical screening,⁷²⁸ and the assessment of the special reception needs of vulnerable persons.⁷²⁹ Minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence are listed as vulnerable persons in accordance with the RCD (recast).⁷³⁰ It is the obligation of Member States to assess whether an applicant has special reception needs, and to identify the nature of such needs.⁷³¹ The vulnerability assessment must be conducted within a reasonable time period.⁷³² Should special reception needs become apparent after the vulnerability assessment has been completed, these needs must also be addressed.⁷³³

(3) International Obligations

UN Convention on the Rights of the Child

Children with disabilities should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.⁷³⁴ State Parties should, where possible, provide assistance to a child with a disability to ensure the child has effective access to and receives education, health care services and rehabilitation services to achieve the child's fullest possible social integration and individual development.⁷³⁵

The rights set forth in the UNCRC are to be respected and ensured without discrimination as to the child or their parent's social origin, disability, birth or other status.⁷³⁶ State Parties must undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC.⁷³⁷ Any asylum-seeking child must receive appropriate protection and humanitarian assistance from State Parties in the enjoyment of rights set forth in the UN CRC, and other international human rights instruments to which the State is a Party.⁷³⁸

⁷²⁶ Such is the obligation as detailed in accordance with the Reception Conditions Regulations. It is as of yet unclear whether the reformed Department of Justice will retain this responsibility, or whether it will be transferred to the newly appointed Minister for Children, Disability, Equality and Integration. *Ibid*, Regulation 8(1).

⁷²⁷ *Ibid*, Regulation 7(4).

⁷²⁸ *Ibid*, art 13.

⁷²⁹ *Ibid*, art 22.

⁷³⁰ *Ibid*, art 21.

⁷³¹ *Ibid*, art 22(1).

⁷³² *Ibid*.

⁷³³ *Ibid*.

⁷³⁴ *Ibid*, art 23(1)

⁷³⁵ *Ibid*, art 23(2), 23(3).

⁷³⁶ *Ibid*, art 1(1).

⁷³⁷ *Ibid*, art 4.

⁷³⁸ *Ibid*, art 22(1).

UN Convention on the Rights of Persons with Disabilities

The UNCRPD considers those with long-term physical, mental, intellectual or sensory impairments to be persons with disabilities.⁷³⁹ It is acknowledged that, when combined with various barriers, a disability may hinder a person's full and effective participation in society on an equal basis with others.⁷⁴⁰ In accordance with UNCRPD any distinction, exclusion or restriction on the basis of disability with the effect of impairing the recognition, enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with others can be considered 'discrimination on the basis of disability'.⁷⁴¹

State Parties must adopt all appropriate legislative, administrative and other measures for the implementation of rights set forth in UNCRPD.⁷⁴² Specific measures necessary to accelerate or achieve de facto equality for persons with disabilities is not considered discrimination.⁷⁴³ The protection and promotion of the human rights of persons with disabilities must be taken into account in all policies and programmes.⁷⁴⁴ All appropriate measures must be taken by State Parties to ensure that persons with disabilities can exercise the right to freedom of expression and opinion on an equal basis with others.⁷⁴⁵

All facilities designed to serve persons with disabilities should be effectively monitored by independent authorities.⁷⁴⁶ Appropriate measures should be taken by State Parties to ensure that persons with disabilities can access the physical environment on an equal basis with others.⁷⁴⁷ State Parties must ensure that persons with disabilities have access to in-home, residential and other community support services necessary to support living and inclusion in the community.⁷⁴⁸

In accordance with the UNCRPD, persons with disabilities have the right to enjoy the highest attainable standard of health without discrimination as to ability.⁷⁴⁹ 'Habilitation' and rehabilitation services for persons with disabilities in areas including health and social services must begin at the earliest possible stage and be based on the multidisciplinary assessment of individual needs.⁷⁵⁰ Measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of abuse must be taken by State Parties.⁷⁵¹

Article 7 of the UNCRPD addresses the rights of children with disabilities. All actions concerning children with disabilities must take the best interests of the child as a primary consideration.⁷⁵² All necessary measures must be taken by State Parties to ensure that children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children.⁷⁵³ Children with disabilities also have the right to be provided with age and disability-appropriate assistance to realise

⁷³⁹ CRPD, art 1.

⁷⁴⁰ *Ibid.*

⁷⁴¹ *Ibid*, art 2.

⁷⁴² *Ibid*, art 4(1)(a).

⁷⁴³ *Ibid*, art 5(4).

⁷⁴⁴ *Ibid*, art 4(1)(c).

⁷⁴⁵ *Ibid*, art 21.

⁷⁴⁶ *Ibid*, art 16(3)

⁷⁴⁷ *Ibid*, art 9(1).

⁷⁴⁸ *Ibid*, art 19(b).

⁷⁴⁹ *Ibid*, art 25.

⁷⁵⁰ *Ibid*, art 26(1)(a).

⁷⁵¹ *Ibid*, art 16(4).

⁷⁵² *Ibid*, art 7(2).

⁷⁵³ *Ibid*, art 7(1).

their right to express their views freely on all matters affecting them.⁷⁵⁴ Children with disabilities should have access to participation in play and recreation activities on a basis equal to that of other children.⁷⁵⁵

In addition, State Parties should take all appropriate legislative, administrative and other measures to protect persons with disabilities from all forms of exploitation, violence and abuse within and outside the home.⁷⁵⁶ All effective legislative, administrative and other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to inhuman or degrading treatment must be taken by State Parties.⁷⁵⁷ This should include the provision of information on how to avoid, recognise and report such instances to persons with disabilities and their families and caregivers.⁷⁵⁸

International Covenant on Economic, Social and Cultural Rights

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living, and to continuous improvement of conditions.⁷⁵⁹ In accordance with ICESCR, the State Party must recognise the right of everyone to the highest attainable standard of physical and mental health.⁷⁶⁰

International Covenant on Civil and Political Rights

In accordance with Article 7 ICCPR, no one should be subjected to inhuman or degrading treatment.⁷⁶¹ The rights set forth in the ICCPR are to be respected and ensured without discrimination as to social origin, birth or other status, among others⁷⁶²

International Convention on the Elimination of All Forms of Racial Discrimination

In accordance with ICERD, State Parties must take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.⁷⁶³

4.2.2 Policy Framework

(1) European Policy

EASO Guidance on Reception Conditions

The guide recognises that international protection applicants 'are in general in a vulnerable situation, given the uncertainty of their status in a foreign country and often their experiences in the country of origin and/or during the journey'.⁷⁶⁴ The list of persons considered vulnerable, as provided in the RCD (recast), is described by EASO as 'non-exhaustive'.⁷⁶⁵ EASO also stresses the obligation of Member States to assess, indicate and address the special reception needs of vulnerable applicants in a timely

⁷⁵⁴ *Ibid*, art 7(3).

⁷⁵⁵ *Ibid*, art 30(5)(d).

⁷⁵⁶ *Ibid*, art 16(1).

⁷⁵⁷ *Ibid*.

⁷⁵⁸ *Ibid*, art 16(2).

⁷⁵⁹ ICESCR, art 11(1).

⁷⁶⁰ *Ibid*, art 12(a).

⁷⁶¹ ICCPR, art 7(1).

⁷⁶² *Ibid*, art 2(1).

⁷⁶³ ICERD, art 2(1)(c).

⁷⁶⁴ EASO Guidelines, 39.

⁷⁶⁵ *Ibid*.

manner.⁷⁶⁶ Identification of special reception needs must also be possible at a later stage of the protection process.⁷⁶⁷ EASO state that all persons involved in the provision of reception conditions should be aware of and able to identify special reception needs.⁷⁶⁸

EASO draw specific attention to the importance of ensuring that ‘referral mechanisms’ in Member States are functioning properly in order to efficiently communicate special needs.⁷⁶⁹ This mechanism should make reference to child protection and child safeguarding standards.⁷⁷⁰ It should also clearly prescribe responsibility for the identification and assessment of special reception needs,⁷⁷¹ and establish clear channels of communication and cooperation between the reception authority and the determining authority.⁷⁷² EASO consider it good practice to integrate the ‘EASO Tool for Identification of Persons with Special Needs (IPSN)’ into the referral mechanism.⁷⁷³ The mechanism should clearly outline how identification and assessment of special reception needs are recorded and communicated to the applicant and other relevant actors.⁷⁷⁴ Where relevant, specialists such as psychologists or medical professionals may be involved in the assessment of special reception needs, depending on the nature of an applicant’s needs.⁷⁷⁵

4.2.3 Situation in Direct Provision

(2) Failure to Conduct Adequate Vulnerability Assessments

The ICCL and IHREC, among others, have repeatedly emphasised that the absence of a vulnerability screening mechanism to identify applicants with special reception needs seeking asylum in Ireland is extremely problematic.⁷⁷⁶ In July 2019, the Irish Refugee Council warned that, in failing to conduct vulnerability assessments, the State is in breach of the EU law.⁷⁷⁷

During a Joint Committee on Justice and Equality debate in June 2019, a representative of the then-Minister for Justice and Equality claimed that the State was meeting its legal obligations by providing health screenings at Baleskin reception centre.⁷⁷⁸ In acknowledging that ‘vulnerability assessments extend beyond medical screening’, the representative stated that other issues, such as mental health, are ‘picked up as time goes by’ through interaction with RIA, the International Protection Office, staff

⁷⁶⁶ *Ibid.*

⁷⁶⁷ *Ibid*, Indicator 35.3.

⁷⁶⁸ *Ibid*, 39.

⁷⁶⁹ *Ibid*, Standard 36.

⁷⁷⁰ *Ibid*, Indicator 34.1.

⁷⁷¹ *Ibid*, Indicator 34.2.

⁷⁷² *Ibid*, Indicator 35.5.

⁷⁷³ *Ibid*, Standard 36.

⁷⁷⁴ *Ibid*, Indicator 34.3.

⁷⁷⁵ *Ibid*, Indicator 34.4.

⁷⁷⁶ Irish Council for Civil Liberties and Irish Centre for Human Rights, ‘Submission to Oireachtas Justice Committee Consultation on Direct Provision’ (June 2019) 7; Immigrant Council of Ireland, ‘UN CERD Alternative Report’ (October 2019) 6–7; Faculty of Paediatrics, Royal College of Physicians of Ireland, ‘Children in Direct Provision’ (December 2019) 8–9; Children’s Rights Alliance, ‘Submission to the Joint Committee on Justice and Equality on Direct Provision and the International Protection Process’ (May 2019) 161; Irish Human Rights and Equality Commission, ‘Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th to 9th Report’ (October 2019) 117; Doras Luimní, ‘Submission on Direct Provision and International Protection Application Process’ (December 2019) 238–39; Nasc, ‘Working Paper on the Implementation of the McMahon Report’ (December 2017) 10; Irish Refugee Council, ‘Submission to the United Nations Committee against Torture on the Examination of Ireland’s National Report’ (June 2017) 9–10; Irish Refugee Council, ‘The Reception Conditions Directive: One Year On’ (July 2019) 17–20.

⁷⁷⁷ Irish Refugee Council, Irish Refugee Council report warns that Ireland is in breach of EU Law, 12 July 2019. Available at: <https://www.irishrefugeecouncil.ie/news/irish-refugee-council-report-warns-that-ireland-is-in-breach-of-eulaw/7175>

⁷⁷⁸ ‘Joint Committee on Justice and Equality debate – Wednesday, 19 Jun 2019’ (19th June 2019), 18. Available at: https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_justice_and_equality/2019-06-19/debate/mul@/main.pdf.

at Direct Provision centres and other service providers such as GPs.⁷⁷⁹ When pressed on the issue, the representative stated that '[P]eople have to bring other vulnerabilities to our attention', and that the Department 'cannot evaluate whether someone has a particular vulnerability by looking at him or her'.⁷⁸⁰

However, the RCD (recast) differentiates between a medical screening,⁷⁸¹ and the assessment of the special reception needs of vulnerable persons.⁷⁸² The Department's approach, through which 'other issues', such as mental health, are 'picked up as time goes by' through interaction with RIA, staff at Direct Provision centres, and other service providers,⁷⁸³ provides no guarantee that the nature of a person's special reception needs will be identified within 30 days of applying for international protection, as required by law.⁷⁸⁴

In accordance with Article 22(1) of the RCD (recast), the obligation is on the State, not the applicant, to assess whether an applicant has special reception needs and the nature of such needs.⁷⁸⁵ Therefore, the Department's contention that '[p]eople have to bring other vulnerabilities to our attention', and that the Department 'cannot evaluate whether someone has a particular vulnerability by looking at him or her' breaches the State's obligations under EU law.⁷⁸⁶

Responding to a question regarding vulnerability assessments, then Minister of State for Equality, Immigration and Integration, David Stanton, stated there were 'a number of ways' in which special reception needs were responded to, but cited only Tusla's provision of 'required supports' to unaccompanied minors.⁷⁸⁷ Under Section 14 of the International Protection Act 2015, unaccompanied minors are referred to Tusla, who then provide care to the child under the Child Care Act 1991.⁷⁸⁸ The provision of services by Tusla to unaccompanied minors has a wholly different statutory basis to the carrying out of vulnerability assessments.

(3) Failure to Meet Special Reception Needs

The State's failure to carry out vulnerability assessments also constitutes a breach of vulnerable applicants' rights under EU law as, without identification, it cannot be guaranteed that an applicant's special reception needs are being met.⁷⁸⁹ In responding to a Parliamentary Question, then Minister of State for Equality, Immigration and Integration, David Stanton stated that 'it is not possible to provide data on the number of persons found to have special reception needs', and suggested that RIA is not privy to information held by other Departments involved in the process of identifying such needs.⁷⁹⁰ Under domestic law it is, however, the responsibility of the Minister for Justice and Equality to ensure that special reception needs are identified and met.⁷⁹¹ As RIA is a functional agency under the Minister

⁷⁷⁹ *Ibid*, 7.

⁷⁸⁰ *Ibid*, 18.

⁷⁸¹ RCD (recast), art 13.

⁷⁸² *Ibid*, art 22.

⁷⁸³ 'Joint Committee on Justice and Equality debate – Wednesday, 19 Jun 2019' (19th June 2019), 7.

⁷⁸⁴ European Communities (Reception Conditions) Regulations, 2018. Regulation 8(1); RCD Art. 22.

⁷⁸⁵ *Ibid*, art. 22(1).

⁷⁸⁶ 'Joint Committee on Justice and Equality debate – Wednesday, 19 Jun 2019' (19th June 2019), 18.

⁷⁸⁷ Department of Justice and Equality, Parliamentary Questions 165, (28 May 2019), <http://www.justice.ie/en/JELR/Pages/PQ-28-05-2019-165>.

⁷⁸⁸ International Protection Act (Ireland 2015) s 14.

⁷⁸⁹ RCD (recast), art 22(1).

⁷⁹⁰ Department of Justice and Equality, Parliamentary Question 165, (28 May 2019) <http://www.justice.ie/en/JELR/Pages/PQ-28-05-2019-165>.

⁷⁹¹ In accordance with the Regulations, as noted previously it is unclear whether this responsibility will be retained by the reformed Department of Justice. European Communities (Reception Conditions) Regulations, 2018. Regulation 8(1).

for Justice and Equality with responsibility for providing reception conditions, it is reasonable to expect that RIA be aware of the number of persons availing of its services with special reception needs.

Minors are listed as vulnerable persons under the RCD (recast).⁷⁹² As such, assessment and identification of special reception needs can be considered a provision of the RCD (recast) specifically concerning minors. When implementing provisions of the RCD (recast) which specifically concern minors, the best interests of the child must be the primary consideration.⁷⁹³ In the absence of a dedicated vulnerability assessment policy or mechanism, the State cannot guarantee that the special reception needs of a child will be identified and met. The best interests of the child principle, as per the RCD (recast), is therefore breached. As compliance with best interests of the child principle under the RCD (recast) should be in accordance with the EU Charter and the UN CRC,⁷⁹⁴ the State's failure to conduct vulnerability assessments for children also infringes upon its obligations in accordance with both of these instruments.⁷⁹⁵

A minor who falls into another category of vulnerable persons, such as a minor with a disability or a minor with a 'mental disorder',⁷⁹⁶ faces additional risks should their special reception needs not be identified and met.

(4) Impact on Children with Disabilities

There is no published data on the actual or estimated number of children with disabilities living in Direct Provision. In the absence of a vulnerability assessment, the needs of children with disabilities, particularly those with 'hidden disabilities', may not be identified. As such, their special reception needs as a person with a disability may not be met when designating accommodation, violating Article 18(3) of the RCD (recast),⁷⁹⁷ and Regulation 7(4) of the Reception Conditions Regulations,⁷⁹⁸ in addition to the aforementioned violations of the rights of the child.

In accordance with the UNCPRD, provision of services for persons with disabilities in areas including health and social services must begin at the earliest possible stage and be based on the multidisciplinary assessment of individual needs.⁷⁹⁹ Failure to conduct vulnerability assessments, and the resulting delays in the provision of services for children with disabilities in accordance with their special reception needs, is a clear violation of this right. The child's right to seek information through their preferred means⁸⁰⁰ may also be violated as, without a vulnerability assessment mechanism, the means through which a child can express their need for health, social and other services is limited to other interactions with RIA and staff at their accommodation centre. As a result, the child's right as a person with a disability to access health care services, in accordance with the UNCRC may also be breached.⁸⁰¹ Failure to identify a child's health needs by means of a vulnerability assessment may also breach their right to the highest attainable standard of health as guaranteed to all persons under

⁷⁹² RCD (recast), art 21.

⁷⁹³ *Ibid*, art 23(1).

⁷⁹⁴ RCD (recast), Recital 9.

⁷⁹⁵ Charter of Fundamental Rights of the European Union, art 24(2); CRC, art 3(1);

⁷⁹⁶ European Communities (Reception Conditions) Regulations, 2018. Regulation 2(5); RCD (recast), art 21.

⁷⁹⁷ RCD (recast), art 18(3).

⁷⁹⁸ European Communities (Reception Conditions) Regulations, 2018. Regulation 7(4).

⁷⁹⁹ CRPD, art 26(1)(a).

⁸⁰⁰ CRC, art 13(1).

⁸⁰¹ CRC, art 23(2), 23(3).

regional and international instruments,⁸⁰² to children under the UNCRC,⁸⁰³ and to persons with disabilities under UNCRPD.⁸⁰⁴

Furthermore, if management and staff at a Direct Provision centre are unaware of the fact that a child has a disability, they are unable to facilitate the realisation of the child's rights as a person with a disability in accordance with UNCRPD. Such rights include the right to independence and integration within the community,⁸⁰⁵ the right to be able to access their environment,⁸⁰⁶ the right to in-home supports,⁸⁰⁷ and, as a child with a disability, their right to access children's recreational facilities.⁸⁰⁸

Failure to identify a minor as a person with a disability, and assess their related special reception needs, may also place the child at risk. In general terms Tusla identify children with disabilities as being at greater risk of abuse and neglect, with the presence of multiple disabilities increasing this risk.⁸⁰⁹ Tusla advise that those working with disabled children be alert to signs and symptoms of abuse.⁸¹⁰ Yet, in the absence of a vulnerability assessment, social workers to whom a child may be referred, and staff working in Direct Provision centres, may be unaware of a child's disability.

Tusla has stated that children with disabilities are 'accustomed to being directed' and 'are rarely offered choices', meaning they may be 'less able to recognise abusive situations'.⁸¹¹ This suggests that the institutional setting of Direct Provision, where a high level of social control is exercised by staff and management, is an environment in which some children with disabilities may be at a higher risk of abuse. Direct Provision centres are required to carry out a risk assessment,⁸¹² which should include measures to control and manage the risk of a child using the centre's services being abused.⁸¹³ However, if staff are unaware that a child resident in a Direct Provision centre has a disability, the effectiveness of such measures to protect against the risk of abuse are likely reduced. Furthermore, the RIA Child Protection Policy does not mention the rights and/or needs of children with disabilities, nor does it propose specific measures to support, safeguard and/or protect children with disabilities and their families. There is no evidence of training for Direct Provision centre managers or staff in the area of disability.

In accordance with UNCRC, the State is obliged to take account of the rights of persons with disabilities in all policy measures.⁸¹⁴ The complete absence of measures to address the needs and/or rights of children with disabilities in the RIA Child Protection Policy is a clear breach of this obligation. The failure to identify disabilities through a vulnerability assessment, or to specifically address the protection of children with disabilities in policy, may put children with disabilities at an increased risk of abuse or neglect. This fails to adequately protect the child's right to be free from abuse or neglect,

⁸⁰² Charter of Fundamental Rights of the European Union, art 35; European Social Charter, recital 11; ICESCR, art 12(a).

⁸⁰³ CRC, art 3(2), art 24.

⁸⁰⁴ CRPD, art 25.

⁸⁰⁵ Charter of Fundamental Rights of the European Union, art 26.

⁸⁰⁶ CRPD, art 9(1).

⁸⁰⁷ *Ibid*, art 19(b).

⁸⁰⁸ *Ibid*, art 30(5)(d).

⁸⁰⁹ Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018) 46-48.

⁸¹⁰ *Ibid*, 46-48.

⁸¹¹ *Ibid*.

⁸¹² Children First Act 2015 11(1).

⁸¹³ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 33.

⁸¹⁴ CRPD, art 4(1)(c).

as required under regional and international instruments.⁸¹⁵ It may also constitute a breach of the right for children with disabilities to be free from such abuse, in accordance with UNCRPD.⁸¹⁶

(5)

Health Difficulties

Impact on Children with Mental

There is no published data on the actual or estimated number of children who are suffering from mental health difficulties while living in Direct Provision. In the absence of a vulnerability assessment, the needs of children with mental health difficulties may not be identified. As such, their special reception needs may not be met when designating accommodation, violating Article 18(3) of the RCD (recast),⁸¹⁷ and Regulation 7(4) of the Reception Conditions Regulations.⁸¹⁸

The following quote from the Children's Rights Alliance highlights the specific vulnerability of children living in Direct Provision to mental health difficulties, including trauma:

*many have lost parents and siblings, experienced significant trauma or witnessed severe acts of violence. War and conflict in their home country along with the danger faced throughout their journey will leave many children with both physical and emotional scars.*⁸¹⁹

In its report on children living in Direct Provision, the Faculty of Paediatrics of the Royal College of Physicians of Ireland emphasised that 94% of international protection applicants experience 'traumatic events' prior to arriving in Ireland.⁸²⁰ On this basis, the Faculty has called for a routine psychological assessment of all applicants.⁸²¹ The Joint Committee on Justice and Equality also noted that staff in Direct Provision centres are not required to receive training on vulnerability or victims of trauma, despite the requirement being listed in Articles 21 and 22 of the RCD (recast).⁸²² This significantly limits the likelihood that a child's special reception needs would be identified at a later stage in the protection process.

Subsection 17 of the Tusla Practices Handbook, 'Children from Abroad Needing Protection', makes no reference to asylum-seeking children who are accompanied by their legal guardian. Only unaccompanied minors, separated minors and minors arriving with adults lacking documented guardianship rights, are addressed.⁸²³ Yet, logic would suggest that the 'particular sensitivities' of unaccompanied minors highlighted by Tusla, including past trauma, previous living situation, the child's journey to Ireland and the shock experienced upon arrival in Ireland⁸²⁴ may also be experienced by asylum seeking children arriving with their legal guardian.

In general terms, prompt referral of children experiencing mental health difficulties, and urgent referral in cases where a child expresses thoughts of self-harm or suicide, is a key component of the

⁸¹⁵ Charter of Fundamental Rights of the European Union, art 24(1); European Social Charter, art 7(10), 17(1)(a); CRC, art 19(1).

⁸¹⁶ CRPD, art 16(1).

⁸¹⁷ RCD (recast), art 18(3).

⁸¹⁸ European Communities (Reception Conditions) Regulations, 2018. Regulation 7(4).

⁸¹⁹ Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on direct provision and the international protection process' 160–61.

⁸²⁰ Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) 9; See also: Doras Luimní (n 2) 238.

⁸²¹ Faculty of Paediatrics, Royal College of Physicians of Ireland 'Children in Direct Provision' (December 2019) 9.

⁸²² Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 29.

⁸²³ Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018) 75.

⁸²⁴ *Ibid*, 75.

Tusla Practices Handbook.⁸²⁵ Without a vulnerability assessment mechanism through which children applying for international protection experiencing mental health difficulties can be immediately referred to Tusla, best practice guidelines cannot be followed. Also in general terms, Tusla further advise that parents be given advice regarding supervision of children with mental health difficulties, and environment management.⁸²⁶ In accordance with the UNCRC, the State is obliged to provide appropriate assistance to parents in the performance of child rearing.⁸²⁷ Absence of a vulnerability assessment therefore also prevents a parent from receiving support and advice which may help them in safeguarding the mental health and welfare of their child.

Tusla recommend that professionals provide background information regarding the young person's situation to the child's medical practitioner so as to assist in diagnosis and the development of a treatment plan, and so as to be used to inform any future plans.⁸²⁸ Failure to identify the mental health difficulties of a minor applicant upon their arrival to the State may disrupt the quality of their treatment plan and accuracy of their diagnosis should they be referred to mental health services at a later date. Furthermore, the RIA Child Protection Policy does not propose specific measures to support and/or protect children with mental health difficulties and their families. There is no evidence of training for centre managers or staff regarding mental health.

Failure to conduct vulnerability assessments may violate a child with mental health difficulties' right to seek information through their preferred means,⁸²⁹ as the provision of information regarding services provided by Tusla and CAHMS would be restricted to other interactions with RIA and staff at their accommodation centre. The UNCRC further details children who have experienced torture or other forms of harm's right to physical and psychology recovery,⁸³⁰ which may be delayed or limited in impact in the absence of vulnerability assessments. As a result, a child's enjoyment of the highest attainable standard of health as to which all persons are entitled under regional and international instruments,⁸³¹ and to children in accordance with the UN CRC,⁸³² is not sufficiently protected by the State.

Failure to identify mental health difficulties experienced by parents may also have indirect consequences for minor applicants. Tusla stress that poor parental mental health may result in the often unintended neglect of a child's physical and emotional needs.⁸³³ The risk of a child being more vulnerable to harm on account of their parent's mental health difficulties is also acknowledged in the National Guidance.⁸³⁴ Details regarding mental health services are not provided in the RIA House Rules, made available to residents upon arrival at their Direct Provision centre. The RIA Child Protection Policy does not require centre managers to provide either child or adult residents with such information. In the absence of a vulnerability assessment, it may be difficult for a parent's mental health difficulties to be identified, which may indirectly result in harm to the child. As noted by HIQA, the impact of a parent's physical or mental illness on their ability to care for their child was a common

⁸²⁵ *Ibid*, 50-53.

⁸²⁶ *Ibid*, 50, 55.

⁸²⁷ CRC, art 18(2).

⁸²⁸ *Ibid*, 56.

⁸²⁹ UNCRC, art 13(1).

⁸³⁰ *Ibid*, art 39.

⁸³¹ Charter of Fundamental Rights of the European Union, art 35; European Social Charter, recital 11; ICESCR, art 12(a).

⁸³² CRC, art 3(2), art 24.

⁸³³ Tusla, 'Child Protection and Welfare Practices Handbook 2' (2018) 13-15.

⁸³⁴ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 11-12.

theme among children living in Direct Provision referred to Tusla's services.⁸³⁵ If such situations could have been avoided by assessing a parent, identifying their needs, and providing appropriate supports, the State may be in breach of its obligation to take all appropriate measures to protect children from negligent treatment, in accordance with UN CRC.⁸³⁶

4.3. OPERATION OF DIRECT PROVISION CENTRES AND DISPERSAL

4.3.1 Emergency Accommodation

As previously outlined, Regulation 4(5) of the Reception Conditions Regulations gives a statutory basis to the use of emergency accommodation as an alternate means of providing reception conditions should designated accommodation centres be at capacity, in line with the RCD (recast).⁸³⁷ The alternate conditions must continue to meet a protection applicant's basic needs.⁸³⁸

The Court of Justice of the European Union (CJEU) has held that saturation of services intended to provide reception conditions does not justify a Member State abdicating their responsibilities under the RCD (recast).⁸³⁹ An alternative method of providing reception conditions must continue to uphold the minimum standards as set out in the RCD (recast) and protect human dignity.⁸⁴⁰

Emergency accommodation arrangements are ad-hoc and poorly planned, the most extreme example of which is the temporary transfer of over 100 residents from their hotel accommodation in Monaghan to Wexford, to make way for a wedding booked in the hotel in January 2019.⁸⁴¹ The Immigrant Council of Ireland and the Irish Network Against Racism have expressed concern regarding the practice of housing international protection applicants in emergency accommodation, as these hotels and guesthouses do not meet the same standards as Direct Provision centres.⁸⁴² The Children's Rights Alliance has specifically called for the end of the practice of accommodating children in emergency accommodation.⁸⁴³

Emergency Accommodation and Child Welfare

Drawing on research cited in previous chapters concerning inadequate provision of food and materials for infants in emergency accommodation, it would appear that basic standards are not being met, therefore violating the State's obligation to guarantee a high level of human health upon implementing provisions of the RCD (recast).⁸⁴⁴ This may further constitute violations of the child's right to the highest attainable standard of health, in accordance with UN CRC,⁸⁴⁵ and other regional

⁸³⁵ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 14. Available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

⁸³⁶ *Ibid*, art 19(1).

⁸³⁷ European Communities (Reception Conditions) Regulations, 2018, Regulation 4(5), RCD (recast), art 18(9)(a).

⁸³⁸ European Communities (Reception Conditions) Regulations, 2018, Regulation 4(6)(b); RCD (recast), art 18(9).

⁸³⁹ Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others*. [2014] ECLI:EU:C:2014:103, para 50.

⁸⁴⁰ *Ibid*, Para 56.

⁸⁴¹ 'Joint Committee on Justice and Equality' (19th June 2019), 9. Available at: https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_justice_and_equality/2019-06-19/debate/mul@/main.pdf.

⁸⁴² Irish Network Against Racism 26; Immigrant Council of Ireland 5.

⁸⁴³ Children's Rights Alliance, 'Report Card 2020' 141.

⁸⁴⁴ Charter of Fundamental Rights of the European Union, art 35.

⁸⁴⁵ CRC, art 24.

and international instruments.⁸⁴⁶ Should a child have a disability, this also constitutes a violation of their rights under UNCRPD.⁸⁴⁷

UNCRC requires that children seeking refuge be given appropriate assistance,⁸⁴⁸ with other regional and international instruments requiring that the best interests of the child be a primary consideration for all decisions concerning the child,⁸⁴⁹ and guaranteeing protection and care necessary for the child's wellbeing.⁸⁵⁰ Procedures for allocating emergency accommodation, a lack of standards for emergency accommodation, and failure to oversee conditions in emergency accommodation risk breaching these rights. The rights of children with disabilities, in accordance with regional and international law, may also be breached.⁸⁵¹ Emergency accommodation centres are further in breach of the UNCRPD requirement that services provided to persons with disabilities be independently monitored.⁸⁵² A culmination of these violations may constitute a breach of the right to protection against degrading treatment, under regional and international law,⁸⁵³ UNCRC,⁸⁵⁴ and, if the child has a disability, UNCRPD.⁸⁵⁵

Emergency Accommodation and Child Protection

As there is no policy framework for emergency accommodation or monitoring of conditions in the various premises used as emergency accommodation, there is no means of evaluating whether the State is meeting its obligation to ensure minimum standards, and to protect human dignity. The Department of Justice and Equality has confirmed that standards for Direct Provision centres cannot be imposed on private persons providing emergency accommodation.⁸⁵⁶ The only stated safeguard is that 'in circumstances where there is a clear breach of what we anticipate as being the requirements of someone providing emergency accommodation... [the Department] will withdraw from using that hotel or facility'.⁸⁵⁷ However, as no requirements for emergency accommodation have been set down, and no monitoring mechanism is in place, it is unclear how the issue would come to the attention of the Department. As the incoming National Standards will not apply to emergency accommodation, and no standards for emergency accommodation currently exist, the benchmark used to establish a 'clear breach' of expected requirements is unclear.

In addressing a question concerning emergency accommodation, then Minister of State for Equality, Immigration and Integration, David Stanton, stated that under the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016, 'it is compulsory for employers to obtain vetting disclosures in relation to anyone who is carrying out relevant work with children or vulnerable adults'.⁸⁵⁸ Work carried out in Direct Provision centres constitutes 'relevant work'.⁸⁵⁹ However, what the Minister failed to clarify was that work carried out in a hotel, B&B or letting property is not explicitly considered

⁸⁴⁶ European Social Charter, recital 11; ICESCR, art 12(a).

⁸⁴⁷ CRPD, art 25.

⁸⁴⁸ CRC, art 22(1).

⁸⁴⁹ Charter of Fundamental Rights of the European Union, art 24(2); CRC, art 3(1).

⁸⁵⁰ Charter of Fundamental Rights of the European Union, art 24(1); European Social Charter, recital 7, art 7(10), CRC, art 3(2).

⁸⁵¹ Charter of Fundamental Rights of the European Union, art 26; European Social Charter, recital 15, art. 15; CRPD, art 7(2).

⁸⁵² CRPD, art 16(3).

⁸⁵³ Charter of Fundamental Rights of the European Union, art 4; ECHR, art 3; ICCPR, art 7(1).

⁸⁵⁴ CRC, art 37(a).

⁸⁵⁵ CRPD, art 7(2).

⁸⁵⁶ 'Joint Committee on Justice and Equality' (19th June 2019), 14. Available at:

https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_justice_and_equality/2019-06-19/debate/mul@/main.pdf.

⁸⁵⁷ *Ibid.*

⁸⁵⁸ Dáil Éireann Debate, Direct Provision System (23 July 2019). Available at: https://www.oireachtas.ie/en/debates/question/2019-07-23/964/#pq-answers-959_960_961_962_963_964_965_966_967

⁸⁵⁹ National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016 ss 2, Schedule 1, Part 1(1)(g) (Ireland 2012).

‘relevant work’ in accordance with the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016. As such, emergency accommodation does not come within the statutory remit of the Acts. The Minister could also not confirm that staff working in locations used to provide emergency accommodation receive any training in the provision of reception conditions, stating only that ‘RIA liaise with relevant partner agencies... regarding the local roll-out of required services to residents.’⁸⁶⁰

In the absence of child protection and welfare policies, or the Garda Vetting of staff at emergency accommodation centres, there is an absence of safeguards against child trafficking.⁸⁶¹ The State’s protection of the child from negligence and abuse, as required under regional and international law,⁸⁶² is inadequate for children residing in emergency accommodation.

4.3.2 Staff Vetting

(1) European Obligations

EU Reception Conditions Direct (recast)

The RCD (recast) makes no specific reference to the vetting of staff in accommodation centres. However, persons working in accommodation centres should be ‘adequately trained’.⁸⁶³ Persons working with victims of torture, rape or other serious violent acts must be appropriately trained, and receive such training on a continuous basis, concerning these persons’ needs.⁸⁶⁴

(2) European Policy

EASO Guidance on Reception Conditions

Under the EASO guide, the term ‘reception officer’ is defined as practitioners who are in direct contact with applicants for international protection in a reception context, irrespective of whether they are employed by the State, a non-governmental organisation, a private contractor, or a municipality.⁸⁶⁵ In the context of Direct Provision, centre staff who come into contact with residents would be considered a ‘reception officer’, as per the guide.

Each reception officer should have a clear job description,⁸⁶⁶ and should be qualified as per the terms of their job description in accordance with national law and regulations concerning child protection.⁸⁶⁷ In cases where the reception officer will be working in direct contact with children, the reception officer’s criminal records with regard to child-related offences or crimes should be verified.⁸⁶⁸ Reception officers should receive training no later than immediately following their employment.⁸⁶⁹ At a minimum, training should include gender and age-specific concerns, the situation of applicants

⁸⁶⁰ Dáil Éireann Debate, Direct Provision System, (23 July 2019) https://www.oireachtas.ie/en/debates/question/2019-07-23/964/#pq-answers-959_960_961_962_963_964_965_966_967

⁸⁶¹ Charter of Fundamental Rights of the European Union, art 5(3); CRC, art 35.

⁸⁶² European Social Charter, art 17(1)(a); CRC, art 19(1).

⁸⁶³ *Ibid*, art 29(1).

⁸⁶⁴ *Ibid*, art 25(2).

⁸⁶⁵ *Ibid*, 43.

⁸⁶⁶ *Ibid*, Indicator 37.1.

⁸⁶⁷ *Ibid*.

⁸⁶⁸ *Ibid*.

⁸⁶⁹ *Ibid*, Indicator 38.1.

with special reception needs, child protection standards, and child safeguarding standards.⁸⁷⁰ This training should follow a training syllabus, detailing the training requirements of each functional group of reception officers, with 'refresher' training provided on a regular basis.⁸⁷¹

(3) Domestic Legislation

National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 Revised

The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 Revised provides the statutory basis for Garda Vetting requirements for Direct Provision centres accommodating children.⁸⁷² Any work or activity allowing a person to have access to children in a reception or accommodation centre which provides residential accommodation services to applicants for asylum under contract to the Department of Justice and Equality where children may be accommodated falls within the scope of the Acts.⁸⁷³ As such, managers and staff directly employed at Direct Provision centres by persons under contract to the Department, and persons contracted through a third party by the Direct Provision centre manager to provide services including transport or private security, fall within the scope of the Acts, should they have access to children living in Direct Provision while carrying out their work.

In accordance with the Acts, Direct Provision centres which accommodate children cannot employ any person until a Garda Vetting disclosure has been received.⁸⁷⁴ Centres accommodating children are also required to re-vet staff at specified intervals.⁸⁷⁵ The Minister for Justice and Equality is also required to receive a Garda Vetting disclosure for contractors intending to accommodate children in a Direct Provision centre prior to entering into the contract for services,⁸⁷⁶ and must re-vet contractors at specific intervals.⁸⁷⁷

(4) Domestic Policy

RIA Child Safeguarding Policy

The RIA Child Safeguarding Policy outlines steps that must be followed when recruiting staff to a Direct Provision centre. The individual must be specifically asked whether there is anything which would exclude them from working with children, all potential employees must be formally Garda vetted, and three references must be supplied, one of which must be confirmed verbally.⁸⁷⁸ However, there is no obligation for references to be kept on file.

A valid, up to date Garda Vetting Disclosure must be returned for any member of staff working in a Direct Provision centre, prior to their commencing employment.⁸⁷⁹ The Child and Family Services Unit

⁸⁷⁰ *Ibid*, Indicator 38.4.

⁸⁷¹ *Ibid*, Indicator 38.2.

⁸⁷² National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016.

⁸⁷³ *Ibid*, ss 2, Schedule 1, Part 1(1)(g) (Ireland 2012).

⁸⁷⁴ *Ibid*, s 12(a)

⁸⁷⁵ *Ibid*, s 20(1)(a).

⁸⁷⁶ *Ibid*, s 12(1)(b).

⁸⁷⁷ *Ibid*, s 20(1)(b).

⁸⁷⁸ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 22.

⁸⁷⁹ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6. National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 2 (Ireland 2012).

coordinates the Garda Vetting of staff in Direct Provision centres, and maintains a database confirming that persons have been vetted.⁸⁸⁰ However, it is stated that the Child and Family Services Unit does not maintain a record of the ‘vetting outcome’, referring to whether an offence, conviction or pending prosecution was disclosed on the returned Garda Vetting Disclosure.⁸⁸¹ Neither the RIA Child Protection Policy nor the RIA Safeguarding Statement details an obligation for the manager or contractor of a Direct Provision centre to keep returned Garda Vetting Disclosures on file, or to make a record of offences declared.

While the webpage of the Child and Family Services Unit states that designated contact persons are ‘trained in the Garda Vetting procedure’,⁸⁸² what is not explained is that the role of a National Vetting Bureau Liaison Person is solely administrative and does not involve training in decision-making procedures should an offence be disclosed. According to the National Vetting Bureau’s Garda Vetting Code of Practice, the role of a Liaison Person is restricted to the validation of Garda Vetting forms, and confidential management of returned Disclosures.⁸⁸³ The National Vetting Bureau Code of Practice clearly states that it is the responsibility of the referring organisation, in this case Direct Provision centres, to follow their own decision-making process with respect to recruitment following the return of a Garda Vetting Disclosure, with no input from the National Vetting Bureau.⁸⁸⁴ The National Guidance affirms that the National Vetting Bureau has no role in recruitment procedures.⁸⁸⁵

Neither the RIA Child Protection Policy nor the RIA Safeguarding Statement detail how a Garda Vetting Disclosure is to be assessed. As detailed on the webpage of the Child and Family Services Unit, the ‘clearing process’ is the responsibility of managers and contractors of Direct Provision centres:

*‘Clearing’ is the process by which an employer and/or a responsible authority makes a decision, based on the result of the Garda Vetting process, as to whether to employ, or continue to employ - possibly with restrictions - the individual concerned.*⁸⁸⁶

The only guidance on the webpage of the Child and Family Services Unit is that contractors should ‘take into account any disclosures that arise’ when deciding whether to employ a person, potentially with restrictions.⁸⁸⁷ It is clearly stated that the ‘clearing process’ is ‘a matter for the contractors (who, after all, are [staff employed at Direct Provision centres’] employers) and their designated contact persons’.⁸⁸⁸ There is no procedural guide for a Direct Provision’s centre’s clearing process, or obligation for this process to be recorded. Under the Children First Act 2015, the child safeguarding statement of a Direct Provision centre must detail its recruitment process.⁸⁸⁹ It is unclear whether a recruitment procedure which states that a prospective employee must be Garda vetted, but does not clarify the procedure for assessing Garda Vetting Disclosures, meets this obligation.

The RIA Child Protection Policy contains no obligation for a contractor to retain copies of references, returned Garda Vetting Disclosures, or details regarding the contents of a returned Disclosure. There

⁸⁸⁰ *Ibid*, 21.

⁸⁸¹ *Ibid*.

⁸⁸² ‘FAQs: Child & Family Services’, [ria.gov.ie](http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs), available at: http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs

⁸⁸³ National Vetting Bureau of An Garda Síochána, ‘Code of Practice – Garda Vetting’, (2017) 3. Available at: <http://hcci.ie/wp-content/uploads/2018/01/Code-of-Practice-Garda-Vetting-for-Affiliates.pdf>

⁸⁸⁴ *Ibid*, 6.

⁸⁸⁵ Department of Children and Youth Affairs ‘Children First: National Guidance for the Protection and Welfare of Children’ (2017) 37.

⁸⁸⁶ ‘FAQs: Child & Family Services’, [ria.gov.ie](http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs). Available at: http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs

⁸⁸⁷ *Ibid*.

⁸⁸⁸ *Ibid*.

⁸⁸⁹ Children First Act 2015 11(3) (Ireland 2015)(c).

is also no obligation for contractors to have a standard procedure should an offence or pending case be detailed on the Disclosure, or should a negative reference be received. Furthermore, contractors are not required to record the steps taken with respect to the recruitment of individuals whose Garda Vetting Disclosure detail an offence.

As managers and/or contractors of Direct Provision centres are not required to maintain a record of references, vetting outcomes, how a Garda Vetting Disclosure is assessed, or the clearing process followed on either a procedural or individual basis, it is virtually impossible for these processes to be audited. In maintaining a database confirming that staff have been Garda vetted, the Child and Family Services Unit meets its obligation under the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016.⁸⁹⁰ However, this monitoring process is functionally useless from a child protection and child welfare point of view, as there is no transparency in how recruitment processes operate, and no capacity for the Child and Family Services Unit, RIA, the Department of Justice and Equality, or an independent body to audit the recruitment of staff to Direct Provision centres.

Issues arising from unclear chains of responsibility and lack of oversight in Garda Vetting procedures have, unfortunately, already manifested in the case of the Skellig Star Direct Provision centre in Caherciveen, Co. Kerry. In May 2020, the Irish Examiner revealed that almost two months after residents had been moved to Skellig Star, over half of the staff at the centre had not been Garda Vetted.⁸⁹¹ The Irish Examiner further reported that 'most, if not all' of the Skellig Star staff had not completed mandatory training with Tusla.⁸⁹² Within a week of this article being published, a representative of the Department of Justice and Equality appeared before the Dáil Special Committee on Covid-19 Response.⁸⁹³ The representative confirmed that the Department had been made aware of the issue in the week prior, and confirmed that all staff at Skellig Star had since been Garda Vetted, and completed the Tusla course.⁸⁹⁴ Explaining the situation, the representative stated that

*The [Garda Vetting] unit indicated to us that there were concerns about the way in which the Garda vetting had been done and the fact that there were some staff on site who had not been Garda vetted.*⁸⁹⁵

Although it was not clarified, the Garda Vetting Unit referred to here would appear to be that of RIA and/or the Child and Family Services Unit, as the centralised National Vetting Bureau does not keep track of staff vetted within individual organisations. The oversight was acknowledged as 'unacceptable' and 'a very serious thing', and Garda Vetting was described as 'part of [the Department's] governance structures'.⁸⁹⁶ However, the representative proceeded to affirm that it was 'obviously the employer's obligation to ensure Garda vetting is done'.⁸⁹⁷

4.3.3 Responsibilities of Direct Provision Centre Staff and Child Protection

⁸⁹⁰ National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 2 (Ireland 2012).

⁸⁹¹ Michael Clifford, 'Many Caherciveen direct provision staff not Gardaí vetted; Minister's statements - fact or fiction?' *Irish Examiner*, 21 May 2020 available at: <https://www.irishexaminer.com/breakingnews/ireland/many-caharciveen-direct-provision-staff-not-gardai-vetted-ministers-statements--fact-or-fiction-1000812.html>.

⁸⁹² *Ibid.*

⁸⁹³ Dáil Special Committee on Covid-19 Response (26 May 2020), available at:

https://data.oireachtas.ie/ie/oireachtas/debateRecord/special_committee_on_covid-19_response/2020-05-26/debate/mul@/main.pdf.

⁸⁹⁴ *Ibid.*, 78.

⁸⁹⁵ *Ibid.*

⁸⁹⁶ *Ibid.*

⁸⁹⁷ *Ibid.*

(1) Training

All staff directly employed in a Direct Provision centre must complete HSE Children First training, delivered via e-module.⁸⁹⁸ All directly employed staff should also receive additional training from RIA staff, who have themselves completed training with Tusla.⁸⁹⁹ The RIA Child Protection Policy instructs staff at Direct Provision centres to respect children's personal space, to be sensitive to the risk of contact sports and other similar activities, to be sensitive to favouritism, and to never physically punish or verbally abuse a child, or tell jokes of sexual nature in the presence of a child.⁹⁰⁰ Should a child protection or child welfare complaint be made against a member of staff, it must be reported to both Tusla and the Child and Family Services Unit.⁹⁰¹ The DLP should assess, in consultation with the manager of the Child and Family Services Unit, An Garda Síochána, and Tusla, whether the staff member who is the subject of a complaint should be allowed on-site.⁹⁰² It is the responsibility of the contractor to carry out an investigation.⁹⁰³

(2) Designated Liaison Persons and Mandated Persons

In accordance with the National Guidance, Designated Liaison Persons (DLPs) should be knowledgeable about child protection and should be provided with any training considered necessary to fulfil this role.⁹⁰⁴ According to the RIA Child Protection Policy, DLPs in Direct Provision centres are not child protection specialists, but are required to undertake HSE Children First training.⁹⁰⁵ However, all staff and management of Direct Provision centres are to receive the HSE's Children First training, and additional training on the implementation of RIA's Child Protection Policy.⁹⁰⁶ As such, while DLPs are to be a source of information regarding child protection and child welfare policies, they are not entitled to formal training beyond that which is provided to all staff employed by a Direct Provision centre.

In accordance with the National Guidance, it is the responsibility of each Direct Provision centre to identify their staff's training needs,⁹⁰⁷ and to ensure that DLPs receive adequate training on child protection and child welfare to enable them to undertake the role.⁹⁰⁸ While RIA's inspection report requires confirmation that a DLP has received HSE training, this is simply a yes/no statement.⁹⁰⁹ Confirmation of the dates on which HSE training was undertaken, or that training was completed in full, is not required. Furthermore, there are no questions regarding whether a DLP felt the training met their needs, whether DLPs had requested additional training, whether centre managers had provided additional training and, if so, the nature of such training. Without oversight from HIQA and Tusla, the

⁸⁹⁸ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018), 18.

⁸⁹⁹ *Ibid.*

⁹⁰⁰ *Ibid.*, 21.

⁹⁰¹ *Ibid.*, 23.

⁹⁰² *Ibid.*, 22.

⁹⁰³ *Ibid.*, 23.

⁹⁰⁴ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 35.

⁹⁰⁵ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 19.

⁹⁰⁶ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 3.

⁹⁰⁷ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 38.

⁹⁰⁸ *Ibid.*

⁹⁰⁹ Reception and Integration Agency (RIA), 'RIA Inspections'. Available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

RIA inspection process alone is therefore inadequate in ensuring that Direct Provision centre managers have met their obligation to ensure that DLPs' training needs are adequately met.

The National Guidance also states that organisations should ensure that mandated persons receive specific training on their statutory responsibilities.⁹¹⁰ The Children First Act 2015 lists the manager of a Direct Provision centre as a mandated person.⁹¹¹ The RIA Child Protection Policy states that all Direct Provision centre managers must, as mandated persons, read and 'fully understand and abide by' the advice and procedures outlined in Chapter 3 'Mandated Persons' of the National Guidance.⁹¹² However, Direct Provision centre managers are not required to undertake training beyond the standard HSE Children First e-learning module.⁹¹³ The above described inspection reports do not check whether the manager of a Direct Provision centre has completed HSE Children First training, or whether the manager has read information in the National Guidance pertaining to mandated persons.⁹¹⁴ Furthermore, there is no means of verifying that centre managers 'fully understand' and have correctly interpreted their role as a mandated person, as detailed in the National Guidance.

(3) RIA Code of Behaviour for Persons Working Accommodation Centres

The RIA Child Protection Policy requires all contractors to have a Code of Conduct for their employees.⁹¹⁵ Although the RIA Child Protection Policy states that the RIA Code of Practice was revised in May 2018,⁹¹⁶ the only code of practice available on RIA's website dates to 2005. Appendix 7 of the 'Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA) and Centres under contract to RIA',⁹¹⁷ dated 2014, contains the 'Reception and Integration Agency Code of Behaviour for Persons Working in Accommodation Centres'. The RIA Child Protection Policy, a revised version of the 2014 document, does not contain a code of behaviour, and so the 'Reception and Integration Agency Code of Behaviour for Persons Working in Accommodation Centres' (hereafter 'RIA Code of Behaviour') contained in the 2014 Child Protection and Welfare Policy and Practice Document is detailed below.

The RIA Code of Behaviour sets standards expected of persons working in Direct Provision centres, and provides guidelines for all centre employees.⁹¹⁸ Its stated purposes are to contribute to the protection, safety and welfare of service users, and to reduce the risk of false accusations being made against persons working in the accommodation centres.⁹¹⁹

⁹¹⁰ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 38.

⁹¹¹ Children First Act 2015, 2.

⁹¹² Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 16.

⁹¹³ *Ibid*, 18.

⁹¹⁴ Reception and Integration Agency (RIA), 'RIA Inspections'. Available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

⁹¹⁵ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 23.

⁹¹⁶ *Ibid*, 5.

⁹¹⁷ Reception and Integration Agency (RIA), 'Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency' (2014). Available at:

[http://www.ria.gov.ie/en/RIA/Revised%20Child%20Protection%20&%20Welfare%20Policy%20for%20accommodation%20centres%20\(October%202014\).pdf/Files/Revised%20Child%20Protection%20&%20Welfare%20Policy%20for%20accommodation%20centres%20\(October%202014\).pdf](http://www.ria.gov.ie/en/RIA/Revised%20Child%20Protection%20&%20Welfare%20Policy%20for%20accommodation%20centres%20(October%202014).pdf/Files/Revised%20Child%20Protection%20&%20Welfare%20Policy%20for%20accommodation%20centres%20(October%202014).pdf)

⁹¹⁸ The Reception and Integration Agency Code of Behaviour for Persons Working in Accommodation Centres is contained in Appendix 7 of RIA's 'Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA) and Centres under contract to RIA' 29-44.

⁹¹⁹ *Ibid*, 39.

The RIA Code of Behaviour outlines grounds for discrimination as age, disability, political belief, race, family status, religion, gender, marital status, sexual orientation and social status.⁹²⁰ Bullying, harassment, humiliation, racism, sarcasm, sexual innuendo, sexual harassment, embarrassment and favouritism are given as examples of unacceptable behaviour.⁹²¹ Under the RIA Code of Behaviour, staff are obliged to maintain a high standard of personal practice, adhere to child protection and health and safety policies, respect the rights, dignity and worth of every human being, promote the interests of service users, strive to establish and maintain the trust and confidence of service users, promote service users' independence, ensure the behaviour of service users does not harm themselves or others, and be accountable for the quality of their work.⁹²²

Section 5 of the RIA Code of Behaviour outlines a 'Code of Behaviour between Workers and Children', the singular stated aim of which is to avoid the possibility of misunderstanding, or the potential for allegations of misconduct.⁹²³ In order to protect and promote children's rights, staff are required to treat children with dignity, sensitivity and respect, to listen to children, to value and respect children as individuals, to involve children in decision making as appropriate, to encourage and praise children, and to refrain from engaging in favouritism.⁹²⁴ Children should also be encouraged to report bullying to the DLP.⁹²⁵ Physical contact with children should only take place when it is acceptable to all persons concerned.⁹²⁶ Physical chastisement and verbal abuse towards a child, or telling jokes of a sexual nature in the presence of children, is prohibited.⁹²⁷ In its entirety, the RIA Code of Behaviour makes no reference to the best interests of the child. Section 7 of the RIA Code of Behaviour concerns breaches of the guidelines, the procedure for which is to contact management of the Direct Provision centre for 'follow-up action'.⁹²⁸

The RIA Child Protection Policy clearly states that it is not the purpose of the Policy to set out the HR procedure to be followed should an employee be subject to a complaint.⁹²⁹ It only goes so far as to recommend that separate individuals manage the implementation of the RIA Child Protection Policy, and any internal HR procedures, should an allegation be made against a staff member.⁹³⁰ Should an external service provider be subject to a complaint, the contractor of a Direct Provision centre must immediately inform the Child and Family Services Unit and the individual's employer.⁹³¹ The contractor, the Child and Family Services Unit and Tusla should jointly consider whether the individual should be disallowed from working in the Direct Provision centre, pending investigation by their employer.⁹³²

(4) Inconsistencies in the RIA Safeguarding Statement

There are a number of inconsistencies between the RIA Safeguarding Statement, the RIA Child Protection Policy, and the National Guidance. The RIA Child Safeguarding Statement describes the

⁹²⁰ *Ibid*, 39-40.

⁹²¹ *Ibid*, 40.

⁹²² *Ibid*, 41-43.

⁹²³ *Ibid*, 40.

⁹²⁴ *Ibid*.

⁹²⁵ *Ibid*.

⁹²⁶ *Ibid*.

⁹²⁷ *Ibid*.

⁹²⁸ *Ibid*, 44.

⁹²⁹ *Ibid*, 22.

⁹³⁰ *Ibid*, 24.

⁹³¹ *Ibid*.

⁹³² *Ibid*.

responsibility of the DLP as to report child protection concerns to Tusla.⁹³³ However, the National Guidance clearly states that it is the responsibility of the DLP to ensure that child protection reporting procedures are followed, so that child welfare concerns can be promptly referred to Tusla,⁹³⁴ but stresses that it is not the DLP's responsibility to report concerns of harm directly to Tusla; this is the responsibility of an organisation's mandated person.⁹³⁵ While the National Guidance acknowledges that the same individual may carry out the roles of both mandated person and DLP,⁹³⁶ a DLP is not automatically considered a mandated person, and is not responsible for reporting to Tusla.⁹³⁷ A DLP is also not considered a mandated person under the RIA Child Protection Policy.⁹³⁸ As such, the RIA Safeguarding Statement misplaces reporting obligations on DLPs, and details an incorrect reporting procedure, breaching requirements set out in the Children First Act 2015.⁹³⁹

The RIA Safeguarding Statement notes that managers of Direct Provision centres are 'Mandatory Reporters' under the Children First Act 2015.⁹⁴⁰ However, their statutory reporting obligations in accordance with the Act are not outlined. The reporting procedure for Direct Provision centre managers is different to that of DLPs and other staff members under the RIA Child Protection Policy, owing to centre managers' statutory obligations as mandated persons.⁹⁴¹ The RIA Safeguarding Statement fails to clarify that mandated persons must follow a different reporting procedure. It also fails to provide details of the reporting procedure for mandated persons, breaching requirements under the Children First Act, 2015.⁹⁴² Furthermore, appointment of a 'relevant person' with regard to a child safeguarding statement is required in accordance with the Children First Act 2015.⁹⁴³ However, the RIA Child Safeguarding Statement makes no reference to a 'relevant person'.

Aside from the RIA Safeguarding Statement itself breaching requirements under the Children First Act 2015, there are a number of secondary consequences of these inconsistencies. The RIA Child Protection Policy contains no template for a Direct Provision centre's own child safeguarding statement. The RIA Safeguarding Statement is said to:

*address the principles and procedures that... staff in RIA and EROC accommodation should follow if harm, risk or suspicion of harm to a child resident is made known to them.*⁹⁴⁴

As such, while not explicitly stated, the RIA Safeguarding Statement may be interpreted as a template for the child safeguarding statements of Direct Provision centres. This may result in responsibility for reporting child protection and child welfare concerns being incorrectly allocated to DLPs, and the statutory reporting duties of Direct Provision centre managers as mandated persons not being clearly

⁹³³ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 3.

⁹³⁴ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 36.

⁹³⁵ *Ibid*, 26, 37.

⁹³⁶ *Ibid*, 37.

⁹³⁷ *Ibid*, 26, 37.

⁹³⁸ Children First Act 2015 s 11(2), 11(6); Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6.

⁹³⁹ *Ibid*, s 11(2)(e).

⁹⁴⁰ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 2.

⁹⁴¹ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 28.

⁹⁴² Children First Act 2015, s 11(2)(e).

⁹⁴³ *Ibid*, s 11(2)(g).

⁹⁴⁴ Department of Justice and Equality, 'Child Safeguarding Statement' (2019) 2.

understood or outlined. The issue of procedural inconsistency in reporting to Tusla identified by HIQA in 2014⁹⁴⁵ is therefore not rectified by the RIA Safeguarding Statement. This lack of clarity may result in accountability issues should there be a delay or failure to report a child protection or child welfare concern to Tusla. As a result, the State may be in breach of its obligation to safeguard the protection and care of children,⁹⁴⁶ and to protect children living in Direct Provision from harm and abuse.⁹⁴⁷

4.3.4 Transfers

(1) Domestic Legislation

European Communities (Reception Conditions) Regulations 2018

In designating an accommodation centre, the Minister must take into account the possibility of family unity,⁹⁴⁸ 'gender and age-specific concerns',⁹⁴⁹ 'the public interest',⁹⁵⁰ 'public order',⁹⁵¹ and 'the efficient processing and effective monitoring' of the recipient's application for international protection.⁹⁵² To facilitate these conditions, the Minister may designate a recipient to an alternate accommodation centre, should it be considered necessary.⁹⁵³

(2) Domestic Policy

RIA House Rules

The RIA House Rules state that transfers between Direct Provision centres cannot be appealed.⁹⁵⁴ According to the House Rules, residents have 'no right to be moved to another centre of [their] choice'.⁹⁵⁵ Nevertheless, residents may apply for a transfer using forms available at centres, with a reply guaranteed within 21 days.⁹⁵⁶ Where a transfer is requested on medical grounds, an independent medical referee may be asked to evaluate the resident's request.⁹⁵⁷ However, it is stressed that transfers can only be facilitated for 'priority cases', which 'only happens in rare and exceptional circumstances'.⁹⁵⁸

If RIA believe a transfer has been requested on account of a Direct Provision centre's failure to provide the necessary services to a resident, the request is referred to the manager of that Direct Provision centre.⁹⁵⁹ RIA will then consider the centre manager's observations before responding to the resident.⁹⁶⁰

⁹⁴⁵ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 25.

⁹⁴⁶ Charter of Fundamental Rights of the European Union, art 24(1).

⁹⁴⁷ CRC, art 19(1).

⁹⁴⁸ This Regulation applies only to recipients whose family members are also recipients and are within the territory of the State. European Communities (Reception Condition) Regulations SI 230/2018, Regulation 7(2)(a).

⁹⁴⁹ *Ibid*, Regulation 7(2)(b).

⁹⁵⁰ *Ibid*, Regulation 7(2)(c).

⁹⁵¹ *Ibid*, Regulation 7(2)(d).

⁹⁵² *Ibid*, Regulation 7(2)(e).

⁹⁵³ *Ibid*.

⁹⁵⁴ Reception and Integration Agency, 'House Rules, revised' (2019), 11.

⁹⁵⁵ *Ibid*.

⁹⁵⁶ *Ibid*.

⁹⁵⁷ *Ibid*.

⁹⁵⁸ *Ibid*.

⁹⁵⁹ *Ibid*.

⁹⁶⁰ *Ibid*.

(3) European Obligations

EU Reception Conditions Direct (recast)

In accordance with accommodation conditions detailed under Article 18 of RCD (recast), transfers of applicants between accommodation centres should occur 'only when necessary'.⁹⁶¹ Member States are required to consider gender and age-specific concerns and the situation of vulnerable persons upon designating accommodation.⁹⁶² In designating accommodation, family unity with those family members present in the territory of the Member State should be maintained insofar as possible.⁹⁶³ Should housing capacities normally available to applicants be temporarily exhausted, Member States may accommodate applicants in conditions other than those ordinarily expected for as short a period of time as possible.⁹⁶⁴

(4) European Policy

EASO Guidance on Reception Conditions

The EASO guide reaffirms that transfers between accommodation centres should only take place where necessary.⁹⁶⁵ It is also recommended that allocation of housing to a child be based on an assessment of their best interests.⁹⁶⁶ In line with Article 17(2) of RCD (recast), it is recommended that support measures such as social counselling be available to all applicants, so as to safeguard mental health.⁹⁶⁷

(5) Situation in Direct Provision

Despite the above cited provisions of the RCD (recast) and the EASO guide regarding transfers, the Minister for Justice and Equality has the right to transfer an applicant between Direct Provision centres on 'necessary grounds'.⁹⁶⁸ These grounds are relatively broad, and include 'the public interest',⁹⁶⁹ 'public order',⁹⁷⁰ and 'the efficient processing and effective monitoring' of the recipient's application for international protection.⁹⁷¹ According to the RIA House Rules, if the Minister decides to transfer an applicant against their wishes, this decision cannot be appealed.⁹⁷²

Regarding applicants who themselves request a transfer, RIA state that residents have 'no right to be moved to another centre of [their] choice'.⁹⁷³ Nevertheless, residents may apply for a transfer.⁹⁷⁴ However, it is stressed that transfers can only be facilitated for 'priority' cases, for example owing to medical issues, which 'only happens in rare and exceptional circumstances'.⁹⁷⁵ If RIA believe a transfer has been requested on account of a Direct Provision centre's failure to provide the necessary services to a resident, the request is referred to the manager of that Direct Provision centre. RIA will then

⁹⁶¹ RCD (recast), art 28(6).

⁹⁶² *Ibid*, art 18(3).

⁹⁶³ *Ibid*, art 12.

⁹⁶⁴ *Ibid*, art 18(9)(a).

⁹⁶⁵ EASO Guidelines, Standard 1.2.

⁹⁶⁶ *Ibid*, Standard 3.1.

⁹⁶⁷ *Ibid*, Standard 6.

⁹⁶⁸ European Communities (Reception Conditions) Regulations, SI 230/2018. Regulation 7(2)(e).

⁹⁶⁹ *Ibid*, Regulation 7(2)(c).

⁹⁷⁰ *Ibid*, Regulation 7(2)(d).

⁹⁷¹ *Ibid*, Regulation 7(2)(e).

⁹⁷² Reception and Integration Agency, 'House Rules, revised' (2019) 40.

⁹⁷³ *Ibid*, 10.

⁹⁷⁴ *Ibid*.

⁹⁷⁵ *Ibid*.

consider the centre manager's observations before responding to the resident.⁹⁷⁶ Should the transfer request be in response to an issue in the Direct Provision centre, or a manager's behaviour, this procedure places the resident in a difficult and vulnerable position for the duration of the process.

4.3.5 House Rules and Complaints

(1) Domestic Legislation

European Communities (Reception Conditions) Regulations 2018

The Regulations give a statutory basis to the RIA House Rules, which are to be published on RIA's website.⁹⁷⁷ Regulation 25 states that House Rules may relate to the operation of the accommodation or reception centre.⁹⁷⁸ When designated an accommodation centre, a recipient must be informed in writing of their obligations under the House Rules of the accommodation centre.⁹⁷⁹ The Regulations do not, however, detail an internal complaints procedure, that complaints may be made to the Ombudsman or Ombudsman for Children, or the fundamental rights of recipients.

(2) Domestic Policy

RIA House Rules: Complaints Procedure

Part 4 of the RIA House Rules contains RIA's 'Complaints Procedure', the aim of which is to deal with problems quickly and efficiently.⁹⁸⁰ The Complaints Procedure is open to both residents and the centre manager.⁹⁸¹ A resident can make a complaint if the Direct Provision centre fails to fulfil its obligations to the resident with regard to service provision.⁹⁸²

For residents, the Complaints Procedure follows four steps: an informal verbal complaint to management, a formal complaint to management in writing, an appeal to RIA in writing, and an appeal to the Ombudsman, or Ombudsman for Children.⁹⁸³ Residents are expected to approach centre managers immediately if they are unhappy with services provided.⁹⁸⁴ A resident may only bypass centre management and complain directly to RIA in 'very exceptional and serious circumstances'.⁹⁸⁵

According to the RIA House Rules, residents are guaranteed confidentiality, may seek assistance in making a complaint, may make a complaint in a language other than English, and 'where possible and necessary' will have their complaint handled by someone of the same gender.⁹⁸⁶ If a complaint involves children, the Direct Provision centre should notify Tusla and RIA.⁹⁸⁷ The Complaints Procedure states that making a complaint will not affect a resident's application for international protection.⁹⁸⁸

⁹⁷⁷ European Communities (Reception Conditions) Regulations SI 230/2018, Regulations 25(1), 25(4).

⁹⁷⁸ *Ibid*, Regulation 25(2)(a).

⁹⁷⁹ *Ibid*, Regulation 7(8)(a).

⁹⁸⁰ Reception and Integration Agency, 'House Rules, revised' (2019) Part 4, 33. Available at:

<http://www.ria.gov.ie/en/RIA/House%20Rules%20revised%20January%202019.pdf/Files/House%20Rules%20revised%20January%202019.pdf>.

⁹⁸¹ *Ibid*.

⁹⁸² *Ibid*, 33.

⁹⁸³ *Ibid*, 35.

⁹⁸⁴ *Ibid*.

⁹⁸⁵ *Ibid*, 37.

⁹⁸⁶ *Ibid*, 34.

⁹⁸⁷ *Ibid*, 39.

⁹⁸⁸ *Ibid*, 34.

(3) Situation in Direct Provision

Doras have criticised the fact that complaints must first go through the manager of a Direct Provision centre and cannot be addressed directly to RIA, even when management is the subject of the complaint.⁹⁸⁹ While complaints should not affect a resident's protection application,⁹⁹⁰ there is 'a lack of awareness of and trust in the RIA complaints procedure among residents of DP centres'.⁹⁹¹ Similar issues were raised in the McMahon Report, and by the Joint Committee on Justice and Equality.⁹⁹²

Complaints can only be submitted to the Ombudsman or the Ombudsman for Children when other complaint mechanisms, namely centre management and RIA, are exhausted.⁹⁹³ The Ombudsman for Children noted that complaints to its office are low, and considered the most likely reason to be that the complaints procedure is neither culturally appropriate nor fair.⁹⁹⁴ The Ombudsman for Children also expressed concern that residents may fear that the complaint will negatively affect their life in the centre.⁹⁹⁵ The fact that the Ombudsman for Children's visits to Direct Provision centres were conducted under CCTV supervision was also noted as a potential barrier to residents expressing their concerns, for fear of repercussions from centre managers.⁹⁹⁶

AkiDwa have described the lack of an independent and effective complaints procedure as a major barrier to disclosing sexual harassment experienced in Direct Provision centres.⁹⁹⁷ Many female asylum seekers are unwilling to report sexual harassment for fear of conditions in their own centre becoming more difficult, or being transferred to a 'worse' centre.⁹⁹⁸ Among those who have made reports, some complaints have been dismissed by RIA as a 'misunderstanding' or 'without merit'.⁹⁹⁹

4.4 INCOMING NATIONAL STANDARDS

Calls for the establishment of national standards for Direct Provision centres, and a system of independent monitoring and inspection, have been made by the Irish Human Rights and Equality Commission and the Irish Refugee Council, among others.¹⁰⁰⁰ The Children's Rights Alliance stress that these measures are essential to ensure that all children living in Direct Provision receive a consistent standard of high quality care in all centres.¹⁰⁰¹ In 2016, the UN Committee on the Rights of the Child

⁹⁸⁹ *Ibid* 243; Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on direct provision and the international protection process' 158.

⁹⁹⁰ Reception and Integration Agency, 'House Rules, revised' 34.

⁹⁹¹ Doras 243.

⁹⁹² Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final report ('McMahon report') (June 2015) 179, Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019) 28.

⁹⁹³ Reception and Integration Agency, 'House Rules, revised' 39.

⁹⁹⁴ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 3-4.

⁹⁹⁵ *Ibid*.

⁹⁹⁶ *Ibid*.

⁹⁹⁷ AkiDwa, 'No Place to Call Home: Safety and Security Issues of Women Seeking Asylum in Ireland' (October 2012) 10. Available at: <https://akidwa.ie/wp-content/uploads/2019/10/No-Place-to-Call-Home.pdf>

⁹⁹⁸ *Ibid*.

⁹⁹⁹ *Ibid*.

¹⁰⁰⁰ Doras 244; Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on direct provision and the international protection process' 158-59; Children's Rights Alliance, 'Are We There Yet?' 98-99; Children's Rights Alliance, 'Report Card 2020. Is Government Keeping Its Promises to Children?' (March 2020) 138-41; Irish Human Rights and Equality Commission 115; Irish Refugee Council, 'Submission to Joint Oireachtas Committee on Justice and Equality' 11-12, 17-18, 23; Immigrant Council of Ireland (n 38) 5; Faculty of Paediatrics, Royal College of Physicians of Ireland, 'Children in Direct Provision' (December 2019) 8, 23.

¹⁰⁰¹ Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on direct provision and the international protection process' 158.

expressed concern regarding the accommodation of asylum-seeking children in privately run centres that are not subject to national standards.¹⁰⁰² The Committee further considered the majority of inspections carried out at Direct Provision centres to be ‘not adequately independent’.¹⁰⁰³

The Department of Justice and Equality published a final draft of the incoming National Standards in August 2019, including standards regarding the rights of children. The incoming National Standards establish some much-needed baseline criteria and provide an amount of clarity on certain issues. The incoming National Standards are said to meet EASO guidelines and obligations under the RCD (recast), and are guided by other standard-setting authorities such as HIQA.¹⁰⁰⁴ However, there is no stated intention to amend Section 2(1)(b)(ii) of the Health Act 2007 to so as to include Direct Provision centres as a ‘designated centre’. As such, inspection and oversight of standards in Direct Provision will continue to fall outside of HIQA’s remit. Independent inspections will be introduced in order to ‘assess whether service providers are providing high-quality, safe and effective services and supports for residents’.¹⁰⁰⁵ The National Standards will not be legally binding or subject to monitoring until January 2021.

4.4.1 Child Protection and Child Safeguarding: Persisting Inconsistencies

The incoming National Standards set down a framework for child protection and child welfare policies. Direct Provision centres must display visibly statements on the centre’s safety, dignity, anti-bullying and anti-harassment policies.¹⁰⁰⁶ Each centre must also display publicly a child safeguarding statement and child protection policy which can be easily viewed and read.¹⁰⁰⁷ Where there is an allegation of abuse or neglect, the RIA Child Protection Policy, alongside ‘national policy and legislation’, should be followed.¹⁰⁰⁸ Direct Provision centres must have policies and procedures in place covering risk assessment and management.¹⁰⁰⁹ Centres must also fully inform parents of domestic child protection legislation and policy,¹⁰¹⁰ and provide information on available supports, including with regard to the parent’s right to contact Tusla.¹⁰¹¹

In accordance with the incoming National Standards, each Direct Provision centre should have their own residents’ Charter, detailing how new arrivals are welcomed to the centre, how the centre meets residents’ needs, and dignity and respect policies.¹⁰¹² There is no mention of how a Direct Provision centre’s own child safeguarding statement or child protection policy can be accessed. While the residents’ charter is to be unique to each Direct Provision centre and not a formal RIA policy, there is no requirement for the residents’ charter to contain up-to-date contact details for local support services, such as GPs and the locality’s Duty Social Work Team.

¹⁰⁰² UN Committee on the Rights of the Child, ‘Concluding observations on the combined third and fourth periodic reports of Ireland’ (March 2016) para 65.

¹⁰⁰³ *Ibid.*

¹⁰⁰⁴ Department of Justice and Equality, ‘National Standards for accommodation offered to people in the protection process’ (August 2019) para 9.

¹⁰⁰⁵ *Ibid.*, para 2.

¹⁰⁰⁶ Department of Justice and Equality, ‘National Standards for accommodation offered to people in the protection process’ (August 2019) Indicator 6.3.3.

¹⁰⁰⁷ *Ibid.*, Indicator 1.2.11.

¹⁰⁰⁸ *Ibid.*, Indicator 8.2.3.

¹⁰⁰⁹ *Ibid.*, Indicator 8.1.2.

¹⁰¹⁰ *Ibid.*, Indicator 9.1.12.

¹⁰¹¹ *Ibid.*, Indicator 8.2.1.

¹⁰¹² *Ibid.*, Indicator 1.3.1.

According to the RIA Child Protection Policy, residents are informed of the centre's child protection policy and reporting procedures when meeting staff upon arrival, and through the RIA House Rules.¹⁰¹³ However, the House Rules do not contain copies of the RIA Child Protection Policy, or RIA Safeguarding Statement. Furthermore, the House Rules refer residents to the Tusla and New Communities websites to find advice on local care options and family resource centres.¹⁰¹⁴ The House Rules do not explicitly inform parents of their right to contact Tusla. The House Rules also contain no contact details for the various Duty Social Work Teams, or any obligation for staff or the DLP to provide such information to residents. It is therefore unclear how parents will be fully informed of legislation, policy, available supports, and their right to contact Tusla, as required under the incoming National Standards.¹⁰¹⁵

At Appendix 6, the incoming National Standards attach a copy of the RIA Child Safeguarding Statement.¹⁰¹⁶ If the RIA Child Safeguarding Statement is therefore to be interpreted as a template for a Direct Provision centre's own child safeguarding statement, inconsistencies with the National Guidance and the RIA Child Protection Policy detailed in Section 4.2.1 will likely persist.

The National Standards identify managers of Direct Provision centres as mandated persons under the Children First Act 2015.¹⁰¹⁷ However, the National Standards do not clarify that centre managers have a statutory reporting obligation under the Act, and do not develop upon the nature of this obligation. Indicator 1.2.11, which details the obligation for a Direct Provision centre to have their own child safeguarding statement, refers the reader to Indicator 8.2.5, which details the obligations of the DLP.¹⁰¹⁸ Echoing the RIA Safeguarding Statement, the National Standards state that the DLP is responsible for reporting allegations or suspicions of abuse and neglect to Tusla or An Garda Síochána.¹⁰¹⁹ However, as outlined previously, the National Guidance clearly states that it is the responsibility of the mandated person, not the DLP, to report concerns of harm to Tusla.¹⁰²⁰ In accordance with the National Guidance, it is the responsibility of the DLP to ensure that child protection reporting procedures are followed, so that concerns are reported to Tusla in an effective manner.¹⁰²¹ Similarly, the RIA Child Protection Policy states that DLPs are not regarded as mandated persons.¹⁰²²

In accordance with the RIA Child Protection Policy, all staff working in a Direct Provision centre, whether directly employed or contracted, must be Garda vetted.¹⁰²³ It is welcome that persons involved in groups or activities which take place in Direct Provision centres but are organised or managed by persons external to the centre are also explicitly required to be Garda vetted under the

¹⁰¹³ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6, 17.

¹⁰¹⁴ Reception and Integration Agency, 'House Rules, revised' para 2.22.

¹⁰¹⁵ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 8.2.1, 9.1.12.

¹⁰¹⁶ *Ibid*, Appendix 6, 71-81.

¹⁰¹⁷ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 1.2.11, 8.2.5.

¹⁰¹⁸ *Ibid*, Indicator 1.2.11, 8.2.3.

¹⁰¹⁹ *Ibid*, Indicator 8.2.3.

¹⁰²⁰ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 26, 37.

¹⁰²¹ *Ibid*, 36.

¹⁰²² Children First Act 2015 s 11(2), 11(6); Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 6.

¹⁰²³ Children First Act 2015 s 11(2), 11(6); Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 22.

incoming National Standards.¹⁰²⁴ Furthermore, it is welcome that security personnel employed at Direct Provision centres must be Garda vetted and licenced by the Private Security Authority,¹⁰²⁵ and that drivers responsible for transporting residents are to be Garda vetted.¹⁰²⁶ However, the accountability issues previously outlined with respect to keeping a record of Garda Vetting Disclosures, the ‘clearing’ process to be followed should a Vetting Disclosure declare an offence, and the inability of RIA or an independent inspectorate to audit these procedures in the absence of written records, are not addressed by the incoming National Standards.

4.4.2 Accountability, Inspections and Oversight

This issue of accountability and oversight is poorly addressed by the incoming National Standards. It is welcome that independent inspections of Direct Provision centres will be introduced in order to assess whether high-quality, safe and effective services and supports are provided to residents.¹⁰²⁷ There is as of yet no template for the independent inspection process. It is therefore unclear whether monitoring and inspection will be of a qualitative nature, considering the experiences, views and concerns of residents, or whether the current tick-the-box model of RIA inspections will continue under the new inspectorate. In this context, it is important to note that Theme 1 of the incoming National Standards, ‘Governance, Accountability and Leadership’, does not detail accountability or auditing procedures of private contractors by RIA, the Department of Justice and Equality, Tusla, or any other government department or statutory agency.¹⁰²⁸

Standard 1.1, that services provided under Direct Provision be in accordance with legislation, regulations, national policies and standards, contains five indicators.¹⁰²⁹ Staff are to receive training on relevant legislation and policy they are required to know, and must ‘show this knowledge in how they do their work’.¹⁰³⁰ The incoming National Standards do not detail a means of ensuring that this training has been completed, or ensuring that staff’s understanding of legislation and policy is correct. The Direct Provision centre manager/contractor must themselves examine whether services meet the relevant standards.¹⁰³¹ In response to inspections, they must improve ‘where required’ and put a structured ‘quality improvement programme’ in place.¹⁰³² This improvement programme does not appear to be developed in coordination with RIA. There is no mention of follow-up procedures to ensure that improvements have been made, and no reference to sanctions for managers/contractors who fail to respond appropriately to inspections.

Under Indicator 1.1.3, the manager/contractor of a Direct Provision centre is required to respond to recommendations or critiques following monitoring, inspection or investigation, and must submit an ‘implementation report’ to the Department of Justice and Equality.¹⁰³³ However, there is again no mention of sanctions or follow-up on the actual implementation of the submitted implementation report. The Direct Provision manager/contractor is responsible for ensuring that services provided

¹⁰²⁴ Department of Justice and Equality, ‘National Standards for accommodation offered to people in the protection process’ (August 2019) Indicator 8.2.3.

¹⁰²⁵ *Ibid*, Indicator 4.8.4.

¹⁰²⁶ *Ibid*, Indicator 7.2.6.

¹⁰²⁷ *Ibid*, 2.

¹⁰²⁸ *Ibid*, Theme 1 encompasses Standards 1.1 – 1.5.

¹⁰²⁹ *Ibid*, Standard 1.

¹⁰³⁰ *Ibid*, Indicator 1.1.1.

¹⁰³¹ *Ibid*, Indicator 1.1.2.

¹⁰³² *Ibid*.

¹⁰³³ *Ibid*, Indicator 1.1.3.

comply with new and existing legislation and policy,¹⁰³⁴ again with no mention of monitoring or sanctions. The wording of Indicator 1.1.5, that the manager/contractor 'cooperates and assists' in monitoring and assessment,¹⁰³⁵ does not convey a sense of accountability and stringent monitoring. Again, there is no mention of sanctions for breaches of the incoming National Standards.

Standard 1.2 concerns governance and staff accountability.¹⁰³⁶ Under this Standard, Indicators for accountability,¹⁰³⁷ strategic and operational planning,¹⁰³⁸ management systems,¹⁰³⁹ resource allocation,¹⁰⁴⁰ monitoring and evaluation,¹⁰⁴¹ and quality improvement¹⁰⁴² are to be assessed within the Direct Provision centre's own management structure. There is no mention of external inspection, assessment, or sanctions. Standard 1.4 is the only Standard which explicitly addresses the monitoring and review of the quality of care and experience of those living in Direct Provision.¹⁰⁴³ The Standard allocates responsibility for monitoring and review to the provider of a Direct Provision centre.¹⁰⁴⁴ The manager/contractor of a Direct Provision centre is responsible for conducting regular audits of their own services for the purpose of evaluation and improvement.¹⁰⁴⁵ The centre's manager/contractor must also conduct an annual review of the quality and safety of their own service delivery to residents, and provide a copy to both residents and the Department of Justice and Equality.¹⁰⁴⁶ While the annual review should inform continuous improvement in the Direct Provision centre's service delivery,¹⁰⁴⁷ this is also not said to be subject to either monitoring by an external body, or sanctions.

Residents' input is also effectively absent from the monitoring and review process, as outlined in the incoming National Standards. Residents should be consulted as part of the abovementioned annual review.¹⁰⁴⁸ However, there is no requirement for a section of the final review to be dedicated to residents' feedback and views, or for residents to be quoted directly. As such, the views and feedback of residents are mediated by the Direct Provision centre's contractor/manager in the write-up of the annual review, which is then given to the Department of Justice and Equality. Standard 1.5 concerns consultation with residents on decision making within the Direct Provision centre.¹⁰⁴⁹ However, there is no declared right for residents to have a say in decisions that affect them; rather, they are 'allowed' to 'participate' in decision making 'as much as possible'.¹⁰⁵⁰ This should involve a residents' committee,¹⁰⁵¹ collective consultation with residents,¹⁰⁵² and individual consultation.¹⁰⁵³ There is no guarantee that the opinions and concerns expressed under these processes will be taken into account at management level. There is also no stated right for the residents' committee, or any individual resident, to submit to the independent inspectorate regarding service provision, or lack thereof, in

¹⁰³⁴ *Ibid*, Indicator 1.1.4.

¹⁰³⁵ *Ibid*, Indicator 1.1.5.

¹⁰³⁶ *Ibid*, Standard 1.2.

¹⁰³⁷ *Ibid*, Indicator 1.2.1.

¹⁰³⁸ *Ibid*, Indicator 1.2.8.

¹⁰³⁹ *Ibid*, Indicator 1.2.9.

¹⁰⁴⁰ *Ibid*, Indicator 1.2.7.

¹⁰⁴¹ *Ibid*, Indicator 1.2.12.

¹⁰⁴² *Ibid*, Indicator 1.2.17.

¹⁰⁴³ *Ibid*, Standard 1.4.

¹⁰⁴⁴ *Ibid*.

¹⁰⁴⁵ *Ibid*, Indicator 1.4.2.

¹⁰⁴⁶ *Ibid*, Indicator 1.4.3.

¹⁰⁴⁷ *Ibid*.

¹⁰⁴⁸ *Ibid*.

¹⁰⁴⁹ *Ibid*, Standard 1.5.

¹⁰⁵⁰ *Ibid*.

¹⁰⁵¹ *Ibid*, Indicator 1.5.1.

¹⁰⁵² *Ibid*, Indicator 1.5.2.

¹⁰⁵³ *Ibid*, Indicator 1.5.3.

their Direct Provision centre. A ‘culture of involvement’ with residents is mentioned under other indicators,¹⁰⁵⁴ without any guarantee that the views of residents will be taken into full consideration by management.

Although there is currently no obligation for Direct Provision centres to be certified by a Quality Management System, it is included as a category on the current RIA inspection template. Of the 18 reports from Direct Provision centres accommodating children reviewed, only five had been certified by a Quality Management System.¹⁰⁵⁵ The National Standards do not require a centre to have any such certification. Documentation uploaded to the RIA webpage with inspection reports include written confirmation from the Direct Provision centre contractor/manager that the issues identified during the inspection have been addressed.¹⁰⁵⁶ There is no evidence to suggest that a follow-up inspection is conducted, or that any verification beyond written confirmation from the centre contractor/manager is sought by RIA.

In accordance with Indicator 1.1.2, Direct Provision centre contractors/managers must implement an ‘improvement programme’ in response to inspections,¹⁰⁵⁷ and must submit an implementation report to the Department of Justice and Equality.¹⁰⁵⁸ However, it is unclear whether either the independent inspectorate or the Department of Justice and Equality will be required to carry out a follow-up inspection to ensure that any issues raised have been addressed in full. If implementation of an independent inspector’s recommendations is to be the responsibility of a Direct Provision centre, without meaningful oversight or follow-up procedures by either the inspecting body or the Department of Justice and Equality, the very purpose of establishing an independent inspectorate is undermined.

4.4.3 Vulnerability Assessments

The term ‘Direct Provision’ is commonly used in the media and informal discourse to refer to the international protection provision in its entirety. However, in reality Direct Provision concerns only the material reception conditions afforded asylum seekers, including accommodation, weekly allowances and the provision of services. Other aspects of the international protection process which impact the lives of asylum seekers, but are not directly related to the system of Direct Provision, include asylum applications, asylum interviews, the conduct of vulnerability assessments, and the asylum appeals process, to name a few. As the National Standards only address the material reception conditions provided to asylum seekers in Direct Provision centres, other aspects of the protection process, including a vulnerability assessment mechanism, are not outlined.¹⁰⁵⁹ However, the comprehensive conduct of vulnerability assessments is essential so as to ensure that the services provided to individual asylum seekers while resident in Direct Provision meet any particular special reception needs.

¹⁰⁵⁴ *Ibid*, Indicator 1.2.18, 1.4.1.

¹⁰⁵⁵ Five centres reported certification: Knockalisheen, Davis Lane, Clonakilty Lodge, Globe House and Birchwood. Only two of these five centres could provide evidence of certification on the day of inspection, Globe House and Birchwood. No data was collected with respect to Old Convent in Mayo, all other centres accommodating children reported that they had no quality certificate.

¹⁰⁵⁶ Reception and Integration Agency (RIA), ‘RIA Inspections’. Available at: <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

¹⁰⁵⁷ Department of Justice and Equality, ‘National Standards for accommodation offered to people in the protection process’ (August 2019) Indicator 1.1.2.

¹⁰⁵⁸ *Ibid*, Indicator 1.1.3.

¹⁰⁵⁹ *Ibid*, para 8.

It is welcome that all children, pregnant residents, nursing mothers, persons with disabilities and LGBTI+ identifying people are to be considered vulnerable residents under the incoming National Standards and thus requiring special reception needs, as per the Reception Conditions Regulations 2018.¹⁰⁶⁰ It is also important that the incoming National Standards note that a person may not fall within a 'vulnerable' category, but may still be assessed as having a special reception need.¹⁰⁶¹ The Standards further acknowledge that special reception needs are not 'fixed', and may change over time.¹⁰⁶²

Under the incoming National Standards, the service provider must allocate rooms on the basis of needs identified in initial and subsequent vulnerability assessments, including consideration of gender and sexual orientation, in conjunction with the Department of Justice and Equality.¹⁰⁶³ Once a Direct Provision centre has been designated to an applicant, allocation of rooms is the responsibility of the service provider, based on 'fair and transparent criteria'.¹⁰⁶⁴ Residents with specific health conditions or disabilities should be given their own room 'as far as practicable'.¹⁰⁶⁵ Accommodation for persons with disabilities must comply with national regulations, as outlined in Indicator 4.2.11.¹⁰⁶⁶ A bedroom's fixtures and fittings must meet the resident's identified needs.¹⁰⁶⁷ A service provider must also make available appropriate, secure and adequate indoor and outdoor play spaces for children.¹⁰⁶⁸

Under Standard 10.3, the provider of a Direct Provision centre must have a policy to identify, communicate and address a resident's existing and emerging special reception needs.¹⁰⁶⁹ Under this standard, in accordance with Indicator 10.3.3, the manager of a Direct Provision centre must liaise with the Department of Justice and Equality if the centre is unable to cater for an applicant's special reception needs,¹⁰⁷⁰ or if supports and services required in accordance with the resident's reception needs are not available locally.¹⁰⁷¹ This is an effective safeguard in ensuring that a resident's special reception needs are met on a continuous basis.

Under Standard 10.1, the provider of a Direct Provision centre must ensure that a resident's special reception needs, as notified by the Department of Justice and Equality, are incorporated into the provision of accommodation and associated services.¹⁰⁷² However, the same caveat, with identical wording to Indicator 10.3.3, exists under this standard; that the manager of a Direct Provision centre must liaise with the Department of Justice and Equality if the centre is unable to cater for an applicant's special reception needs,¹⁰⁷³ or if supports and services required in accordance with the resident's reception needs are not available locally.¹⁰⁷⁴ Phrasing this as 'is unable' and 'is not available', as opposed to 'becomes unable' or 'becomes unavailable', suggests that the Standards foresee a situation whereby the designated accommodation is unsuitable at the time of its designation, as

¹⁰⁶⁰ *Ibid*, 15.

¹⁰⁶¹ *Ibid*.

¹⁰⁶² *Ibid*.

¹⁰⁶³ *Ibid*, Indicator 4.1.1.

¹⁰⁶⁴ *Ibid*, Indicator 4.1.3.

¹⁰⁶⁵ *Ibid*, Indicator 4.1.2.

¹⁰⁶⁶ *Ibid*, Indicator 4.2.11.

¹⁰⁶⁷ *Ibid*, Indicator 4.2.5.

¹⁰⁶⁸ *Ibid*, Indicator 4.5.2.

¹⁰⁶⁹ *Ibid*, Standard 10.3.

¹⁰⁷⁰ *Ibid*, Indicator 10.3.3(a).

¹⁰⁷¹ *Ibid*, Indicator 10.3.3(b).

¹⁰⁷² *Ibid*, Standard 10.1.

¹⁰⁷³ *Ibid*, Indicator 10.3.4(a).

¹⁰⁷⁴ *Ibid*, Indicator 10.3.4(b).

opposed to through changes in the circumstances of the resident, which are addressed separately under Standard 10.3.

Similarly, as per Standard 4.1, the provider of a Direct Provision centre should be informed by the identified needs and best interests of residents, and the best interests of the child, in planning, designing and allocating accommodation within the centre.¹⁰⁷⁵ Again, there exists a caveat that the manager of a Direct Provision centre must liaise with the Department of Justice and Equality should the centre be unable to meet the identified needs of a resident, or the best interests of the child.¹⁰⁷⁶

In accordance with the Reception Conditions Regulations, the Minister for Justice and Equality must take account of a vulnerable applicant's special reception needs when designating accommodation.¹⁰⁷⁷ The best interests of the child must be a primary consideration when applying the Regulations.¹⁰⁷⁸ Accommodation designated to a minor must suit their needs.¹⁰⁷⁹ These considerations are also a requirement under EU law.¹⁰⁸⁰ As such, the Minister has a legal obligation to ensure that a Direct Provision centre, the services it provides, and services available in the local area meet an applicant's special reception needs, and, should the applicant be a child, meet their needs as a minor and be in their best interest, prior to the accommodation being designated. However, Standards 10.1 and 4.1 suggest that it is the responsibility of the provider of a Direct Provision centre to ensure that the accommodation is suitable, and that the required supports and services are available, once the applicant has already been designated to the centre. The Department of Justice and Equality's procedure for designating accommodation through RIA is not publicly available.

In lieu of a formal policy for designating accommodation in accordance with an applicant's special reception needs, there is the risk that the above Standards will be interpreted as the procedure to be followed, thus breaching the Minister's statutory obligations. Following this procedure may also result in a sizable accountability gap, whereby it may be claimed that it is unclear whether it is the responsibility of the Minister or the contractor/manager of a centre to ensure special reception needs are met, owing to the inconsistencies between the National Standards and the Reception Conditions Regulations 2018. While this can be easily clarified by consulting the Regulations, it may result in on-the-ground delays to the provision of services required to meet a resident's special reception needs.

This may be compounded by the overall weak procedural monitoring of Direct Provision, such as the unfairness and inefficiency of the current Complaints Procedure. The incoming National Standards do not amend the current Complaints Procedure, in accordance with which a resident must twice address a complaint to the manager or contractor of the Direct Provision centre before progressing the issue to RIA, and only then to the Ombudsman or Ombudsman for children. The incoming National Standards do not detail a separate procedure for addressing concerns related specifically to special reception needs. As it is primarily the duty of the manager/contractor of a Direct Provision centre to ensure that special reception needs are met on a continuous basis, the structure of the current Complaints Procedure stands as a significant barrier to residents with special reception needs asserting their rights under the RCD (recast).

¹⁰⁷⁵ *Ibid*, Standard 4.1.

¹⁰⁷⁶ *Ibid*, Indicator 4.1.5.

¹⁰⁷⁷ European Communities (Reception Conditions) Regulations, 2018. Regulation 7(4).

¹⁰⁷⁸ *Ibid*, Regulation 9(1).

¹⁰⁷⁹ *Ibid*, Regulation 7(3)(b).

¹⁰⁸⁰ RCD (recast), art 18(3).

Should designated accommodation be unsuitable in meeting an applicant's special reception needs at the time of designation, the applicant's rights under the Reception Conditions Regulations, and the RCD (recast) are violated. Where the applicant in question is a person with a disability, this may also constitute a breach of their rights under the UNCRPD. Such rights may include the right to access the physical environment on an equal basis with others,¹⁰⁸¹ the right to access in-home, residential and other community support services necessary to support living and inclusion in the community,¹⁰⁸² and the right to efficient and local access to health and social services.¹⁰⁸³ Should the applicant in question be a minor with a disability, their right to enjoy human rights and fundamental freedoms on an equal basis with other children is specifically protected in accordance with Article 7 UNCRPD.¹⁰⁸⁴

EASO recommend that accommodation provided under RCD (recast) be built in compliance with applicable local and national regulations.¹⁰⁸⁵ However, under the Reception Conditions Regulations, Direct Provision centres under contract to RIA are not required to comply with any local or national regulations or guidelines on housing. RIA's failure to adhere to best practice guidelines set by the State, such the 'Quality Housing for Sustainable Communities' guidelines for housing, was noted in the McMahon Report.¹⁰⁸⁶ Without a statutory obligation for the Minister for Justice and Equality to ensure that accommodation centres meet certain housing regulations prior to contract, there may be a shortfall in the supply of suitable accommodation for applicants with particular reception needs. This may result in delays in designating an applicant to suitable accommodation which fully meets their special reception needs.

It is also unclear what requirements a locality must meet with regard to service provision when a premises is under consideration for contract as a Direct Provision centre. The Department's policy of dispersal has resulted in a large number of Direct Provision centres being located in remote areas, with issues of transport, and access to health and social care services raised by the McMahon Working Group¹⁰⁸⁷ and HIQA¹⁰⁸⁸ respectively. Two issues emerge here. First, in accordance with the National Standards, it is the responsibility of the newly appointed Reception Officer to assess whether a resident's special reception needs are being met on a continuous basis. The resident themselves does not, under the Standards, have a direct say in this process. Second, the procedure for requesting transfers between centres is not mentioned in the National Standards, and would appear to remain unchanged. Under the current procedure, if RIA believe a the transfer request stems from a Direct Provision centre's failure to provide necessary services to the resident, the request is referred to the manager of that Direct Provision centre.¹⁰⁸⁹ It is unclear whether any investigation into whether a manager is failing to provide appropriate services takes place on foot of a complaint or transfer request, an issue the is not addressed in the National Standards. The procedural safeguards for

¹⁰⁸¹ CRPD, art 9(1).

¹⁰⁸² *Ibid*, art 19(b).

¹⁰⁸³ *Ibid*, art 26(1)(a).

¹⁰⁸⁴ *Ibid*, art 7.

¹⁰⁸⁵ European Asylum Support Office (EASO), 'EASO guidance on reception conditions' (September 2016) Standard 9.1.

¹⁰⁸⁶ Department of the Environment, Heritage and Local Government, 'Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007); Working Group on the Protection Process 163–64.

¹⁰⁸⁷ McMahon report, p 204

¹⁰⁸⁸ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (2014) 14. Available at: <https://static.rasnet.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>

¹⁰⁸⁹ Reception and Integration Agency, 'House Rules and Procedures', 11.

residents with special reception needs to assert and protect their right to suitable accommodation and services are therefore weak.

4.4.4 Operation of Direct Provision Centres

(1) Emergency Accommodation

Hotels and guesthouses used as emergency accommodation are excluded from the scope of the incoming National Standards, as they are not under contract to RIA.¹⁰⁹⁰ In the context of the high number of asylum seekers residing in emergency accommodation which, according to the Department of Justice and Equality, is expected to increase in 2021,¹⁰⁹¹ this is the most significant limitation of the National Standards. The exclusion of emergency accommodation centres from the incoming National Standards has significant consequences for child protection and child welfare concerns. While there is a statutory basis for the use of emergency accommodation in providing reception conditions,¹⁰⁹² inspection of emergency accommodation centres do not come within the remit of either HIQA or RIA. Tusla are not directly responsible for safeguarding the welfare and protection of children living in emergency accommodation. As such, even the restricted application of the National Standards, particularly 'Theme 8: Safeguarding and Protection', which sets requirements for the implementation of risk assessments, management policies, and procedures for reporting abuse,¹⁰⁹³ would provide some additional safeguards for the protection of children living in emergency accommodation.

Without action on the issue of emergency accommodation, the State continues to fail in its specific obligation to provide children seeking refuge with appropriate assistance.¹⁰⁹⁴ In the context of emergency accommodation, the State does not uphold its obligations regarding the best interests of the child,¹⁰⁹⁵ or the protection of a child's wellbeing.¹⁰⁹⁶ This may constitute violations of the child's right to the highest attainable standard of health, in accordance with the UNCRC,¹⁰⁹⁷ and other regional and international instruments.¹⁰⁹⁸ Should a child have a disability, this also constitutes a violation of their rights under UNCRPD.¹⁰⁹⁹

In the absence of any policy on emergency accommodation, obligations to safeguard child protection and child welfare are not upheld.¹¹⁰⁰ Without inspection of emergency accommodation where persons with disabilities are resident, the State continues to be in violation of its obligation under the UNCRPD.¹¹⁰¹ As stated previously, a culmination of these violations may constitute a breach of the right to protection against degrading treatment, under regional and international law,¹¹⁰² in

¹⁰⁹⁰ *Ibid*, Appendix 2.

¹⁰⁹¹ Department of Justice and Equality 'Spending Review 2019 Direct Provision: Overview of current accommodation expenditure' (August 2019) 28. Available at: http://justice.ie/en/JELR/Spending_Review.pdf/Files/Spending_Review.pdf.

¹⁰⁹² European Communities (Reception Conditions) Regulations, 2018. Regulation 4(5).

¹⁰⁹³ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019).

¹⁰⁹⁴ CRC, art 22(1).

¹⁰⁹⁵ Charter of Fundamental Rights of the European Union, art 24(2); CRC, art 3(1).

¹⁰⁹⁶ Charter of Fundamental Rights of the European Union, art 24(1); European Social Charter, recital 7, art 7(10), CRC, art 3(2).

¹⁰⁹⁷ CRC, art 24.

¹⁰⁹⁸ European Social Charter, recital 11; ICESCR, art 12(a).

¹⁰⁹⁹ CRPD, art 25.

¹¹⁰⁰ European Social Charter, art 17(1)(a); CRC, art 19(1).

¹¹⁰¹ CRPD, art 16(3).

¹¹⁰² Charter of Fundamental Rights of the European Union, art 4; ECHR, art 3; ICCPR, art 7(1).

accordance with the UNCRC in the case of minors,¹¹⁰³ and, if an applicant is a person with a disability, in accordance with UNCRPD.¹¹⁰⁴

(2) Staff Recruitment

The incoming National Standards specify that Direct Provision centre managers should be experienced in cross-cultural work, work with international protection applicants or refugees, and have a basic understanding of social welfare systems, mental health, child protection and social care.¹¹⁰⁵ Centre staff should also have the 'necessary skills' for the role, including experience in cross-cultural work, a basic understanding of mental health issues, communication skills, and empathy.¹¹⁰⁶ While recruitment remains the responsibility of centre managers, the recruitment procedures outlined under Standard 2.1, including job descriptions, probationary periods and staff orientation,¹¹⁰⁷ are important so as to encourage transparency and accountability. However, under the National Standards there is no requirement for a Direct Provision centre to have a written recruitment procedure, or to maintain a record of a staff members' references for the purpose of inspection and auditing.

The introduction of a 'Reception Officer' to work alongside the centre's Designated Liaison Person also appears to be a step in the right direction. According to the National Standards, the Reception Officer should hold a QQI level 7 in social care or an equivalent background,¹¹⁰⁸ and should be regularly referred for specialised training with an external body.¹¹⁰⁹ The Reception Officer's role primarily concerns residents with special reception needs, in the capacity of support to other staff, relationship building with residents, and provision of information regarding local services to the Department of Justice and Equality.¹¹¹⁰ Significantly, the Reception Officer should advise the Department of Justice and Equality of any resident's special reception needs which become apparent after their arrival at a Direct Provision centre.¹¹¹¹ If effective, and when complementary to a comprehensive vulnerability assessment, this process has the potential to guarantee access to necessary services for vulnerable asylum seekers.

(3) Staff Training

Training for both staff and management in Direct Provision centres appears comprehensive, with many areas including child protection, disability, domestic, sexual and gender-based violence, equality and diversity, mental health, victims of torture, and conflict resolution cited in the Standards.¹¹¹² This training is intended to assist staff in identifying and responding to special reception needs which become apparent after dispersal.¹¹¹³ Staff working in Direct Provision centres accommodating a large number of exceptionally vulnerable residents should receive additional, specialised training to meet the assessed special reception needs of these residents.¹¹¹⁴ The skills and competencies of each staff

¹¹⁰³ CRC, art 37(a)

¹¹⁰⁴ *Ibid*, art 7(2).

¹¹⁰⁵ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 1.2.3.

¹¹⁰⁶ *Ibid*, Indicator 2.2.3.

¹¹⁰⁷ *Ibid*, Standard 2.1.

¹¹⁰⁸ *Ibid*, Indicator 10.4.1.

¹¹⁰⁹ *Ibid*, Indicator 10.4.2.

¹¹¹⁰ *Ibid*, Indicators 10.4.4, 10.4.5, 10.4.6, 10.4.11.

¹¹¹¹ *Ibid*, Indicator 10.4.9.

¹¹¹² *Ibid*, Indicator 2.4.8.

¹¹¹³ *Ibid*, Indicator 10.2.1.

¹¹¹⁴ *Ibid*, Indicator 10.5.3

member should be regularly reviewed as part of a performance appraisal, with written records maintained.¹¹¹⁵

Although it is important from the point of view of auditing and inspection that a written record of performance reviews are maintained, the National Standards contain no guidelines as to the grounds on which a staff member should be assessed for a performance appraisal. Similarly, staff are required to know relevant legislation, regulations, policies and standards, and are said to receive regular training in this regard.¹¹¹⁶ However, whether this training is to be coordinated by the centre manager/contractor or RIA, and whether training should be provided by a qualified external body, as opposed to through internal, informal staff training sessions, is not specified. Similarly, induction training for centre staff is conducted through the Direct Provision centre service provider,¹¹¹⁷ with no standardised requirements detailed under the incoming National Standards.

In accordance with the incoming National Guidance, managers of Direct Provision centres should receive specific training on their statutory responsibilities as mandated persons.¹¹¹⁸ However, upon listing additional training to be undertaken by centre managers,¹¹¹⁹ the incoming National Standards do not include training on their role and obligations as mandated person. Under the incoming National Standards, DLPs are not obliged to undertake training in child protection or child welfare beyond that which is provided to all staff employed by a Direct Provision centre.

In accordance with the National Guidance, it is the responsibility of each organisation to ensure that its staff receive adequate training on child protection and welfare issues.¹¹²⁰ Although the manager or contractor of a Direct Provision centre must maintain a written record of staff training,¹¹²¹ the incoming National Standards do not outline what details should be recorded with regard to training. Should an audit of staff training be conducted, it is therefore unclear whether managers/contractors of Direct Provision centres would be required to specify whether staff completed the required training in full, the dates on which training took place, whether all staff had been trained within a minimum period of commencing employment, whether staffs' knowledge and awareness was assessed after the training, whether the training was provided by a certified body, or whether staff provided feedback as to whether the training was adequate to suit their needs. If, as is the case with the current RIA inspection process, an independent inspectorate is required to simply tick a box to confirm training has been completed, the National Standards would then provide little guarantee that training is effective in upholding the rights of residents in accordance with the RCD (recast).

(4) Complaints Procedure

Under the incoming National Standards, the current Complaints Procedure, as detailed in the RIA House Rules, is maintained.¹¹²² The finalised National Standards will include a complaint chart outlining how complaints can be made under the current procedure, and provide information on the

¹¹¹⁵ *Ibid*, Indicator 2.3.5.

¹¹¹⁶ *Ibid*, Indicator 1.1.1.

¹¹¹⁷ *Ibid*, Indicator 2.1.4.

¹¹¹⁸ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 38.

¹¹¹⁹ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicators 2.4.3, 2.4.8.

¹¹²⁰ Department of Children and Youth Affairs 'Children First: National Guidance for the Protection and Welfare of Children' (2017) 28.

¹¹²¹ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 10.2.1.

¹¹²² Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) Indicator 2.4.7.

remit of the Ombudsman and the Ombudsman for Children.¹¹²³ In accordance with the incoming National Standards, each Direct Provision centre should have their own system in place to hear and record complaints from residents.¹¹²⁴ A residents' charter, unique to each Direct Provision centre, will inform residents about how complaints can be made.¹¹²⁵ Residents must also be informed of when 'feedback' will be provided following from their complaint.¹¹²⁶ The Direct Provision centre must also have a 'non-retaliation' policy in place, to ensure that there are no adverse consequences to raising a complaint.¹¹²⁷

While the National Standards provide clarity for the procedure to be followed upon making a complaint, the current Complaints Procedure has not been changed in any way. Therefore, the fact that residents cannot complain directly to RIA, even when the centre manager is the subject of a complaint, as noted by Doras,¹¹²⁸ is not addressed. The question of the cultural appropriateness and fairness of the Complaints Procedure, as raised by the Ombudsman for Children,¹¹²⁹ also persists.

¹¹²³ *Ibid*, 5.

¹¹²⁴ *Ibid*, Indicator 1.2.15.

¹¹²⁵ *Ibid*, Indicator 1.3.1(h).

¹¹²⁶ *Ibid*, Indicator 1.2.15.

¹¹²⁷ *Ibid*, Indicator 1.2.15.

¹¹²⁸ *Ibid* 243; Children's Rights Alliance, 'Submission to the Joint Committee on Justice and Equality on direct provision and the international protection process' 158.

¹¹²⁹ The Ombudsman for Children Office, Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process (May 2019) 3-4.

APPENDIX: LEGAL AND POLICY BACKGROUND

A. Key Policies

(1) Direct Provision

Direct Provision refers to the asylum reception system in Ireland established in April 2000 by the Directorate for Asylum Support Services¹¹³⁰ under what was then the Department of Justice, Equality and Law Reform (DJELR). The system was designed and implemented without consultation with asylum seekers, relevant NGOs or communities to which asylum seekers would be dispersed.¹¹³¹ At its inception, Direct Provision was described as an interim measure which would provide accommodation to international protection applicants for six months, while awaiting the outcome of their asylum application.

The type of accommodation varies within the Direct Provision system; some centres are fully self-catering, and some contain own-door accommodation. However, the most common model is the use of communal centres predominately in buildings which were originally designed for a different purpose, such as former hotels, convents, holiday camps and mobile home sites.¹¹³² Since 2016 a combination of factors, such as the expiry of contracts between RIA and service providers and Ireland's housing crisis, led to increased overcrowding in accommodation centres.¹¹³³

For many years the reception system in Ireland had no legal basis, with Direct Provision initially being provided for under Supplementary Welfare Allowance Circulars 04/00¹¹³⁴ and 05/00.¹¹³⁵ In 2018 Ireland opted-in to the EU Reception Conditions Directive (recast).¹¹³⁶ The European Communities (Reception Conditions) Regulations 2018, commenced 30 June 2018, transposed this directive into Irish law.¹¹³⁷ The Reception Conditions Regulations define 'accommodation centre', as a premises designated by the Minister for Justice and Equality at which the material reception conditions shall be made available to a recipient.¹¹³⁸ In accordance with the Regulations, the material reception conditions to which a recipient is entitled will only be made available at a designated accommodation centre.¹¹³⁹

¹¹³⁰ This became the Reception and Integration Agency (RIA) in April 2001.

¹¹³¹ Free Legal Aid Centres, 'Direct Discrimination' (FLAC 2003), 8.

¹¹³² Irish Refugee Council, 'Types of Accommodation' *Asylum in Europe* available at:

<http://www.asylumineurope.org/reports/country/republic-ireland/reception-conditions/housing/types-accommodation>.

¹¹³³ Irish Refugee Council, 'Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless' *irishrefugeecouncil.ie* 20 September 2018 available at: <https://www.irishrefugeecouncil.ie/news/irish-refugee-council-calls-for-government-to-urgently-address-issue-of-people-seeking-asylum-being-made-homeless/6697>.

¹¹³⁴ Since repealed, Supplementary Welfare Allowance Circular 04/00, 10 April 2000, accessed through Liam Thornton, 'The Direct Provision Files: 2000' (*Exploring Direct Provision*, 2019) available at: <https://exploringdirectprovision.ie/wp-content/uploads/2019/10/1004-00-SWA-Circular-04-of-2000-SW.pdf>

¹¹³⁵ Since repealed, Supplementary Welfare Allowance Circular 05/00, 15 May 2000, accessed through Liam Thornton, 'The Direct Provision Files: 2000' (*Exploring Direct Provision*, 2019) available at: <https://exploringdirectprovision.ie/wp-content/uploads/2019/10/1505-00-SWA-Circular-05-of-2000-SW.pdf>

¹¹³⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1, (RCD (recast) hereafter)

¹¹³⁷ European Communities (Reception Conditions) Regulations 2018, SI 2018/230, (Reception Conditions Regulations hereafter)

¹¹³⁸ Note: an 'accommodation centre' is better known as a Direct Provision centre, the term used throughout this report. The term 'accommodation centre' is used in this section to reflect terminology used in the Regulations. A 'reception centre' is a place where a recipient is accommodated before being designated to an accommodation centre. Reception centres are not considered to be Direct Provision centres. European Communities (Reception Conditions) Regulations, SI 230/2018, Regulation 2(1); Regulation 4(3); Regulation 7.

¹¹³⁹ *Ibid*, Regulation 4(2)(a).

The Reception Conditions Regulations provide the first legislative framework for the provision of material reception conditions to asylum seekers. However, as the Regulations do not explicitly legislate for the manner in which reception conditions ought to be provided within a direct provision centre, these centres continue to operate on an ad-hoc, administrative footing.

(2) Emergency Accommodation

Towards the end of 2018, a shortage of accommodation resulted in a number of asylum seekers being made homeless.¹¹⁴⁰ In light of this, RIA has increasingly used 'emergency' accommodation by contracting rooms on an ad-hoc, bed and board basis with hotels and B&Bs.¹¹⁴¹ In December 2019 1,559 asylum seekers were accommodated across 37 emergency accommodation locations.¹¹⁴²

Both the Reception Conditions Regulations¹¹⁴³ and the RCD (recast)¹¹⁴⁴ allow for material conditions to be provided 'in a manner that is different' to that which is otherwise legislated for on an exceptional basis. Such exceptions include where designated accommodation centres are at capacity,¹¹⁴⁵ or in accordance with a recipient's special reception needs.¹¹⁴⁶ Use of such alternate accommodation must 'meet the recipient's basic needs',¹¹⁴⁷ and be 'for as short a period as possible'.¹¹⁴⁸

This provides a statutory basis for the use of emergency accommodation for asylum seekers in lieu of designated accommodation centres. However, it is unclear whether the obligation for emergency accommodation to meet applicants' basic needs is being fulfilled. In January 2020, the UN Committee on the Elimination of Racial Discrimination called for the use of emergency accommodation to be halted as soon as possible due to 'substandard living conditions'.¹¹⁴⁹ Owing to a lack of access to education, health and other services, the Irish Refugee Council further recommends that children be removed from emergency accommodation as a matter of urgency.¹¹⁵⁰

(3) The McMahon Report

In 2015 the Working Group to Report to Government on Improvements to the Protection Process including Direct Provision and Supports to Asylum Seekers (McMahon Report)¹¹⁵¹, published its findings and recommendations following a review of the asylum application process and Direct Provision. The terms of reference of the McMahon Group instructed it to identify improvements which could be made to the existing system rather than identification of alternatives.¹¹⁵² The McMahon Group was made up of, among others, civil servants from the Department of Justice and Equality and

¹¹⁴⁰ European Communities (Reception Conditions) Regulations, Regulation 4(2)(a).

¹¹⁴¹ Cónal Thomas, 'Emergency accommodation for asylum seekers costs three times more than Direct Provision centres' *TheJournal.ie* 26 August 2019 available at: <https://www.thejournal.ie/direct-provision-costs-emergency-accommodation-4782558-Aug2019/>>.

¹¹⁴² Dáil Debates, Parliamentary Question 271 (10 December 2019), <<https://www.kildarestreet.com/wrans/?id=2019-12-10a.635&s=%22emergency+accommodation%22#g636.q>>

¹¹⁴³ European Communities (Reception Conditions) Regulations, Regulation 4(5).

¹¹⁴⁴ RCD (Recast), art 18(9).

¹¹⁴⁵ European Communities (Reception Conditions) Regulations, Regulation 4(5)(b).

¹¹⁴⁶ *Ibid*, Regulation 4(5)(a).

¹¹⁴⁷ *Ibid*, Regulation 4(6)(b).

¹¹⁴⁸ *Ibid*, Regulation 4(6)(a).

¹¹⁴⁹ UN Committee on the Elimination of Racial Discrimination (CERD), 'Concluding Observations on the Combined Fifth to Ninth Reports of Ireland' (23 January 2020) para 37(c), 38(c) available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRL/CO/5-9&Lang=En.

¹¹⁵⁰ Irish Refugee Council, 'The Reception Conditions Directive: One Year On' (July 2019) 44 available at:

<https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=705cb783-c68e-43f8-a9ff-896d9e15912e>.

the Department of Social Protection, concerned groups such as UNHCR, Nasc and the Children's Rights Alliance, and staff from Tusla, the HSE and the Department of Children and Youth Affairs. The group was chaired by former High Court judge Dr Bryan McMahon.

The McMahon Report made 173 recommendations regarding the asylum determination procedure and Direct Provision. In July 2017, the Department of Justice and Equality stated that 98% of the recommendations were implemented or in progress.¹¹⁵³ However in December 2017 Nasc stated that 51% of the McMahon recommendations could be verified as being implemented/ partially/ in progress.¹¹⁵⁴ The McMahon report has acted as the basis for the Incoming National Standards introduced in 2019.

(4) Incoming National Standards for Accommodation Offered to People in the Protection Process

The incoming National Standards were published in August 2019.¹¹⁵⁵ The Department of Justice and Equality has stated that the National Standards will be legally binding and subject to monitoring by January 2021, and that an independent inspectorate will be established to carry out inspections against the National Standards.¹¹⁵⁶ These standards were designed to meet the requirements of the Reception Conditions Regulations,¹¹⁵⁷ RCD (recast),¹¹⁵⁸ and guidance from the European Asylum Support Office (EASO).¹¹⁵⁹

The Standards should operate as a framework for 'person-centred, high-quality, safe and effective services and supports for residents living in accommodation centres', with the aim of improving quality of care and consistency of standards.¹¹⁶⁰ Independent inspections will be introduced in order to 'assess whether service providers are providing high-quality, safe and effective services and supports for residents'.¹¹⁶¹

However, hotels and guesthouses used as emergency accommodation do not come within the scope of the incoming National Standards as they are not under contract to RIA.¹¹⁶² Therefore, an accountability gap and inequalities in the standard of living of asylum seekers will likely persist following the introduction of the Standards, as explored below. As highlighted in each of the following chapters, centre managers may operate with a high level of discretion when implementing the Standards, which is likely to result in persisting inequalities in ensuring rights and protection for children in the Direct Provision system.

¹¹⁵⁵ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹¹⁵⁶ Department of Justice and Equality, 'Ministers Flanagan and Stanton welcome publication of the Spending Review on Direct Provision' (15 August 2019) available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>; Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹¹⁵⁷ European Communities (Reception Conditions) Regulations 2018, SI 230/2018.

¹¹⁵⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1.

¹¹⁵⁹ European Asylum Support Office (EASO) 'EASO guidance on reception conditions: operational standards and indicators' (EASO September 2016), (EASO Regulations hereafter)

¹¹⁶⁰ Department of Justice and Equality, 'National Standards for accommodation offered to people in the protection process' (August 2019) 2. Available at: <http://www.justice.ie/en/JELR/Pages/PR19000215>.

¹¹⁶¹ *Ibid.*

¹¹⁶² *Ibid.*

(5) EASO Guidance on Reception Conditions: Operational Standards and Indicators

In September 2016, EASO issued a guidance document to assist in the harmonisation of reception conditions for asylum seekers under the RCD (recast).¹¹⁶³ These guidelines set out specific standards and indicators for reception conditions in order to ensure an adequate standard of living for all asylum seekers. The guidelines were developed by a working group consisting of EU Member States' experts and stakeholders from bodies such as the European Commission, the European Union Agency for Fundamental Rights (FRA) and United Nations High Commissioner for Refugees (UNHCR),¹¹⁶⁴ and reflect existing practice in EU Member States, rather than trying to create a new model for the 'perfect reception system'.¹¹⁶⁵ Furthermore, they have been specifically referred to by the European Commission in its proposal for reform of the RCD (recast).¹¹⁶⁶

B. Key Legislative Instruments

(1) The Constitution

In 2012, the thirty-first amendment to the Constitution repealed article 42.5 and replaced it with article 42A, which incorporates principles broadly consistent with the UN Convention on the Rights of the Child (UNCRC).¹¹⁶⁷ Article 42A.1 recognises the 'natural and imprescriptible rights of *all* children'¹¹⁶⁸ and places a duty on the State to protect and vindicate those rights. It has been proposed that the language of Article 42A.1 suggests an unenumerated rights clause for children.¹¹⁶⁹ Taken together with rights enshrined in UNCRC, particularly the non-discrimination¹¹⁷⁰ and best interests principles,¹¹⁷¹ along with the right to survival and development¹¹⁷² and the right to play,¹¹⁷³ children living in Direct Provision who are not Irish citizens may nonetheless enjoy constitutional rights.

(2) European Communities (Reception Conditions) Regulations 2018

The Reception Conditions Regulations,¹¹⁷⁴ enacted in June 2018, give domestic effect to the RCD (recast). The decision to opt-in to the RCD (recast) came following the Supreme Court judgment in *NHV v Minister for Justice and Equality*,¹¹⁷⁵ which found the absolute prohibition on asylum seekers accessing the labour market to be unconstitutional. Key reforms introduced by the Reception Conditions Regulations include; (limited) access to the labour market;¹¹⁷⁶ the requirement to consider family unity, public interest, public order and efficient processing of the application when designating

¹¹⁶³ EASO, 'EASO guidance on reception conditions: operational standards and indicators' (EASO September 2016).

¹¹⁶⁴ *Ibid*, 7.

¹¹⁶⁵ EASO, 'EASO guidance on reception conditions: operational standards and indicators' (EASO September 2016), 8.

¹¹⁶⁶ European Commission, Proposal for a Directive laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf.

¹¹⁶⁷ Thirty-first Amendment of the Constitution (Children) Act, 2012 (Ireland 2015)

¹¹⁶⁸ Emphasis added.

¹¹⁶⁹ Alan D.P. Brady, "Children's Rights Alliance Seminar 6 (December 2018), at para 28, available at: https://www.childrensrights.ie/sites/default/files/submissions_reports/files/Alan%20DP%20Brady%20-%20Childrens%20Constitutional%20Rights%20-%206%20Dec%202018.pdf.

¹¹⁷⁰ Convention on the Rights of the Child' (UN General Assembly 9 February 1990) art. 2(1).

¹¹⁷¹ *Ibid*, art. 3(1).

¹¹⁷² *Ibid*, art. 6(1).

¹¹⁷³ *Ibid*, art. 31(1).

¹¹⁷⁴ European Communities (Reception Conditions) Regulations 2018, SI 230/2018.

¹¹⁷⁵ *NHV v Minister for Justice and Equality* [2017] IESC 35.

¹¹⁷⁶ European Communities (Reception Conditions) Regulations 2018, SI 230/2018, Regulation 11 and Regulation 14.

a reception centre;¹¹⁷⁷ and the statutory requirement to conduct vulnerability assessments.¹¹⁷⁸ The Reception Conditions Regulations also explicitly protect the asylum-seeking child's right to education on an equal basis to citizen children¹¹⁷⁹ and access to healthcare.¹¹⁸⁰

(3) EU Reception Conditions Directive (recast)

The RCD (recast) aims to harmonise reception conditions within the EU by laying down minimum standards for the reception of applicants for international protection in Member States. Under the RCD (recast), Member States should ensure that the material reception conditions provided to asylum seekers, which include inter alia, housing, food and clothing provided in-kind, or as financial allowances,¹¹⁸¹ thus providing an adequate standard of living.¹¹⁸²

The RCD (recast) should be applied in accordance with the best interests of the child principle, and the principle of family unity.¹¹⁸³ In accordance with Recital 9 of the RCD (recast),¹¹⁸⁴ upon applying the directive Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union (CFREU),¹¹⁸⁵ the Convention on the Rights of the Child,¹¹⁸⁶ and the European Convention for the Protection of Human Rights and Fundamental Freedoms¹¹⁸⁷ respectively. As outlined the RCD (recast) also provides for the education of minors,¹¹⁸⁸ as well as recognising minors as vulnerable persons and thus requiring a vulnerability assessment so as to identify and accommodate special reception needs.¹¹⁸⁹

In July 2016 the European Commission presented a proposal to revise the RCD (recast) in order to achieve further harmonisation of reception conditions within the EU.¹¹⁹⁰ A common definition of reception conditions for all asylum seekers is proposed, together with the right to work within six months after lodging an application, and increased education rights for minors.¹¹⁹¹ Little progress has been made on reform negotiations since 2019,¹¹⁹² and it remains unclear whether Ireland would opt-in to a revised version of the RCD (recast) directive.

¹¹⁷⁷ *Ibid*, Regulation 7. Family Unity in 7(2)(a); provisions that are specific to minors, including family unity in 7(3)(a) , also 7(3)(b) is relevant and should not be omitted here.

¹¹⁷⁸ *Ibid*, Regulation 8. Reg 8 (9) Best interests of child, 'minors' specific provisions, should be elaborated on.

¹¹⁷⁹ *Ibid*, Regulation 17.

¹¹⁸⁰ *Ibid*, Regulation 18.

¹¹⁸¹ Directive 2013/33/EU RCD (recast), article 2(g) "'material reception conditions': means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance"

¹¹⁸² Directive 2013/33/EU RCD (recast), art 17(2).

¹¹⁸³ Directive 2013/33/EU RCD (recast), art 12, 23(1).

¹¹⁸⁴ Directive 2013/33/EU RCD (recast), recital 9.

¹¹⁸⁵ Charter of Fundamental Rights of the European Union [2000] OJ C364/1.

¹¹⁸⁶ Convention on the Rights of the Child' (UN General Assembly 9 February 1990).

¹¹⁸⁷ European Convention on Human Rights (as amended)' (Council of Europe 1 June 2010).

¹¹⁸⁸ *Ibid*, art 14.

¹¹⁸⁹ *Ibid*, art 21 and 22 (assessment is article 22).

¹¹⁹⁰ *Supra*, footnote 30

¹¹⁹¹ European Commission, Proposal for a Directive laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf>

¹¹⁹² 'Legislative Train: Reform of the Reception Conditions Directive' (European Parliament December 2019) available at: <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-jd-reform-of-the-reception-conditions-directive/12-2019>>.

(4) Charter of Fundamental Rights of the European Union

The CFREU¹¹⁹³ was set down as a declaration in 2000 and became legally binding in December 2009. The CFREU provisions apply where the national authorities of Member States are implementing EU law.¹¹⁹⁴ Ireland is therefore required to ensure that asylum law applied in accordance with EU directives into which it has opted, such as the transposed RCD (recast), are compatible with the CFREU.

Specific rights under the CFREU applicable to children in Direct Provision include, inter alia, the right to the integrity of a person,¹¹⁹⁵ the right to respect for private and family life,¹¹⁹⁶ the right to education,¹¹⁹⁷ and the right to access health care.¹¹⁹⁸ CFREU also contains a 'guaranteed' right to asylum.¹¹⁹⁹ However, this provision is not considered to grant protections beyond those afforded under the Refugee Convention.¹²⁰⁰ This right may nonetheless be significant with regard to delays in processing asylum applications in Ireland, which delays the granting of refugee status and its associated protections to applicants, and results in applicants residing in Direct Provision for prolonged periods.

Article 24 CRFEU is dedicated specifically to the rights of the child, including the right to protection and care necessary for the child's wellbeing,¹²⁰¹ the right for the child to express their views freely,¹²⁰² the child's right to maintain a personal relationship and direct contact with both parents on a regular basis,¹²⁰³ and that the best interests of the child to be a primary consideration in all actions taken by public or private institutions.¹²⁰⁴ In addition, Article 3(3) of the Treaty on European Union commits to promoting the protection of children's rights.¹²⁰⁵

(5) European Convention on Human Rights

Ireland ratified the European Convention on Human Rights¹²⁰⁶ (ECHR) in 1953. Although this Convention does not explicitly address the child or asylum seekers, the rights and freedoms contained therein are accessible to 'everyone' within the jurisdiction of a state party.¹²⁰⁷ Rights set out in the ECHR can be enforced by the European Court of Human Rights (ECtHR). Specific rights applicable to children in Direct Provision are the right to respect for private and family life¹²⁰⁸ and the right to education,¹²⁰⁹ both of which should be applied in accordance with the principle of non-

¹¹⁹³ Charter of Fundamental Rights of the European Union [2000] OJ C364/1.

¹¹⁹⁴ *Ibid*, art 51(1).

¹¹⁹⁵ Charter of Fundamental Rights of the European Union [2000] OJ C364/1, art. 3.

¹¹⁹⁶ *Ibid*, art. 7.

¹¹⁹⁷ *Ibid*, art. 14.

¹¹⁹⁸ *Ibid*, art. 35.

¹¹⁹⁹ *Ibid*, art. 18. 'The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as "the Treaties").'

¹²⁰⁰ Noll G, Fagerlund J, and Liebaut F, 'Study on the Feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common European Procedure' (Danish Centre for Human Rights and European Commission 2002) 36 available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/asylumstudy_dchr_2002_en_en.pdf.

¹²⁰¹ *Ibid*, art. 24(1).

¹²⁰² *Ibid*, art. 24(1).

¹²⁰³ *Ibid*, art. 24(3).

¹²⁰⁴ *Ibid*, art. 24(2).

¹²⁰⁵ Treaty on European Union [2008] OJ 1 115/13, art 3(3).

¹²⁰⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 ('ECHR') (CoE) (3 September 1953) ETS 5.

¹²⁰⁷ *Ibid*, art. 1.

¹²⁰⁸ *Ibid*, art. 8.

¹²⁰⁹ *Ibid*, art. 2 of protocol 1.

discrimination.¹²¹⁰ Although the ECHR lacks a specific right to health, the ECtHR has considered this in accordance with the right to life,¹²¹¹ and the right to physical integrity.¹²¹² Additionally, where rights enshrined in the CFREU correspond with the ECHR, the meaning and scope of such rights shall be the same as those laid down by the ECHR.¹²¹³

The European Convention on Human Rights Act 2003 (ECHR Act) gives effect to the standards set out in the ECHR in domestic law.¹²¹⁴ The ECHR Act does not incorporate the ECHR into domestic law but instead places obligations on the judiciary and public bodies. The Irish courts are required to interpret law and practice in a manner compatible with the ECHR, with the Constitution taking primacy.¹²¹⁵ In addition, decisions of the ECtHR may be used in arguments before the Irish Courts.¹²¹⁶ The ECHR Act requires every organ of the State to perform its functions in a manner compatible with Ireland's obligations under the ECHR.¹²¹⁷

(6) European Social Charter

The European Social Charter (ESC) and its revised version (hereafter 'ESC system') are Council of Europe treaties which guarantees fundamental social and economic rights complementing the civil and political rights protected by the ECHR.¹²¹⁸ Ireland ratified the European Social Charter on in October 1964, and the Revised European Social Charter in November 2000, accepting 92 of the 98 paragraphs of the Revised Charter. While the ESC system does not have domestic effect, Ireland is bound in international law¹²¹⁹ to respect protect and fulfil the rights under the ESC. Implementation of the European Social Charter is monitored by the European Committee of Social Rights (ECSR). This monitoring process includes a reporting system¹²²⁰ and a collective complaints procedure.¹²²¹

Provisions of the ESC system related to children's rights which Ireland has accepted include special protection against physical and moral hazards,¹²²² and social, legal and economic protection.¹²²³ Additional relevant provisions include protection of health,¹²²⁴ and social, legal and economic protection for families.¹²²⁵

The European Committee of Social Rights confirmed in 2015 that the personal scope of the ESC system includes refugees and asylum seekers.¹²²⁶ The Committee has also stated that refugee and asylum-

¹²¹⁰ *Ibid*, art. 14.

¹²¹¹ *Ibid*, art. 2.

¹²¹² *Ibid*, art. 8. See *Oyal v. Turkey*, App No 4864/05 [ECHR, 2010]; *Iliya Petrov v Bulgaria* App No 19202/03 [ECHR, 2012]; Centre for Legal Resources on behalf of Valentin Campeanu v Romani App No 47848/08 [ECHR GA 2014].

¹²¹³ Charter of Fundamental Rights of the European Union [2000] OJ C364/1, art 52(3).

¹²¹⁴ European Convention on Human Rights Act 2003.

¹²¹⁵ *Ibid*, s 2.

¹²¹⁶ *Ibid*, s 4.

¹²¹⁷ *Ibid*, s 3.

¹²¹⁸ Together, the Charter and its revised version are known as the 'ESC system'. See: Council of Europe (COE), European Social Charter (ESC) (18 October 1961) ETS 35. Council of Europe (COE), European Social Charter (Revised) (3 May 1996) ETS 163.

¹²¹⁹ See following subsection 7-10 regarding the State's international obligations.

¹²²⁰ European Social Charter (CoE) (18 October 1961) ETS 35, arts 21 – 29. For more on this see 'Reporting system of the European Social Charter' *Council of Europe* available at: <https://www.coe.int/en/web/european-social-charter/national-reports>.

¹²²¹ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (COE) (09 November 1995) ETS 158. For more on the collective complaints procedure see 'Collective complaints procedure' *Council of Europe* available at: <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>.

¹²²² Council of Europe (COE), European Social Charter (ESC) (18 October 1961) ETS 35, art. 7(10).

¹²²³ *Ibid*, art. 17.

¹²²⁴ *Ibid*, art. 11.

¹²²⁵ *Ibid*, art. 11.

¹²²⁶ European Social Rights Committee 'Conclusions 2015 – Statement of Interpretation – The Rights of Refugees under the Charter' 08 October 2015 Doc 2015_163_10/EN available at: http://hudoc.esc.coe.int/eng/?i=2015_163_10/EN.

The ESCR states that, having regard to the definition of a refugee as per the 1951 Convention, 'the protection of a refugee under the CSR

seeking children must be accorded the same treatment as national children in relation to elementary education,¹²²⁷ social and medical assistance,¹²²⁸ protection against poverty and social exclusion,¹²²⁹ and access to healthcare.¹²³⁰

States may refuse to accept certain provisions of the ESC and must update the Committee of Ministers of the Council of Europe every five years after ratification on non-accepted provisions. Non-accepted provisions by Ireland of relevance to children in Direct Provision include: Article 27(1)(c) which requires the State to develop or promote child day care services or other childcare arrangements and Article 31 which provides for a right to housing.¹²³¹

(7) UN Convention on the Rights of the Child 1989

Ireland ratified the UN Convention on the Rights of the Child (CRC) in 1992, and therefore Ireland has an obligation under international law to 'respect and ensure' rights enshrined in the CRC 'to each child within their jurisdiction without discrimination of any kind'.¹²³²

To successfully implement the CRC, the Committee on the Rights of the Child (CRC) has called on States to develop a child rights perspective throughout Government, parliament and the judiciary in light of the four overarching principles therein; non-discrimination,¹²³³ the best interests of the child,¹²³⁴ the right to survival and development,¹²³⁵ and the right of the child to express their views.¹²³⁶

In addition to the general principles outlined above, specific rights in the CRC that affect children in Direct Provision, and thus will be considered in this report, including the right to play,¹²³⁷ the right to the highest attainable standard of health,¹²³⁸ the right to education,¹²³⁹ and the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,¹²⁴⁰ with particular regard to nutrition, clothing and housing.¹²⁴¹

While the UNCRC is not fully incorporated into Irish law, Ireland remains under its international obligations to respect, protect and fulfil the rights of the child. In addition, as aforementioned, the RCD (recast) should be applied in accordance with, *inter alia*, the UNCRC.

[1951 Convention], and his or her resultant protection under the Charter, does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum.'

¹²²⁷ Council of Europe (COE), European Social Charter (ESC) (18 October 1961) ETS 35, art. 17(1).

¹²²⁸ *Ibid*, art. 13.

¹²²⁹ *Ibid*, art. 30.

¹²³⁰ *Ibid*, art. 11. See: European Social Rights Committee 'Conclusions 2015 – Statement of Interpretation – The Rights of Refugees under the Charter' 08 October 2015 Doc 2015_163_10/EN available at: http://hudoc.esc.coe.int/eng/?i=2015_163_10/EN.

The ESCR states that, having regard to the definition of a refugee as per the 1951 Convention, 'the protection of a refugee under the CSR [1951 Convention], and his or her resultant protection under the Charter, does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum.'

¹²³¹ 'Third Report on Non-Accepted Provisions of the European Social Charter: Ireland' 6 May 2016 available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066b9a2>.

¹²³² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 available at: <https://www.refworld.org/docid/3ae6b38f0.html>.

¹²³³ *Ibid*, art. 2.

¹²³⁴ *Ibid*, art. 3(1).

¹²³⁵ *Ibid*, art. 6.

¹²³⁶ *Ibid*, art. 12.

¹²³⁷ *Ibid*, art. 31.

¹²³⁸ *Ibid*, art. 24.

¹²³⁹ *Ibid*, art. 28.

¹²⁴⁰ *Ibid*, art. 27(1).

¹²⁴¹ *Ibid*, art. 27(3).

(8) International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by Ireland in 1989.¹²⁴² Rights therein relevant to the situation of children living in Direct Provision include the right to social security,¹²⁴³ the right to an adequate standard of living,¹²⁴⁴ the right to the enjoyment of the highest attainable standard of mental and physical health,¹²⁴⁵ and the right to education.¹²⁴⁶ All of these rights are to be enjoyed in accordance with the principle of non-discrimination.¹²⁴⁷ States parties are required to report to the UN Committee on Economic, Social and Cultural Rights in respect of progress made in the protection and fulfilment of Covenant rights. As Ireland has a dualist legal system, legislation must be passed to make ICESCR rights justiciable.

(9) The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was ratified by Ireland in 1989.¹²⁴⁸ The rights therein relevant to children living in Direct Provision include the right to life,¹²⁴⁹ and the right to freedom from cruel, inhuman or degrading treatment.¹²⁵⁰ States are required to report to the UN Human Rights Committee regarding progress concerning the implementation of the rights contained within the ICCPR.

(10) UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Ireland ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 2002.¹²⁵¹ UNCAT obliges State parties to prevent acts of cruel, inhuman or degrading treatment or punishment, where such acts are committed by or with the consent or acquiescence of a public official or another person acting in an official capacity.¹²⁵²

(11) General Comments

General Comments are the United Nations human rights treaty bodies' comprehensive interpretation of human rights treaty provisions, thematic issues or its methods of work. General Comments clarify the reporting duties of State parties with respect to particular provisions and propose approaches to implementing treaty provisions.¹²⁵³ General Comments are referred to throughout this report, where clarification on the State's obligations towards children living in Direct Provision is required.

C. Key Actors and Institutions

¹²⁴² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html>

¹²⁴³ *Ibid*, art. 9.

¹²⁴⁴ *Ibid*, art. 11(1).

¹²⁴⁵ *Ibid*, art. 12(1).

¹²⁴⁶ *Ibid*, art. 13(1).

¹²⁴⁷ *Ibid*, art. 2(2).

¹²⁴⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

¹²⁴⁹ *Ibid*, art. 6(1).

¹²⁵⁰ *Ibid*, art. 7.

¹²⁵¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html>

¹²⁵² *Ibid*, art. 16(1).

¹²⁵³ 'OHCHR | Human Rights Treaty Bodies - General Comments', available at: <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

4.4.4.1 (1) Reception and Integration Agency (RIA)

RIA is the governmental body responsible for providing accommodation and ancillary services to persons seeking international protection in Ireland.¹²⁵⁴ While referred to as an agency RIA was not formally established as an agency and operated within the Department of Justice and Equality under a Principal Officer.¹²⁵⁵

Child and Family Services Unit

The Child and Family Services Unit, under RIA, is responsible for monitoring the implementation of the RIA Child Protection Policy.¹²⁵⁶ The Unit is tasked with ensuring child protection and child welfare procedures are followed in Direct Provision centres, providing advice and support to Direct Provision centres, and recording child protection and child welfare concerns referred by staff at a Direct Provision centre.¹²⁵⁷ The Child and Family Services Unit is also responsible for coordinating the Garda Vetting of staff directly employed at Direct Provision centres.¹²⁵⁸

According to RIA's website, the Child and Family Services Unit should comprise two junior civil servants and a manager, to be seconded from the HSE and have expertise in the area of child welfare and protection. The position of manager is, according to the website, currently vacant.¹²⁵⁹

Education Unit

The primary functions of the Education Unit include ensuring all children aged from 6 – 16 years of age and living in RIA centres are enrolled in school, ensuring school attendance of children living in Direct Provision centres, organising transport to and from school, and liaising with school principles.¹²⁶⁰

(2) Child and Family Agency (Tusla)

The Child and Family Agency (Tusla) was established under the Child and Family Agency Act 2013. Tusla has no statutory obligations with regard to Direct Provision centres, or children living in Direct Provision. General functions of Tusla which also relate to children living in Direct Provision include the duty to support and promote the development, welfare and protection of children,¹²⁶¹ to support and encourage the effective functioning of families,¹²⁶² and to maintain and develop support services related to these functions.¹²⁶³

¹²⁵⁴ RIA was established in April 2001 following a merging of the Directorate for Asylum Seekers (DASS) responsible for dispersal of asylum seekers within the Department of Justice and Equality and The Refugee Agency which was responsible for coordinating the reception of programme refugees under the Department of Foreign Affairs.

¹²⁵⁵ The Reception and Integration Agency (RIA) has now been divided into two sections; the International Protection Accommodation Services (IPAS) and the International Protection Procurement Services (IPPS), see: Dáil Deb 15 October 2019, vol 987, no. 7, PQ 252 available at: <https://data.oireachtas.ie/ie/oireachtas/debateRecord/dail/2019-10-15/writtens/mul@/main.pdf>. RIA was established in April 2001 following a merging of the Directorate for Asylum Seekers (DASS) responsible for dispersal of asylum seekers within the Department of Justice and Equality and The Refugee Agency which was responsible for coordinating the reception of programme refugees under the Department of Foreign Affairs. As much of this report's research relies on documents prior to this change this report will refer to RIA for consistency and simplicity.

¹²⁵⁶ 'Child Welfare FAQs' *Reception and Integration Agency* available at: <http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs>.

¹²⁵⁷ Department of Justice and Equality, 'Child Protection and Welfare Policy Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department of Justice and Equality', (May 2018) 67.

¹²⁵⁸ 'About RIA: Units' *Reception and Integration Agency* available at: <http://www.ria.gov.ie/en/RIA/Pages/Units>.

¹²⁵⁹ 'Child Welfare FAQs' *Reception and Integration Agency* available at: <http://www.ria.gov.ie/en/RIA/Pages/Child_Welfare_FAQs>.

¹²⁶⁰ 'About RIA: Units' *Reception and Integration Agency* available at: <http://www.ria.gov.ie/en/RIA/Pages/Units>.

¹²⁶¹ Child and Family Agency Act 2013, s 8(1)(b).

¹²⁶² *Ibid*, s 8(1)(c).

¹²⁶³ *Ibid*, s 8(1)(d).

Section 10(1) of the Child and Family Agency Act 2013 states that ‘if any function of a public body should, in its opinion, be performed[...] by the Agency is able and willing to perform the function, the Agency and the public body may enter into an agreement for the Agency to perform the function on the public body’s behalf’.¹²⁶⁴ Specific duties of other public bodies, which in the context of Direct Provision may include monitoring and inspections of centres, may also be carried out by Tusla.¹²⁶⁵ Despite this statutory caveat, Tusla has no direct role either in the drafting or oversight of the policies, or in the vetting and management of centres accommodating families with children.

Any child in the State may be referred to Tusla, where a child protection or child welfare concern arises. Children living in Direct Provision are referred to Tusla at a disproportionately high rate; in 2014 14% of children living in Direct Provision were referred to the Agency’s services, compared to a referral rate of only 1.6% among the general population.¹²⁶⁶ Under the Child and Family Agency Act 2013, Tusla is obliged to undertake or commission research into matters related to its functions.¹²⁶⁷ Despite children living in Direct Provision comprising a large proportion of Tusla’s caseload, Tusla’s website features no reports or publications pertaining to children or families resident in Direct Provision. In its 2018 Annual Report, Tusla references unaccompanied asylum-seeking minors only.¹²⁶⁸ The Report does not mention vulnerability assessments, or children and families living in Direct Provision.¹²⁶⁹

4.4.4.2 (3) Health Information and Quality Authority (HIQA)

The Health Information and Quality Authority (HIQA) is an independent inspection and monitoring authority which promotes ‘safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public’.¹²⁷⁰ HIQA exercises its regulatory powers and monitoring activities under the Health Act 2007.¹²⁷¹ Its functions include monitoring of compliance with standards,¹²⁷² investigation,¹²⁷³ review of and recommendations for services,¹²⁷⁴ and accreditation.¹²⁷⁵

Section 2(1)(b)(ii) of the Health Act 2007 excludes ‘an institution managed by or on behalf of a Minister of the Government’ from the Act’s remit. As Direct Provision centres are contracted out and privately managed on behalf of the Minister for Justice and Equality, they do not come within the scope of the Act. Therefore, Direct Provision centres do not come within the scope of HIQA’s regulation, inspection and monitoring powers. Emergency accommodation centres are also excluded from HIQA’s remit.

Under Section 8(1)(c) of the Health Act 2007, HIQA is responsible for monitoring the quality of service provided by the Child and Family Agency. Under this remit, HIQA produced a report in 2014 concerning the standard of child protection and welfare services provided by Tusla to children living in Direct

¹²⁶⁴ *Ibid*, s 10(1).

¹²⁶⁵ *Ibid*, s 11(1).

¹²⁶⁶ Health Information and Quality Authority (HIQA), ‘Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007’ (HIQA 2014) available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>>.3.

¹²⁶⁷ Child and Family Agency Act 2013, s 8(1)(f).

¹²⁶⁸ Tusla, ‘Tusla Annual Report 2018’ (2018). Unaccompanied asylum-seeking minors are placed in State care, as coordinated by Tusla. These children do not reside in Direct Provision centres.

¹²⁶⁹ *Ibid*.

¹²⁷⁰ Health Act 2007, s 7.

¹²⁷¹ *Ibid*, s 6(1).

¹²⁷² *Ibid*, s 8(c).

¹²⁷³ *Ibid*, s 8(d).

¹²⁷⁴ *Ibid*, s 8(e).

¹²⁷⁵ *Ibid*, s 8(f).

Provision.¹²⁷⁶ This report highlighted welfare concerns for children due to cramped living conditions, sharing of communal bathrooms with strangers and not experiencing ordinary family life.¹²⁷⁷

4.4.4.3 (4) Office of the Ombudsman and the Ombudsman for Children

The Office of the Ombudsman is an independent body, providing for the examination of complaints against public service providers. Providing a free public service that is 'open and accountable,' the Ombudsman's objective is to examine complaints in a 'fair, independent and impartial way'.¹²⁷⁸ Established under the Ombudsman Act of 1980,¹²⁷⁹ the Ombudsman's Office operates under this Act and its subsequent amendments.¹²⁸⁰ When a complaint is made, the Ombudsman may or may not decide to investigate further. Should an investigation be carried out, a statement of the results of the investigation will be provided in writing to those concerned.¹²⁸¹ Particularly complex complaints, or those which carry wider significance to the public domain, may be published in an investigation report, detailing the findings and recommendations of the Ombudsman.¹²⁸² Following the recommendations of the McMahon Working Group, the Ombudsman's remit was extended to allow for the examination of complaints from residents in Direct Provision centres.¹²⁸³ The Department of Justice and Equality agreed for the Office to formally accept complaints from 3 April 2017.¹²⁸⁴ The Ombudsman has subsequently published three reports on Direct Provision.¹²⁸⁵

The Office of the Ombudsman for Children was established under the Ombudsman for Children Act of 2002.¹²⁸⁶ Functioning similarly to the Office of the Ombudsman, it investigates complaints about services provided to children by public organisations.¹²⁸⁷ Complaints can be made by a child,¹²⁸⁸ a child's parent,¹²⁸⁹ or any other person considered suitable by the Ombudsman for Children by virtue of their relationship with the child, and his/her interest in the child's rights and welfare.¹²⁹⁰ The Office's remit was extended to including children living in Direct Provision in April 2017.¹²⁹¹

¹²⁷⁶ Health Information and Quality Authority (HIQA), 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' (HIQA 2014) available at: <https://static.rasset.ie/documents/news/hiqa-report-on-child-protection-and-welfare-services.pdf>.

¹²⁷⁷ *Ibid*, 15.

¹²⁷⁸ Office of the Ombudsman, <<https://www.ombudsman.ie/about-us/who-we-are/>> accessed 12 June 2020.

¹²⁷⁹ Ombudsman Act 1980.

¹²⁸⁰ Office of the Ombudsman, <<https://www.ombudsman.ie/about-us/the-ombudsman-act-and-amendments/>>

¹²⁸¹ Ombudsman Act 1980, s 2(a)(b)(c)(d).

¹²⁸² 'Reports' (Ombudsman, no date) < <https://www.ombudsman.ie/publications/reports/>> accessed 12 June 2020.

¹²⁸³ Working Group on the Protection Process, 'Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers: Final Report' (June 2015) para 4.135, available at: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>. Office of the Ombudsman, 'The Ombudsman & Direct Provision: The story so far. A commentary by the Ombudsman' (2018) 7, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-and-direct/Direct-Provision-Commentary.pdf>.

¹²⁸⁴ *Ibid*.

¹²⁸⁵ Office of the Ombudsman, 'The Ombudsman & Direct Provision: The story so far. A commentary by the Ombudsman' (2018) available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-and-direct/Direct-Provision-Commentary.pdf>; Office of the Ombudsman, 'The Ombudsman and Direct Provision: An Update for 2018' (2019) available at <https://www.ombudsman.ie/downloads/Direct-Provision-2018.pdf>; Office of the Ombudsman, 'The Ombudsman and Direct Provision: An Update for 2019' (2020) available at <https://www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf>.

¹²⁸⁶ Ombudsman for Children Act 2002.

¹²⁸⁷ *Ibid*, S 8.

¹²⁸⁸ *Ibid*, S 10(c)

¹²⁸⁹ *Ibid*, S 10(b)(i)

¹²⁹⁰ *Ibid*, S 10(b)(ii)

¹²⁹¹ 'Ombudsman for Children can now investigate complaints from those in Direct Provision,' (*Ombudsman for Children*, 3 April 2017) < <https://www.oco.ie/news/ombudsman-children-can-now-investigate-complaints-direct-provision/>> accessed 12 June 2020.

Through the statutory complaints function, the Ombudsman for Children has engaged with children and families in Direct Provision through visits to centres, and conduct of outreach complaints clinics.¹²⁹² Between April 2017 and December 2018, approximately 40 complaints were made on behalf of children living in Direct Provision.¹²⁹³ However, while the number of complaints is low, the Ombudsman for Children believes that this is due to residents' perception that making a complaint could negatively impact their living conditions or lead to a transfer.¹²⁹⁴

The Ombudsman and the Ombudsman for Children work collaboratively, discussing their approach to issues noticed in Direct Provision centres.¹²⁹⁵ To maximise their reach, each Office takes complaints relevant to the other's remit and transfers them for action.¹²⁹⁶ Together, the two Offices are the only bodies that currently provide independent oversight of Direct Provision.¹²⁹⁷

¹²⁹² The Ombudsman for Children Office, 'Oireachtas Committee on Justice and Equality: Examination of Direct Provision and the International Protection Application Process' (Ombudsman for Children Office May 2019) 3, available at: <https://www.oco.ie/app/uploads/2019/06/Ombudsman-for-Children-submission-on-Direct-Provision.pdf>

¹²⁹³ *Ibid.*

¹²⁹⁴ *Ibid.*, 3-4.

¹²⁹⁵ Office of the Ombudsman, 'The Ombudsman & Direct Provision: The story so far. A commentary by the Ombudsman' (2018) 8, available at: <https://www.ombudsman.ie/publications/reports/the-ombudsman-and-direct/Direct-Provision-Commentary.pdf>.

¹²⁹⁶ *Ibid.*

¹²⁹⁷ Office of the Ombudsman, 'The Ombudsman and Direct Provision: An Update for 2018' (2019) available at <https://www.ombudsman.ie/downloads/Direct-Provision-2018.pdf>

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