

# Civil Society Alternative Report

in response to the Fifth and Sixth Combined Report of Ireland  
under the UN Convention on the Rights of the Child

15 August 2022



Founded in 1995, the Children's Rights Alliance unites over 140 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)  
Alcohol Action Ireland  
Amnesty International Ireland  
An Cosán  
Aoibhneas  
AsIAm  
Association of Secondary Teachers Ireland (ASTI)  
ATD Fourth World – Ireland Ltd  
Atheist Ireland  
Barnardos  
Barretstown Camp  
Bedford Row Family Project  
BeLonG To Youth Services  
Blossom Ireland  
Bodywhys  
Catholic Guides of Ireland  
Child Law Project  
Childhood Development Initiative  
Childminding Ireland  
Children in Hospital Ireland  
Children's Books Ireland  
Children's Grief Centre  
Clarecare  
COPE Galway  
Cork Life Centre  
Cork Migrant Centre  
Crann Centre  
Crosscare  
CyberSafeKids  
Cycle Against Suicide  
Dalkey School Project National School  
Daughters of Charity Child and Family Service  
Dental Health Foundation of Ireland  
Department of Occupational Science and Occupational Therapy, UCC  
Disability Federation of Ireland  
Doras  
Down Syndrome Ireland  
Dublin Rape Crisis Centre  
Dyslexia Association of Ireland  
Dyspraxia/DCD Ireland  
Early Childhood Ireland  
Early Learning Initiative (National College of Ireland)  
Educate Together  
EPIC  
Equality for Children  
Extern Ireland  
FamiliBase  
Féach  
Focus Ireland  
Foróige  
Gaelscoileanna Teo  
Galway Traveller Movement  
Good Shepherd Cork  
Helium Arts  
Immigrant Council of Ireland  
Inclusion Ireland  
Institute of Guidance Counsellors  
Irish Aftercare Network  
Irish Association for Infant Mental Health  
Irish Association of Social Workers  
Irish Congress of Trade Unions (ICTU)  
Irish Council for Civil Liberties (ICCL)  
Irish Foster Care Association  
Irish Girl Guides  
Irish Heart Foundation  
Irish National Teachers Organisation (INTO)  
Irish Penal Reform Trust  
Irish Primary Principals' Network  
Irish Refugee Council  
Irish Second Level Students' Union (ISSU)  
Irish Society for the Prevention of Cruelty to Children  
Irish Traveller Movement

Irish Youth Foundation  
iScoil  
Jack and Jill Children's Foundation  
Jigsaw  
Katharine Howard Foundation  
Kids' Own Publishing Partnership  
Kinship Care  
Leap Ireland  
Let's Grow Together! Infant and Childhood Partnerships CLG.  
LGBT Ireland  
Mecpaths  
Mental Health Reform  
Mercy Law Resource Centre  
Migrant Rights Centre Ireland  
Mothers' Union  
My Mind  
My Project Minding You  
Museum of Childhood Ireland  
Music Generation  
New Directions  
National Childhood Network  
National Council for the Blind of Ireland  
National Forum of Family Resource Centres  
National Parents Council Post Primary  
National Parents Council Primary  
National Youth Council of Ireland  
Novas  
One Family  
One in Four  
Parents Plus  
Pavee Point  
Peter McVerry Trust  
Prevention and Early Intervention Network  
Psychological Society of Ireland  
Rainbow Club Cork  
Rainbows Ireland  
Rape Crisis Network Ireland (RCNI)  
Realt Beag/Ballyfermot Star  
Respond Housing  
SAFE Ireland  
Saoirse Housing Association  
SAOL Beag Children's Centre  
Scouting Ireland  
School of Education UCD  
Sexual Violence Centre Cork  
SIPTU  
Simon Communities of Ireland  
Social Care Ireland  
Society of St. Vincent de Paul  
SPHE Network  
SpunOut.ie  
St. Nicholas Montessori College  
St. Nicholas Montessori Teachers' Association  
St. Patrick's Mental Health Services  
TASC  
Teachers' Union of Ireland  
Terenure College Rugby Football Club  
Transgender Equality Network Ireland  
The Anne Sullivan Foundation  
The Ark, A Cultural Centre for Children  
The Irish Red Cross  
The UNESCO Child and Family Research Centre, NUI Galway  
Traveller Visibility Group Ltd  
Treoir  
UNICEF Ireland  
Variety – the Children's Charity of Ireland  
Women's Aid  
Youngballymun  
Young Social Innovators  
Youth Advocate Programme Ireland (YAP)  
Youth Work Ireland

### Children's Rights Alliance

7 Red Cow Lane, Smithfield, Dublin 7, Ireland

Ph: +353 1 662 9400

Email: [info@childrensrights.ie](mailto:info@childrensrights.ie)

[www.childrensrights.ie](http://www.childrensrights.ie)

## Contents

|                                                                                                      |    |
|------------------------------------------------------------------------------------------------------|----|
| Acknowledgements.....                                                                                | ii |
| I. New Developments.....                                                                             | 3  |
| II. Rights under the Convention and its Optional Protocols .....                                     | 4  |
| A. General measures of implementation (arts. 4, 42 and 44 (6)) .....                                 | 4  |
| B. General principles (arts. 2, 3, 6 and 12).....                                                    | 6  |
| C. Civil rights and freedoms (arts. 7, 8, 13-17).....                                                | 10 |
| D. Violence against children (arts 19, 24(3), 28(2), 34, 37(a), 39) .....                            | 15 |
| E. Family environment and alternative care (arts. 5, 9–11, 18 (1) and (2), 20, 21, 25 and 27 (4))... | 21 |
| F. Children with Disabilities (art. 23).....                                                         | 29 |
| G. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33) .....                       | 33 |
| H. Education, play leisure and cultural activities (arts. 28–31).....                                | 48 |
| I. Special protection measures (art. 22, 30, 32, 33, 35, 36, 37 (b)–(d), 38 - 40) .....              | 55 |
| III. Appendix 1 – List of Contributors .....                                                         | 65 |

## Acknowledgements



The Children's Rights Alliance wishes to thank all those who contributed to researching and compiling this report.

This Report has been prepared by the Children's Rights Alliance on behalf of its members, a large and diverse range of civil society organisations and individuals. A written consultation on the Alternative Report took place in July 2022 and thematic focus groups were held in relation to children with disabilities and Traveller and Roma children and young people. We are particularly grateful to our members and other stakeholders who contributed their time and expertise to support the development of this report. A full list can be found in Appendix 1.

The Children's Rights Alliance would like to express our sincere thanks the project funders:

- Community Foundation for Ireland
- Katherine Howard Foundation
- Pobal, SSNO
- Rethink Ireland
- The Department of Children, Equality, Disability, Integration and Youth

## I. New Developments

1. **Brexit:** The United Kingdom (UK) has officially left the European Union (EU). Its departure will have serious ramifications for the protection of children's rights on the island of Ireland. The UK Government plans to repeal the Human Rights Act 1998, a move which will undermine the Good Friday/Belfast Agreement (a political agreement between the Irish and British Governments)<sup>1</sup> and threaten peace on the island of Ireland.<sup>2</sup> It will also adversely affect the rights of EU citizens living in the North and EU derived rights which children and young people currently enjoy, for example non-discrimination protections.<sup>3</sup> A national dialogue has begun on the future of the island of Ireland and the Irish Government has created a Shared Island Unit that sits within the Department of An Taoiseach.<sup>4</sup>
2. **Recommendation:** The Committee is urged to recommend that the State makes every effort to ensure that the commitments in the Good Friday/Belfast Agreement are upheld and that any North/ South initiatives and any initiatives on the future of the island take account of, and are shaped by, children and young people's views.

---

1 The Good Friday Agreement, which is also known as the Belfast Agreement, was signed on Good Friday, 10 April 1998. It consists of two closely related agreements, the British-Irish Agreement and the Multi-Party Agreement. It led to the establishment of a system of devolved government in Northern Ireland and the creation of many new institutions such as the Northern Ireland Assembly and Executive, the North South Ministerial Council and the British-Irish Council. The Good Friday Agreement placed a renewed emphasis on human rights, in particular, the European Convention on Human Rights which to that point had not been legislated for in Ireland or the UK. Both countries subsequently incorporated the Convention into national law. The British government incorporated the European Convention on Human Rights (ECHR) into the domestic law of Northern Ireland through the Human Rights Act 1998. It also introduced the additional power to strike down legislation by the Stormont Assembly if it did not conform to the ECHR.

2 Bill of Rights Bill 2022 <<https://bit.ly/3bK5rSC>> accessed 27 July 2022. This was recently observed by Council of Europe Commissioner for Human Rights, Dunja Mijatović, who noted that of the repeal of the Human Rights Act, "it is worrying that the proposed legal reforms might weaken human rights protections at this pivotal moment for the UK," noting in particular of the Belfast/Good Friday Agreement that, "it is crucial that this foundation is not undermined as a result of the proposed human rights reforms." Council of Europe Commissioner for Human Rights, 'United Kingdom: Backsliding on Human Rights must be Prevented' <<https://bit.ly/3PgXVME>> accessed 27 July 2022.

3 In the Recitals to the Protocol on Ireland/Northern Ireland, both the United Kingdom and the United Kingdom noted that, "[European] Union law has provided a supporting framework for the provisions on Rights, Safeguards, and Equality of Opportunity of the 1998 Agreement." <<https://bit.ly/3C1WrTA>> accessed 27 July 2022.

4 Government of Ireland, 'Shared Island Initiative' <<https://bit.ly/3JKlf4v>> accessed 11 August 2022.

## II. Rights under the Convention and its Optional Protocols

### A. General measures of implementation (arts. 4, 42 and 44 (6))

#### Legislation

3. **Incorporation of the Convention:** In 2016 the Committee recommended that the State take all necessary measures to fully incorporate the Convention into domestic law.<sup>5</sup> Ireland operates a dualist legal system, meaning that international conventions must be given effect in domestic law to be justiciable before the courts.<sup>6</sup> Elements of the Convention have been given legal effect, albeit in limited circumstances and settings, such as the constitutional amendment on children and through the Adoption Act 2010, the Child and Family Agency Act 2013, and the Children and Family Relationships Act 2015.
4. **Recommendation:** The Committee is urged to recommend that the State establish an Oireachtas Committee to examine how Ireland can comprehensively implement the UNCRC into Irish law.
5. **Child Rights Impact Assessments:** Child rights impact assessments (CRIAs) “involve examining existing and proposed policies and legislation on changes in administrative services to determine their impact on children and whether they effectively protect and implement the rights expressed in the Convention on the Rights of the Child.”<sup>7</sup> In 2016, the Committee recommended that the State “include children's rights impact assessments in the framework for integrated social impact assessments, to ensure that fiscal and budgetary decisions are compliant with the obligations under the Convention.”<sup>8</sup> Subsequently, a relevant action was incorporated into *First 5 – A Whole of Government Strategy for Babies, Children and Their Families 2019-2028*,<sup>9</sup> providing that building on previous work in this area, progress will be made to develop a methodological approach to implement CRIAs.
6. **Recommendation:** The Committee is urged to recommend that the State establish a CRIA framework and develop and roll-out a comprehensive training programme for all Government officials and decision-makers to support its implementation.

#### Comprehensive policy, strategy and coordination

7. **National Children's Strategy:** *Better Outcomes, Brighter Futures* is Ireland's National Policy Framework for Children and Young People which has run from 2014-2020. The purpose of this framework is to coordinate policy across Government to achieve better outcomes.<sup>10</sup> The Department of Children, Equality, Disability, Integration and Youth (DCEDIY) are in the process of developing a successor strategy.

---

5 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 9.

6 Constitution of Ireland, Article 29.6.

7 Lisa Payne, *Child Rights Impact Assessment (CRIA): A review of comparative practice across the UK* (UNICEF UK 2017) 16.

8 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4, para 16 (e).

9 Government of Ireland, *First 5 – A Whole of Government Strategy for Babies, Children and Their Families 2019-2028*, (Government Publications 2019) Strategic Action 4.c: Building on and updating previous work, progress the development of a methodological approach to support and inform any wider Government response to the UN Committee on the Rights of the Child concluding observations recommending that the Irish state “...include children's rights impact assessments in the framework for integrated social impact assessments to ensure that fiscal and budgetary decisions are compliant with obligations under the Convention.”

10 Department of Children and Youth Affairs, *Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*, (DCYA 2014).

8. **Recommendation:** The Committee is urged to recommend that the State put in place a dedicated, fully resourced unit to oversee the implementation of the next national children's strategy.

### Independent monitoring

9. **Public Sector Duty:** Section 42 of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public sector bodies to have regard for the need to eliminate discrimination, promote equality, and protect human rights in their daily work. The Irish Human Rights and Equality Commission is also empowered to undertake investigations at its own initiative, where it believes bodies are failing to properly perform their public sector human rights and equality duties.<sup>11</sup> This public sector duty does not apply to services commissioned by public bodies. For example, Tusla - the Child and Family Agency commissions community and voluntary providers deliver services on their behalf. These community and voluntary providers do not have any obligations under the public sector duty contained in the 2014 Act.
10. **Recommendation:** The Committee is urged to recommend that the State expand the obligations of the public sector duty to all services commissioned by the State.

---

<sup>11</sup> Irish Human Rights and Equality Commission Act 2014, Article 42(5).

## B. General principles (arts. 2, 3, 6 and 12)

### Non- Discrimination

11. In 2016, the Committee recommended that Ireland “strengthen its efforts to combat discrimination” against Traveller and Roma children, discrimination based on the “sexual orientation or gender identity of children” and for a successor strategy to the *National Action Plan Against Racism* to be developed.<sup>12</sup> In 2021, DCEDIY began work on the new National Action Plan Against Racism.<sup>13</sup> An independent anti-racism committee was established to develop the plan, a draft of which was expected to be sent to the Department in late spring 2022.<sup>14</sup>
12. **Recommendation:** The Committee is urged to recommend that the State publish the National Action Plan Against Racism, with specific targeted actions for addressing racism experienced by children and ensure it is afforded sufficient budget, with a robust implementation and monitoring framework.
13. **Equality Acts:** In July 2021, the DCEDIY commenced a public consultation on the Equality Acts.<sup>15</sup> Under section 3(3) of the Equal Status Acts 2000, a young person under 18 who is discriminated against on the basis of age is prohibited from taking an action under the Act. An analysis of cases before the Workplace Relations Commission (WRC) shows a clear trend that, in the limited instances in which discrimination faced by children and young people is considered, the grounds on which discrimination is found to have occurred are predominantly disability and membership of the Traveller community; and the primary site of discrimination claims is in the education setting.<sup>16</sup>
14. Regarding the membership of the Traveller Community ground, the WRC has also found discrimination in the provision of hotel accommodation,<sup>17</sup> housing provision,<sup>18</sup> and in the field of leisure and entertainment.<sup>19</sup> Whilst successful findings in favour of victims of discrimination in these instances is encouraging, the decision of the Supreme Court in *Stokes v Christian Brothers High School, Clonmel*<sup>20</sup> concerned an allegation of discrimination in the education context. A child from the Traveller Community alleged that he was indirectly discriminated against contrary to the Equal Status Act (ESA), by being refused admission to the respondent school by the effect of an admissions policy favouring boys whose fathers had gone to the same school. The Supreme Court held that the appellant alleging indirect discrimination had to show, through statistical analysis, that the effect of the policy was the exclusion of Traveller boys. This places an excessively onerous burden on victims to establish a *prima facie* case of discrimination.

---

12 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 28.

13 Department of Children, Equality, Disability, Integration and Youth, ‘Towards a National Action Plan Against Racism for Ireland Public Consultation 2021’ <<https://bit.ly/3QAw1fH>> accessed 11 August 2022.

14 Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman T.D., Dáil Debates, Written Answers, Question to Minister for Children, 24 March 2022 [15305/22].

15 The Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015. In particular, views were sought on whether to introduce intersectional discrimination and socioeconomic status, as protected grounds on which less favorable treatment will be illegal. Department of Children, Equality, Disability, Integration and Youth, ‘Consultation on the Review of the Equality Acts’ <<https://bit.ly/3A8usPN>> accessed 11 August 2022.

16 See also Maria Quinlan, *Out of the Shadows: Traveller & Roma Education: Voices from the Communities* (Department of Education 2021).

17 *A Family v A Hotel* ADJ-00002800; *A Minor v A Hotel* ADJ-00017903.

18 *A Member of the Travelling Community v A County Council* ADJ-00008050.

19 *Three Complainants v Multiplex Cinemas* DEC-S2018-012.

20 *Stokes v Christian Brothers High School, Clonmel* [2015] IESC 13.

15. In relation to children with disabilities, the reasonable accommodation duty under the Equal Status Acts is currently limited to where the accommodation “would give rise to a cost other than a nominal cost, to the provider of the service in question.”<sup>21</sup> This means that if alterations are too costly, they will not need to be undertaken. The nominal cost limit weakens the impact of the ESA and does not tackle barriers for children and young people with disabilities trying to access crucial services, including education, in a manner appropriate given the State’s obligations under the UNCRC. Where there have been successful challenges by children and young people experiencing discrimination on the basis of their disability, it has only been where no additional costs would be incurred as a result of making accommodations, such as by permitting an assistance dog onto school grounds,<sup>22</sup> maintaining an emergency medical kit,<sup>23</sup> or permitting a child with autism to maintain his dietary routine while accepting school transport.<sup>24</sup>
16. **Recommendation:** The Committee is urged to recommend that the State amend the Equality Acts to expand the capacity of people experiencing discrimination to successfully challenge their treatment, expanding grounds to include intersectional and socioeconomic discrimination. The Committee is further urged to recommend the State remove section 3(3)(a) of the Equal Status Act 2000 and replace it with a power for the Minister for Justice to exempt certain services from a general ban on discrimination on the basis of age against children.

## Best Interests of the Child

17. In 2014, the Constitution was amended to explicitly require the best interests of the child to be the paramount consideration in all child care matters.<sup>25</sup> In 2016, the Committee recommended that Ireland “develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.”<sup>26</sup> Under its founding legislation, Tusla – the Child and Family Agency (CFA) must have regard to the best interests of the child when making decisions and in the performance of its functions.<sup>27</sup> In relation to healthcare, the Supreme Court in the case of *Re JJ* held that, “Parents may make a decision in good faith which they fervently believe to be in the best interests of their children, and for which no blame can be ascribed; but if this decision prejudicially affects the child’s safety and welfare, then the test for intervention is met.”<sup>28</sup> In relation to private family law, child care and adoption, legislation sets out a comprehensive test that Judges must consider when determining what is in the best interests of the child.<sup>29</sup> It must be noted that in many other areas, the best interests principle does not have legal status. For example, the principle is absent from the Education Act 1998 which governs the education system, nor does the principle of best interests of the child inform decision-making on immigration.<sup>30</sup>
18. **Recommendation:** The Committee is urged to recommend that the State undertake an audit of education, immigration and disability law to place a legal obligation on decision-makers to

21 Equal Status Acts 2000 - 2018 s.4(2).

22 *A Mother v Board of Management of a National School* DEC-S2016-048.

23 *Parents v Board of Management of a Gaelscoil* DEC-S2016-053.

24 *A Schoolchild v Bus Éireann* ADJ-00008539.

25 Article 42A of the Constitution of Ireland.

26 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 30.

27 Child and Family Agency Act 2013.

28 *In Re JJ* [2022] IESC 1.

29 Guardianship of Infants Act 1964, section 31 as amended by the Children and Family Relationships Act 2015; Adoption Act 2017, s 9 and Child Care Act 1991, section 24 as Child Care (Amendment Act) 2022 section 4.

30 *Dos Santos v Minister for Justice* [2014] IEHC 559. In 2014, the High Court held that the Minister for Justice and Equality, when making a deportation order, was not bound to consider the ‘best interests of the child’ under Article 3 of the UN Convention on the Rights of the Child as the Convention did not form part of Irish domestic law. Instead, the Judge found that consideration by the Minister of the ‘welfare of the child’ under Section 3 of the Immigration Act 1999 was sufficient.

take account of the best interests of the child principle when making decisions and ensure training for relevant professionals, including social workers and judges to support them in this task.

## Respect for the Views of the Child

19. The Child and Family Agency Act 2013 places an obligation on its staff to consult and listen to children in the planning and functioning of the Agency and in their work with individual children and families.
20. **Family Law:** Article 42A.4 of the Irish Constitution states that provision shall be made by law for the best interests of the child to be “the paramount consideration” in child protection and care, adoption and family law proceedings, and for the views of the child to be “ascertained and given due weight.”<sup>31</sup> The Children and Family Relationships Act 2015 gives effect to Article 42A.4 in relation to private law proceedings, providing that an expert can be appointed to determine and convey the child’s views to the Court.<sup>32</sup> In practice, there is an absence of regulation and minimum standards for such experts involved in the preparation of reports.<sup>33</sup>
21. In 2016, the Committee called on Ireland to “[t]ake measures to ensure the effective implementation of legislation recognising the right of the child to be heard in relevant legal proceedings, particularly family law proceedings...” and to ensure that “there are provisions under the Children and Family Relationships Act 2015 for covering the cost of an expert to hear the child’s views in family law proceedings, guarantee that the views of the child are taken into account in all child care proceedings.”<sup>34</sup> The fact that parents, not the State, have to cover the fee of the expert in family law proceedings means that the availability of this service to children is dependent on their parents being able to afford, or being willing, to pay for the service. This can give rise to situations where children will not have the opportunity to exercise their right to be heard.
22. **Child Care Proceedings:** Since 1995, Guardians *ad Litem* (GALs) have provided for a child’s views to be heard.<sup>35</sup> However, these appointments were in the absence of regulation: the role of the GAL was undefined, and their appointment was at the discretion of the judge. This resulted in inconsistent access for children to a GAL, with a significant disparity in appointments between court districts within the State.<sup>36</sup> The recently introduced reform of the GAL system,<sup>37</sup> while long overdue, is welcome as it introduces statutory functions and powers for a GAL, as well as regulation of the role.<sup>38</sup> GALs will be appointed in all High Court special care proceedings and will be appointed in District Court child care proceedings, unless the court is satisfied that the best interests of the child can be identified without a GAL and where it has determined other ways to hear the voice of the child.<sup>39</sup> The reform is limited in nature in that it relates only to the use of the GAL in child care proceedings and represents a missed opportunity to adopt a common approach to hearing the voice of the child in both public and private law proceedings. A public model, whereby the State covers the cost of

---

31 Constitution of Ireland, Art 42A.4.

32 Children and Family Relationships Act 2015, section 63 inserts Part V into the Guardianship of Infants Act 1964. This Part outlines the factors to consider in determining the best interests of the child and s 32(1)(b) provides for the appointment of an expert by the Court ‘to determine and convey the child’s views’. This provision was commenced in January 2016 via Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order (SI No. 12/2016).

33 Any individual with a Level 7 qualification on the National Framework of Qualifications can act as an expert and prepare a report to the court after a one-off meeting with the child.

34 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 32(a) and (b).

35 Child Care Act 1991, section 26.

36 Carol Coulter, *Interim Report of the Child Care Law Reporting Project* (CLRP 2013) 14.

37 Contained in the Child Care (Amendment) Act 2022.

38 *ibid*, section 35E, 35F, 35J.

39 *ibid*, section 35B.

reports for both public and private law proceedings, should be considered. The GAL Executive Office should be moved to the Courts Service, to oversee both the public and private provision of GALS, as there would be significant crossover in oversight required.

23. **Recommendation:** The Committee is urged to recommend that the State ensures that every child has an equal opportunity to have their views heard in matters that affect them, either directly or through a qualified expert, irrespective of the ability of a child's parents to pay for an expert. The State should commence the Child Care (Amendment) Act 2022, move the GAL office to the Courts Service and adopt a common approach in the mechanisms used to hear the voice of the child in both public and private law proceedings, to ensure that children can exercise their right equally regardless of the nature of the proceedings.
24. **Voting Age:** The right to vote is restricted to those over the age of 18 years. In 2012, the Convention on the Constitution considered whether there should be a constitutional amendment to reduce the voting age in Ireland.<sup>40</sup> A majority voted in favour of lowering the voting age – 48 per cent were in favour of lowering the age to 16 years and 38 per cent were in favour of lowering it to 17 years. Despite a commitment to hold a referendum on the issue, no referendum is currently planned.<sup>41</sup> In 2016 the Committee recommended that the State “consider implementing its plan to carry out a national referendum on lowering the voting age to 16 years in accordance with its previous commitment”,<sup>42</sup> which has not been progressed.
25. **Recommendation:** The Committee is urged to recommend that the State lower the voting age to 16 in all European and Local elections as a first step.
26. **Environment:** Climate change is the number one concern for young people aged 16-24 in Ireland, with 87 per cent of young people stating they are not confident the Government is doing enough to tackle the issue.<sup>43</sup> In November 2021 Ireland's strategy aimed at achieving a 51 per cent reduction in overall greenhouse gas emissions by 2030, the *Climate Action Plan 2021*, was published.<sup>44</sup> The *Action Plan* contained a commitment to establish a Youth Assembly on Climate,<sup>45</sup> which aims to “facilitate inputs from young people to the Climate Action Plan”<sup>46</sup> which met for the first time in March 2022.<sup>47</sup> While a welcome development, the Youth Assembly on Climate plans to meet on an annual basis and has just 40 delegates.<sup>48</sup>
27. **Recommendation:** The Committee is urged to recommend the State develop additional measures to ensure the incorporation of the views of children and young people across Ireland in actions to address the climate emergency, including but not limited to the development and implementation of a specific framework for meaningful youth participation in climate action.

---

40 The Convention on the Constitution was established by Resolution of the Houses of the Oireachtas in July 2012. It was a forum of 100 people, representative of Irish society and parliamentarians from the island of Ireland, with an independent chairman. For more see <<https://www.constitution.ie/Convention.aspx>> accessed 6 July 2022.

41 National Youth Council of Ireland, 'No referendum on voting age Youth Council expresses disappointment but says campaign will go on' (Press release 15 January 2015) <<https://bit.ly/3BUX3ul>> accessed 6 July 2022.

42 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 32(d).

43 Amárach, Young Social Innovators, 'Gen Z Index 2022: Climate and Environment Report' <<https://bit.ly/3zVftbQ>> accessed 11 August 2022.

44 Department of Environment, Climate and Communications, Department of An Taoiseach, 'Climate Action Plan 2021' (DECC, DT 2021) <<https://www.gov.ie/en/publication/6223e-climate-action-plan-2021/>> accessed 11 August 2022.

45 A consultative forum of children and young people aged 12-24.

46 Department of Environment, Climate and Communications, Department of An Taoiseach, 'Climate Action Plan 2021' (DECC, DT 2021) <<https://www.gov.ie/en/publication/6223e-climate-action-plan-2021/>> accessed 11 August 2022, 63.

47 Department of Children, Equality, Disability, Integration and Youth, 'National Youth Assembly of Ireland convenes for the first time as the Youth Assembly on Climate' (DCEDIY 2022) <<https://bit.ly/3Qg8tx6>> accessed 11 August 2022.

48 *ibid*, 30 delegates, nominated by established youth organisations, joined by 10 guest delegates who have a specific interest in climate issues.

## C. Civil rights and freedoms (arts. 7, 8, 13-17)

### Birth registration and nationality

28. **Statelessness:** The Minister for Justice, at their absolute discretion, has the power to grant naturalisation if a person is deemed stateless according to the Refugee and Statelessness Conventions.<sup>49</sup> However, there is no clarity as to the procedure whereby a declaration of naturalisation will be granted. Procedures to provide children and young people with a secure and long-term residence status are crucial. Without registration, children's time spent in the State cannot be calculated towards their reckonable residency for the purposes of immigration applications. A deserted newborn child in the State – shall, unless proven otherwise, be considered born in the island of Ireland providing at least one parent is an Irish citizen, entitling them to naturalisation.<sup>50</sup> However, it is unclear if this also applies to deserted older children. The State report said that a statelessness determination can be made under the International Protection Act 2015.<sup>51</sup>
29. Following a constitutional referendum and the enactment of the Irish Nationality and Citizenship Act 2004, children born on the island of Ireland have had no automatic entitlement to Irish citizenship since 2004.<sup>52</sup> This results in children, who were born in Ireland, receiving orders to be deported to countries to which they have never lived and have no relationship with.<sup>53</sup> Despite the recent commitment by the Minister for Justice to advance legislation that will make it easier for children born in Ireland to access Irish citizenship,<sup>54</sup> progress on implementation of this legislation remains slow.<sup>55</sup> There is no timeline nor Government commitment for a referendum regarding the restoration of birth right citizenship. Children born outside Ireland to Irish nationals who themselves were born outside Ireland, must register their birth in the Foreign Birth Register<sup>56</sup> to achieve citizenship.<sup>57</sup> This requirement does not apply to children born outside Ireland whose parents were born in Ireland. This appears to directly discriminate against children of Irish citizens based on their place of birth and affects national minorities who have become Irish citizens and seek access to citizenship for their children. Due to staff redeployment during the Covid-19 pandemic, the processing of foreign birth registration was paused in March 2020<sup>58</sup> and only resumed on a phased basis on 15 November 2021.<sup>59</sup> Children of Irish citizens who are required to register their birth with the Foreign Birth Register are experiencing delays of at least two years in their registration,<sup>60</sup> significantly delaying their path to citizenship.<sup>61</sup>

---

49 UN Convention Relating to the Status of Refugees (UN, 1951), Convention relating to the Status of Stateless Persons (UN 1954). Irish Nationality and Citizenship Act 1956 section 16(1)(g).

50 Irish Nationality and Citizenship Act 1956 section 10.

51 Department of Children, Equality, Disability, Integration and Youth, *The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure* (DCEDIY 2022) para 122. However, it should be noted that at the conclusion of this process, the applicant is issued with refugee status. They are not granted an alternative pathway to naturalisation, different from that offered to any other individual with refugee status.

52 Referendum on the Twenty-Seventh Amendment of the Constitution 2004 (Irish Citizenship).

53 A deportation order was issued upon a 10-year-old boy born in Ireland was lifted in December 2019, following an extensive public campaign to secure his leave to remain in Ireland, see: Emma O Kelly, 'Deportation order against Wicklow schoolboy lifted' *RTE* (17 December 2019) < <https://bit.ly/3zQDQHk> > accessed 11 August 2022.

54 Department of Justice, 'Minister McEntee to make it easier for children to secure Irish citizenship' (DOJ, 2021) < <https://bit.ly/3phepd2> > accessed 27/07/2022.

55 Only the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021 has been published.

56 Irish Nationality and Citizenship Act 1956, as amended, section 27(2).

57 Irish Nationality and Citizenship Act 1956 section 7(3)(c).

58 Becky Morton, 'Irish citizenship: Covid backlog leads to "heartbreaking" delays' *BBC* (25 December 2021) < <https://bbc.in/3peksPU> > accessed 9 August 2022.

59 Department of Foreign Affairs, 'Foreign Births Registration/Citizenship' < <https://bit.ly/3doGwVe> > accessed 9 August 2022

60 *ibid*.

61 It should also be noted that Ireland is not a state party to either the European Convention on Nationality, nor the Convention on the Avoidance of Statelessness in Relation to State Succession, and it has opted out of the EU Returns Directive 2008/115/EC.

30. **Recommendation:** The Committee is urged to recommend that the State adopt a statelessness determination procedure in accordance with international standards. The Committee is urged to recommend that the State remove section 77(3)(c) of the Irish Nationality and Citizenship Act 1956, as amended, requiring children born outside Ireland of Irish nationals who themselves were born outside Ireland to register their birth in the Foreign Birth Register to achieve citizenship.

## Right to identity

31. **Surrogacy:** Surrogacy is currently unregulated in Ireland. The legal pathways for children born through surrogacy to have a relationship with one or both of their intending parents is limited, leaving children in vulnerable legal positions for lengthy periods of time. Genetic mothers can apply for guardianship of the child born by surrogate after two years of providing day-to-day care for the child,<sup>62</sup> but this legal relationship ends when the child turns 18.
32. The lack of pathways for legal recognition of parental relationships can leave children without any legal relationship to their genetic mother when they enter adulthood, which can cause distress for families and have implications for succession rights.<sup>63</sup> The Health (Assisted Human Reproduction) Bill 2022 currently progressing through the legislature, presents a significant opportunity to provide clarity and a legal basis for children who will be, and have been, born through domestic and international surrogacy to access information about their identity. The Oireachtas Joint Committee on International Surrogacy has recommended that children aged twelve and above should have access to their information stored in the National Surrogacy Register.<sup>64</sup>
33. **Recommendation:** The Committee is urged to recommend that the State explicitly provide in legislation for the right of the child born through surrogacy to know and access information about their identity and a system should be developed for the collection, storage and preservation of identity information.
34. **Gender Recognition:** In 2015 the Gender Recognition Act was passed which provides for a process where Transgender people over the age of 18 can achieve full legal recognition of their preferred gender by self-declaration. The Act allows for the acquisition of a new birth certificate that reflects this change.<sup>65</sup> Young people aged 16 to 17 can also apply to be legally recognised, though the process is more onerous<sup>66</sup> as they are required to obtain parental consent, two medical opinions and a court order, which can be a lengthy and cost-prohibitive process.<sup>67</sup> The Government has committed to removing the need to the two specialist medical reports, by providing for self-declaration with parental consent, and by making voluntary mediation available.<sup>68</sup>
35. There is currently no method available to young people under the age of 16 to have their preferred gender recognised. The Department of Health has begun to explore commissioning research to inform the development of a system for children under 16.<sup>69</sup> Where a State fails to provide methods for recognition, this can lead to further rights violations, such as

---

62 The Guardianship of Infants Act 1964 Section 6C.

63 Neil Michael, 'My surrogacy sister carried my baby "out of pure love"' *Irish Examiner* (28 January 2022)

64 Joint Committee on International Surrogacy, 'Final Report of the Joint Committee on International Surrogacy' (JCIS 2022) Recommendation 11, 17 < <https://bit.ly/3vSSlZZ> > accessed 27 July 2022.

65 Transgender Equality Network Ireland, 'Gender Recognition' < <https://www.teni.ie/gender-recognition/> > accessed 9 June 2020.

66 *ibid.*

67 Sinead Keane, 'Gender Recognition Act Ignores Young People' (BelongTo 2016) < <https://bit.ly/3AeASOh> > accessed 11 August 2022.

68 Government of Ireland, Programme for Government, 'Our Shared Future' (Government Publications 2020) 77.

69 Department of Children, Equality, Disability, Integration and Youth, *The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure* (DCEDIY 2022) 29 [169].

exclusion and bullying in an educational context and denial of the right to health.<sup>70</sup> The Government has committed to starting research to look at gender recognition arrangements for children under 16,<sup>71</sup> and this research is now at commissioning stage.<sup>72</sup>

36. **Recommendation:** The Committee is urged to recommend that the State progress the review on gender recognition children for children under the age of 16, and ensure the recommendations provide sufficient protection to children who are subjected to bullying and harm to children and young people who are questioning their gender identity and are transitioning.

## Freedom of thought, conscience and religion

37. **Religious Discrimination in Education:** Census 2016 highlights the increase in the number of people who identify as having no religion, or a religion other than Catholic.<sup>73</sup> In 2016, the Committee recommended Ireland, ‘expeditiously undertake concrete measures to significantly increase the availability of nondenominational and multi-denominational schools’<sup>74</sup> and amend the ‘existing legislative framework to eliminate discrimination in school admissions, including the Equal Status Act’.<sup>75</sup>
38. The Education (Admission to Schools) Act 2018<sup>76</sup> removed the provision that enabled recognised denominational schools to use religion as an eligibility criterion for admission. The Act also provides that children of minority religions are to be given priority in admission to the school of their faith, in the event of that school being oversubscribed.<sup>77</sup> However, due to the lack of multi or non-denominational schools, children whose parents are members of a minority religion, or not members of any religion continue to have little choice in the type of school to which they can send their children and in effectively opting-out of religious instruction in denominational schools.<sup>78</sup> Despite the State engaging in a divestment and reconfiguration process, the majority of publicly funded schools in the Irish education system are denominational in nature.<sup>79</sup>
39. The current Programme for Government pledged to expand and prioritise the transfer of viable schools from religious ownership to community ownership.<sup>80</sup> In March 2022, the Department of Education published its strategy on *School Reconfigurations for Diversity*:

---

70 United Nations Educational, Scientific and Cultural Organization, ‘Out in the Open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression’ (UNESCO 2016) 15; United Nations Development Programme, ‘Transgender health and human rights: discussion paper’ (UNDP 2013)13.

71 Government of Ireland, Programme for Government, ‘Our Shared Future’ (Government Publications 2020) 77.

72 Conor Gallagher, ‘Government to begin research into how to provide gender recognition for transgender children under 16’ *Irish Times* (26 June 2022).

73 People who have no religion represent 10 per cent of the general population there was a 28 per cent increase in the number of people identifying as Muslim and a 37 per cent increase in people identifying as Orthodox, each representing just over one per cent of the population and Central Statistics Office, ‘Census 2016 – Chapter 8 ‘Census 2016 - Irish Travellers, Ethnicity and Religion’, (Central Statistics Office 2017).

74 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (29 January 2016) para 64(a).

75 *ibid*.

76 The Education (Admission to Schools) Act 2018 was signed into law by the President on 18 July 2018.

77 Education (Admissions to Schools) Act 2018, section 11.

78 Carl O’Brien, ‘Parents finding it “impossible” to opt children out of religious education’ *Irish Times* (17 September 2019); Peter McGuire, ‘Religion in schools: “My son was upset – a friend told him he wasn’t going to heaven”’ *The Journal* (14 June 2021); Carl O’Brien, ‘Schools not outlining plans for those opting out of religion, survey finds’ *Irish Times* (16 November 2020); Treacy M, ‘The Legislature’s Attempts to Tame a Recalcitrant Education System’ *Kings Inns Law Review Vol 10* (KILR 2021).

79 Per the Department of Education and Skills, *Statistical Bulletin Enrolments September 2019 – Preliminary Results* (DES 2019) Of the 3,106 mainstream primary schools in the 2019/20 academic year, 88.9 per cent have a Catholic ethos; 5.5 per cent have a Church of Ireland ethos; 0.8 per cent are categorised as having an ethos other than Catholic, Church of Ireland or multi-denominational, and 4.8 per cent have a multi-denominational ethos. Of the 723 post-primary schools in the country, 47.6 per cent have a Catholic ethos, 3 per cent have a Church of Ireland ethos; 0.7 per cent have an ethos other than Catholic, Church of Ireland or multi-denominational, and 48.7 per cent have a multi-denominational ethos. In total, at post-primary level, there are 352 schools with a multi-denominational ethos and one fee-paying, non-denominational school.

80 Government of Ireland, Programme for Government, ‘Our Shared Future’ (Government Publications 2020) 96.

*Transfer of Patronage of Primary Schools.* Under this strategy, the Department will commence arrangements in a number of pilot areas to increase multi-denominational primary schools.<sup>81</sup> At present, 89 per cent of primary schools have a Catholic ethos, approximately five per cent have a multi-denominational ethos and the remaining approximately six per cent of primary schools have a religious ethos other than Catholic, mainly Church of Ireland.<sup>82</sup> In 2021, 49.4 per cent of post-primary schools had a Catholic ethos, while 46.7 per cent were multid denominational.<sup>83</sup> Only 20 formerly-Catholic primary schools have been divested or reconfigured as multi-denominational schools since 2012 and 2022, only one primary school is set to divest from the Catholic Church.<sup>84</sup>

40. The Department of Education has provided that children who do not want instruction in line with the requirements of any particular religion, should be timetabled for alternative tuition throughout the school year, rather than supervised study or other activities.<sup>85</sup> Unless the young person is over the age of 18 there is no provision for ascertaining the views and wishes of the child. In practice, it can be challenging for children and young people to effectively “opt-out” of religious instruction. Given that education is primarily offered through denominational schools in Ireland, religious practice can permeate the school day, which can involve daily prayer, the singing of religious hymns, the observation of religious holidays and the display of religious imagery throughout the school.
41. **Recommendation:** The Committee is urged to recommend that the State take measures to provide for the voice of the child to be heard in determining whether they wish to be exempted from religious instruction and expedite the divestment process to ensure greater educational choice for children.

### Access to appropriate information

42. **Digital Inclusion for all children:** Access to digital services is challenging for many low income families, the cost involved in providing equipment, software and iBooks is beyond the reach of many Irish households, including low income families and members of the Traveller and Roma communities.<sup>86</sup> During Covid-19 lockdowns, evidence of digital exclusion emerged at second level, with a dual problem of poor broadband and lack of access to digital devices more common where household incomes are low, and for Traveller families who may lack access to broadband and electricity on Traveller accommodation sites.<sup>87</sup>
43. **Recommendation:** The Committee is urged to recommend that the State take measures to improve digital inclusion for children and promote equality of access and affordability of online services and connectivity.
44. **Digital Education for all children:** 93 per cent of 8-12 year-olds in Ireland have a smartphone device,<sup>88</sup> with 84 per cent of this group also using social media and messaging apps, despite many having minimum age restrictions of 13 years and above.<sup>89</sup> Webwise<sup>90</sup> currently provides

81 Department of Education, ‘Schools Reconfiguration for Diversity: Transfer of Patronage of Primary Schools’ (DE 2022) <<https://bit.ly/3SKTgFG>> accessed 11 August 2022.

82 *ibid.*

83 Department of Education, ‘Statistical Bulletin: Enrolments September 2021’ (DE 2022) <<https://bit.ly/3vStOV2>> accessed 11 August 2022.

84 Jess Casey, ‘Just One School to Leave Catholic Ethos in 2022 – Government Targets in Doubt’ *Irish Examiner* (6 February 2022).

85 Department of Education and Skills Circular (0013/2018) ‘Religious instruction and worship in certain second level schools in the context of Article 44.2.4 of the Constitution of Ireland and Section 30 of the Education Act 1998’ (DE 2018).

86 Society of St Vincent de Paul, *Submission to the Joint Committee on Education and Skills* (SVP 2019) <<https://bit.ly/2Zxjr96>> accessed 11 August 2022.

87 Gretta Mohan, Selina McCoy, Eamonn Carroll, Georgina Mihut, Sean Lyons and Ciaran Mac Domhnaill, *Learning for all? Second level education in Ireland during Covid-19* (ESRI 2020).

88 Cybersafe Kids, *Annual Report 2020* (Cybersafe 2021) 23.

89 *ibid* 24.

90 A body funded through the Department of Education.

education resources and information on online safety to parents, teachers and young people. The Law Reform Commission recommended the development of education materials for young people and schools on what it means to be a safe and responsible digital citizen.<sup>91</sup> Children and young people urgently require a formal curriculum on online education. This formal online safety curriculum should include information on critical engagement with information sources, recognising misinformation online, awareness of risks online, methods to reduce harm and protect personal data and the available forms of support and remedy.<sup>92</sup>

45. **Recommendation:** The Committee is urged to recommend the introduction of a formal curriculum on online education, focused on responsible online citizenship and digital literacy.
46. **Regulatory Framework:** The Online Safety and Media Regulation Bill is currently progressing through the houses of the Oireachtas<sup>93</sup> and provides for the establishment of a new Media Commission. The Bill sets out a number of functions of the Commission in relation to online safety, including the development of online safety codes that will require designated online service providers to take steps to minimise the availability of harmful online content and the associated risks arising out of the availability and exposure to this content.<sup>94</sup> To enforce the codes, the Commission will have the power to require a designated online service to provide it with information on its compliance with an online safety code, over any set period or periods of time.<sup>95</sup> The Commission will also have the power to appoint someone to carry out an audit of compliance.<sup>96</sup> The Committee has recommended that States should ensure that there are “appropriate and effective remedial judicial and nonjudicial mechanisms for the violations of children’s rights relating to the digital environment.”<sup>97</sup> The Bill currently does not satisfy this recommendation as it fails to provide for an individual complaints mechanism to be established, leaving children and young people with no mechanism to access a remedy where an online platform has failed to deal appropriately with their complaint(s).
47. **Recommendation:** The Committee is urged to recommend that the State enact the Online Safety and Media Regulation Bill as a matter of priority, while ensuring that the legislation specifically provides for an individual complaints mechanism so that vulnerable children and young people whose rights are not respected by the online providers have access to an effective remedy.

---

91 Law Reform Commission, Report on Harmful Communications and Digital Safety (LRC 116 – 2016)

92 Cybersafe Kids, *Annual Report 2020* (Cybersafe 2021) 24.

93 Irish Parliament.

94 Online Safety and Media Regulation Bill s139K(1).

95 *ibid* s139O(1).

96 *ibid* s139P(1).

97 UN Committee on the Rights of the Child, General Comment No 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25 at para 44.

## D. Violence against children (arts 19, 24(3), 28(2), 34, 37(a), 39)

### Freedom of the child from all forms of violence, including abuse, neglect, and sexual exploitation and abuse

49. In 2016, the Committee recommended that the State adequately resource Tusla – the Child and Family Agency (CFA) to respond to child protection referrals; address the needs of at-risk children; implement long-term programmes for addressing the root causes of violence and abuse; and to encourage community-based programmes aimed at preventing and tackling abuse and neglect.<sup>98</sup> DCEDIY has responsibility for the development of policy and legal reform in relation to child protection. Under its aegis is the CFA, the statutory body with responsibility for the delivery of child protection, alternative care and family support services. There has been sustained investment in increasing the capacity of the CFA to deliver on its statutory remit. However, in line with international trends, Tusla has struggled with social worker recruitment and retention.<sup>99</sup> The CFA continues to receive a high volume of referrals of child protection concerns, with 73,069 referrals in 2021.<sup>100101</sup> The CFA reports on the outcome of this volume of referrals, some, but not all, of which will require social work intervention.<sup>102</sup> Earlier this year, the Health Information and Quality Authority (HIQA),<sup>103</sup> reported that in 2021, 23 per cent of all open cases were awaiting allocation, of which 436 had been identified as high priority.<sup>104</sup> This represented an increase of 568 unallocated cases from 2020, including 60 additional high priority cases.<sup>105</sup> Insufficient staffing was cited by HIQA as a key issue facing the CFA in 2021.<sup>106</sup>
50. There is a national approach to child safeguarding in terms of the identification and reporting of child protection concerns. However, there is no parallel national policy or strategy on how to respond to the needs of children who have been identified as being at risk of abuse, neglect or exploitation or whose own emotional and behaviour difficulties are presenting a risk to the child or others. While the CFA has a key role in the provision of alternative care, several other state bodies have significant responsibilities in relation to such children, including the Gardaí and the HSE who provide mental health and disability services.
51. **Recommendation:** The Committee is urged to recommend that the State develop a new whole-of-Government strategy on child protection and welfare, encompassing protecting children from all forms of violence, alternative care, children who are at risk of criminal and sexual exploitation and the provision of supports and services to children.

---

98 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' UN Doc CRC/C/IRL/CO/3-4 para 38.

99 For example, from €617 million in 2014 to €900 million in 2021. Department of Children, Equality, Disability, Integration and Youth, 'The Combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure' (DCEDIY 2022) para 7.

100 Tusla – The Child and Family Agency, *Annual Report 2021* (Tusla 2022) 6.

101 Note: referrals to Tusla – The Child and Family Agency are made where a person has reasonable grounds for concern that a child may have been, is being, or is at risk of being abused or neglected. Tusla assesses the referral and decides what course of action, if any, to take on the basis of the information.

102 Tusla – the Child and Family Agency, *Review of Adequacy Report 2020* (Tusla 2021) 12.

103 The Health Information and Quality Authority (HIQA) inspects and reports upon the safety and quality of some of the children's social care services in Ireland. It monitors child protection and welfare services against the National Standards for the Protection and Welfare of Children (2012).

104 The Health Information and Quality Authority, *Overview report on the inspection and regulation of children's services -2021* (HIQA 2022) 44.

105 *ibid.*

106 *ibid* 6.

## Sexual Exploitation and Sexual Abuse

52. In 2020 Ireland ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention). The protection of children from sexual exploitation was strengthened with the enactment of the Criminal Law (Sexual Offence) Act (2017),<sup>107</sup> legislation which established several new criminal offences and strengthened the law combatting child sexual exploitation, child sexual abuse material and incest.<sup>108</sup>
53. **Online Sexual Abuse and Exploitation:** There is growing concern that online grooming, as well as the sharing of child exploitation material, increased during Covid-19.<sup>109</sup> Hotline.ie, the Irish national reporting centre for illegal online content, has experienced a sustained demand for its services, receiving approximately 10,000 public reports per annum.<sup>110</sup> It also reported a 142 per cent increase in 2020 on the previous year in child sexual abuse material which appeared to be self-generated images or videos.<sup>111</sup>
54. The Online Child Exploitation Unit has responsibility for monitoring the enforcement of the provisions of the Child Trafficking and Pornography Act, 1998. It is the single point of contact for Gardaí for referrals in connection with online child abuse material. It is critical that this unit is both adequately staffed as well as being promoted amongst Gardaí and the general public. Irish cases involving the distribution of child abuse material are taking up to 10 years for the State to complete, with the problem deteriorating in recent years, as technological and data issues impede prosecutions.<sup>112</sup> These delays are caused by a number of factors including the number of devices which need to be seized and a lack of Garda capacity to deal with devices with sophisticated encryption.<sup>113</sup> Delays are reported at every stage in the process including taking victim statements, arresting or interviewing suspects and sending the file to the Director of Public Prosecution.<sup>114</sup>
55. The Harassment, Harmful Communications and Related Offences Act 2020, commenced in 2021,<sup>115</sup> provides for new offences related to the recording and distribution of intimate images without consent and the publishing or sending of threatening messages or grossly offensive communication.<sup>116</sup> The Act fails to provide for a civil restraint order to prevent someone from engaging in harassing behaviour, a measure which had been provided for in an earlier Bill.<sup>117</sup>

---

107 This Act introduced several new offences including obtaining or providing a child for the purpose of sexual exploitation; an invitation to sexual touching; sexual activity in the presence of a child; causing a child to watch sexual activity; meeting a child to groom them for sexual exploitation; and use of information and communication technology to facilitate exploitation (see Criminal Law (Sexual Offence) Act 2017, Part Two).

108 The Act also extends to sexual acts involving children committed outside this jurisdiction by Irish citizens or persons ordinarily resident in Ireland, see Criminal Law (Sexual Offence) Act 2017, section 43.

109 Interpol, 'Child Sexual Exploitation and Abuse threats and trends: COVID-19 Impact' (Interpol 2021) < <https://bit.ly/3pa11aK> > accessed 1 February 2022.

110 Hotline.ie, 2020 Annual Report (Hotline.ie, 2021) 20.

111 *ibid* 15.

112 Conor Gallagher, 'Backlogs a dangerous flaw in child porn and abuse inquiries Resource and Data leave perpetrator at large – and child vulnerable to further abuse' *The Irish Times*, 7 January 2020.

113 Conor Gallagher, 'Backlogs a dangerous flaw in child porn and abuse inquiries Resource and Data leave perpetrator at large – and child vulnerable to further abuse' *The Irish Times*, 7 January 2020

114 Report of the Garda Síochána Inspectorate, Responding to Child Sexual Abuse, A Follow Up Review from the Garda Inspectorate (Garda Inspectorate, December 2017)

115 Harassment, Harmful Communications and Related Offences Act 2020 (Commencement) Order 2021.

116 Harassment, Harmful Communications and Related Offences Act 2020, ss 2, 3 and 4.

117 Harassment, Harmful Communications and Related Offences Bill 2017 (as initiated) s 13.

56. **Recommendation:** The Committee is urged to recommend that the State conduct an audit of the existing resources in An Garda Síochána dedicated to the investigation and prosecution of crimes involving images of child sex abuse and to increase resources to such divisions of An Garda Síochána.
57. **Child trafficking:** While Ireland has recently been removed from the US State Department's Tier Two community watch list,<sup>118</sup> it is of concern that since 2020, no child trafficking victims have been identified by the State.<sup>119</sup> Government approved a new National Referral Mechanism (NRM) in 2021, however it is unclear if it is fully operational.<sup>120</sup> In July 2022, the Government approved the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022, legislation which, when enacted, will place the NRM on a statutory footing.<sup>121</sup> There is no specific national child trafficking identification system operational, despite a commitment to introduce the same in the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*.<sup>122</sup> Given the recent movement of some 6,824 children to Ireland as a result of the conflict in Ukraine,<sup>123</sup> and anecdotal evidence which indicates potential cases are coming to the attention of officials,<sup>124</sup> progress to strengthen the State's victim identification process is of utmost urgency for those who are not identified at the border. Notably, guidance on child trafficking is not included in the Children First Guidelines as a serious form of child abuse. The Irish Human Rights and Equality Commission has called for its inclusion, having found "a general lack of knowledge and understanding of child trafficking within State agencies".<sup>125</sup>
58. **Recommendation:** The Committee is urged to recommend the State implement the new NRM with a specific child trafficking identification process. Competent authorities and trusted partners under the NRM and all frontline services must be provided with child trafficking training, in conjunction with civil society organisations. The Committee is also urged to recommend that the State recognise child trafficking as a serious form of child abuse in the Children First Guidelines.

## Measures To Promote the Physical and Psychological Recovery and Social Reintegration of Child Victims

59. **Optional Protocol:** In 2016, the Committee called on the State to provide redress and rehabilitation to victims of domestic violence. Following the enactment of the Criminal Justice (Victims of Crime) Act 2017, Irish law is broadly in compliance<sup>126</sup> with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>127</sup> Despite repeated calls from international bodies to ratify the Optional

118 Department of State USA, 'Trafficking in Persons Report July 2022' (DS 2022) 298 < <https://bit.ly/3pvuOLr> > accessed 27 July 2022.

119 *ibid* 121.

120 *ibid* 82; Department of Justice, 'Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports' (DOJ 2021) < <https://www.justice.ie/en/JELR/Pages/PR21000122> > 27 July 2022.

121 Department of Justice, 'Government approves publication of General Scheme of Bill which will strengthen law on consent in rape cases and support victims in sexual violence and human trafficking cases' (DOJ 2022) < <https://bit.ly/3BXIPsB> >.

122 National Rapporteur on Human Trafficking, Irish Human Rights and Equality Commission, *Trafficking in Human Beings in Ireland* (IHREC 2022) 124; Department of Justice and Equality, 'Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (DJE 2016) 72.

123 Central Statistics Office, 'Arrivals from Ukraine in Ireland Series 2' (CSO 2022) < <https://bit.ly/3JOAae3> > accessed 27 July 2022.

124 Child Care Law Reporting Project, 'Emergency care order for suspected child victim of trafficking from Ukraine' (CCLRP 2022) < <https://bit.ly/3zORpaw> > accessed 12 August 2022; Mary Carolan, 'Suspected child victim of trafficking from Ukraine taken into emergency care' *The Irish Times* (27 July 2022).

125 National Rapporteur on Human Trafficking, Irish Human Rights and Equality Commission, *Trafficking in Human Beings in Ireland* (IHREC 2022) 19.

126 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' UN Doc CRC/C/IRL/CO/3-4 para 39; Department of Children and Youth Affairs, 'Ireland joining international stand against sale of children, child pornography and child prostitution; Minister Zappone says all legal requirements now in place' (DCYA 2 January 2019).

127 UNCRC, 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (2000) A/RES/54/263.

Protocol, Ireland continues to be the only European Union Member State that has not yet ratified the Protocol.<sup>128</sup>

60. **Services:** Following her 2018 visit to Ireland, the UN Special Rapporteur on the Sale and Sexual Exploitation of Children was critical that specialised and local counselling services are not guaranteed to child victims of sexual violence.<sup>129</sup> This gap in services places demand on voluntary organisations providing counselling to child victims. CARI, a domestic nongovernmental organisation providing specialised therapy to children and families affected by child sexual abuse, saw its waiting list double in 2020 and now has the longest waiting list in the organisation's establishment in 1989.<sup>130</sup>
61. In a welcome development, 2019 saw the launch of a specialised inter-agency service for victims of sexual abuse, based on the Barnahus model, in the West of Ireland.<sup>131</sup> The Minister for Justice has committed to extending this child-friendly pilot to two other locations to serve the south and east of the country to provide a service to all children under 18 years.<sup>132</sup>
62. **Recommendation:** The Committee is urged to recommend that the State ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as a matter of the upmost urgency and ensure that child victims of sexual abuse in all areas of Ireland have access to a specialised inter-agency service based on the Barnahus model.

## Right Not to Be Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

63. **Domestic Violence Law and Policy:** In 2016, the Committee recommended that the State take measures to “ensure sufficient 24-hour refuge accommodation for persons affected by domestic violence and their children and provide redress and rehabilitation to the victims” and to encourage community-based programmes aimed at preventing and tackling domestic violence.<sup>133</sup> The laws on domestic violence were consolidated in, and strengthened by, the Domestic Violence Act 2018.<sup>134</sup> However, the Act does not provide for a child to make a court application in their own right, so they must rely on an adult or the CFA to do so on their behalf.<sup>135</sup> Notably, provisions under the State's domestic violence legislation are not integrated with private family law proceedings nor with family and psychological supports, such as access to counselling for child victims. For example, when an order under the Domestic Violence Act 2018 is granted and person whom the order is made against has custody or access rights in respect of a child from that relationship, there is no requirement for an assessment on the safety and well-being of the children of the relationship. Similarly, children in the affected family are not automatically afforded access to counselling and

---

128 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' UN Doc CRC/C/IRL/CO/3-4 para 77.

129 UN Special Rapporteur 'End of mission statement of the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, on her visit to Ireland', (May 2018) < <https://bit.ly/3C7jhsS> > accessed 11 August 2022.

130 Michelle McGlynn, 'Child sex abuse charity's waiting list for support services doubles' *Irish Examiner* (31 May 2022).

131 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman T.D., Dáil debates, Written Answers, Child Protection, 31 March 2021 [16981/21].

132 *ibid.*

133 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 38.

134 Domestic Violence Act 2018. The Act broadened the applicability of protection to include anyone in an intimate relationship; introduces a new order, an Emergency Barring Order (s9); and provides for a new offence of coercive control (s.39). It also introduces a non-exhaustive list of factors courts must consider when dealing with applications for domestic violence orders (s5), which includes exposure of children to the violence and the age, health including pregnancy of the applicant and any children. Where an application is being sought on behalf of a child, the Act allow for the views of the child to be heard directly or through the appointment of an expert (s 27).

135 See Geoffrey Shannon, Eleventh Report of the Special Rapporteur on Child Protection, (DCYA 2018) 265-266.

psychological supports. Due to this lack of legislative integration, custody and access may continue in situations where someone has been found by the Court to be violent against their partner unless it is challenged by the domestic violence victim in separate proceedings. Due to court backlogs,<sup>136</sup> there may be a delay before such an application is heard, potentially placing the children at risk until the matter of access and custody is decided.

64. **Recommendation:** The Committee is urged to recommend that the State conduct a review to assess potential avenues for the integration of existing domestic violence legislation with family law proceedings such as access and custody, and family supports, such as access to counselling for children.
65. **Domestic Violence Services and Refuge Accommodation:** Complaints of domestic violence have increased significantly in recent times, in particular during the period of Covid restrictions.<sup>137</sup> For example, during 2021 the NGO, Women's Aid, heard 33,831 disclosures of domestic violence, which included 28,096 disclosures of abuse against women and 5,735 disclosures of child abuse in the context of domestic violence.<sup>138</sup> These statistics represent just the minimum level of those affected by domestic violence in Ireland, as such forms of violence are systematically underreported.<sup>139</sup> There continues to be a chronic shortage of refuge accommodation. Ireland is currently providing less than 30 percent of the places recommended under the Istanbul Convention.<sup>140</sup> To address this shortcoming, the Minister for Justice has committed to providing at least 100 more domestic violence refuge spaces by the end of 2023.<sup>141</sup> "Domestic violence" is not defined within Irish housing legislation. This means that a woman who is forced to leave her home due to violence is not categorised as "homeless" and is ineligible for housing support. The effect of the current housing crisis on women and children experiencing domestic abuse is profound: women and children are remaining in and returning to abusive situations due to a lack of housing; women and children are leaving refuges and entering homeless services, exacerbating an already difficult situation and potentially exposing them to additional risks to their safety, welfare and wellbeing.<sup>142</sup>
66. **Recommendation:** The Committee is urged to recommend that the State increase the availability and quality of refuges and expand the definition of homelessness in housing legislation to include victims of domestic violence who have been forced to leave their homes.

## Measures To Prohibit and Eliminate All Forms of Harmful Traditional Practices

67. **Intersex Children and Young People:** In 2016, the Committee made a series of recommendations in relation to intersex children.<sup>143</sup> Any child born in Ireland with a disorder of sex development is referred to Children's Health Ireland (CHI) where specialists will

136 Justin McCarthy, 'Law Society says more judges needed to tackle family law court delays' RTÉ (26 June 2022) <<https://bit.ly/3PmKUKF>> accessed 4 August 2022.

137 Applications to the District Court under the domestic violence legislation increased by 12% in 2020 to 22,970 from 20,501 in 2019 ([Courts Services Annual Report 2020](#)). In 2021 (up until the 9th of September), there were a total of 24,686 incidents of domestic abuse reported to an Garda Síochána (Oireachtas.ie, 2021). In 2020, Gardaí received approximately 43,500 calls to respond to domestic abuse incidents in 2020, a 17 per cent increase on 2019.

138 Women's Aid, Annual Impact Report 2021 (2022) 7. >

139 Oireachtas Library and Research Service, 'Addressing domestic and gender-based violence. Part One: Overview' (OLRS 2021) <<https://bit.ly/3BWu7Cb>> accessed 11 August 2022.

140 Elaine Loughlin, 'Ireland won't meet obligations on domestic violence refuges until end of decade' *Irish Examiner* (04 May 2022)

141 *ibid*.

142 Aisling Moloney, 'Women fleeing domestic violence struggle to find homes' RTÉ (15 June 2022) <<https://bit.ly/3QyzD1O>> accessed 26 July 2022.

143 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' UN Doc CRC/C/IRL/CO/3-4 para 40

conduct an assessment, provide parental counselling and may propose interventions.<sup>144</sup> The Government's cross-departmental *LGBTI+ Youth Strategy 2018-2020*, explicitly includes intersex people.<sup>145</sup> A progress report on the Strategy notes that the Department of Health is "planning a scoping exercise on intersex conditions in Ireland to determine and document prevalence, current practice, clinical governance and compare against international evidence and guidelines [...]."<sup>146</sup> The progress report includes an action to "[e]stablish a working group on intersex healthcare for children and young people with a view to considering how Resolution 2191/2017 Council of Europe and other relevant health care recommendations can be taken account of in healthcare provision in Ireland."<sup>147</sup> This action has yet to be delivered.

<sup>148</sup>

68. **Recommendation:** The Committee is urged to recommend that the State expedite and publish the findings of the working group on intersex healthcare for children as a matter of urgency.

---

<sup>144</sup> Department of Children, Equality, Disability, Integration and Youth, 'Replies to List of Issues prior to Reporting: The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure' (DCEDIY 2022) para 166 – 167.

<sup>145</sup> Department of Children and Youth Affairs, *LGBTI+ National Youth Strategy 2018-2020* (DCYA 2018) It sets two objectives of relevance to "provide an inclusive physical environment for transgender and intersex young people" (objective 10) and to "improve the understanding of, and the response to, the physical and mental health needs of intersex young people" (objective 14).

<sup>146</sup> Department of Children and Youth Affairs, *First Annual Report on the Implementation of the LGBTI+ National Youth Strategy 2018-2020* (DCYA 2019)22.

<sup>147</sup> Council of Europe, Resolution 2191/2017 on promoting the human rights of and eliminating discrimination against intersex people, (COE 2017)36

<sup>148</sup> Dublin City University, *Irish Research Council funding new DCU study on the lived experience of intersex people in Ireland* (DCU 2019).

## E. Family environment and alternative care (arts. 5, 9–11, 18 (1) and (2), 20, 21, 25 and 27 (4))

### Family environment, including adoption

70. **Parental Leave:** Research suggests that most children do best when cared for at home during at least the first year of their life.<sup>149</sup> The combined effect of Parental Benefit (five weeks for each parent), Maternity Benefit (26 weeks) and Paternity Benefit (two weeks) means that parents may receive state income support while caring full-time for their child for between the first 31 and 38 weeks of the child's life, depending on whether they are parenting jointly or alone. Family payments are available to those who have met the required number of social insurance contributions. In 2016, two weeks paid Paternity Benefit was introduced for eligible fathers in the first six months following the birth of a child.<sup>150</sup> Additionally, in 2019<sup>151</sup> and 2021,<sup>152</sup> family payments were further improved by the recent extension of the new Parental Benefit, which provides for seven weeks paid parental leave from work to each parent of a child aged under two years.<sup>153</sup> Parental Benefit is paid in addition to that already available under Maternity Benefit and Paternity Benefit. Unlike two parent families, who can receive a combined fourteen weeks paid parental leave, lone parent families receive seven weeks paid leave. To address this inequality, lone parents should be offered fourteen weeks paid parental leave and be free to allocate a portion of the paid leave to a second recognised caregiver, such as a grandparent.
71. **Recommendation:** The Committee is urged to recommend that the State extend income-supported family leave to cover the first year of a child's life and to remove inequalities in parental leave for lone parent families.
72. **Quality Early Childhood Education and Care (ECEC):** The current Irish regulatory framework for ECEC is reactive, having evolved in response to scandals that have arisen in the sector in recent times.<sup>154</sup> When compared to internationally, the training of staff in the childcare sector in Ireland is low, with childcare workers deemed qualified to work with infant and young children with a level five qualification in the National Framework of Qualifications (NFQ).<sup>155</sup> In order for practices within a childcare setting to be child-centred and underpinned by up-to-date theoretical knowledge and practical understanding concerning children's rights and development,<sup>156</sup> qualification to a higher degree, supported with competitive (and not minimal) salaries, is essential. In Ireland, the regulation of early childcare and education has tended to focus on structural quality, with attention also paid to the health, safety and welfare of the child.<sup>157</sup> Rather than the system of regulation focusing on the structural components of delivery of ECEC, consideration should be given to moving towards a regulatory system that embeds respect for children's rights in their processes and practices.
73. **Recommendation:** The Committee is urged to recommend that the State engage in a thorough children's rights review of the regulatory system for ECEC and ensure that further

---

149M. Marmot et al, *Fair Society Healthy Lives: Strategic Review of Health Inequalities in England Post-2010* (The Marmot Review 2010).

150 Paternity Leave and Benefit Act 2016, section 6.

151 Parent's Leave and Benefit Act 2019, section 5.

152 Family Leave and Miscellaneous Provisions Act 2021, section 15.

153 Department of Social Protection, 'Minister Humphreys and Minister O'Gorman announce the extension of paid Parent's Leave and Benefit to 7 weeks' (DPR 2022) <<https://bit.ly/3dexDNO>> accessed 27 July 2022.

154 M Moloney, 'Breach of Trust - Getting it Right for Children in Early Childhood Care and Education in Ireland', *NZ Research in Early Childhood Education Journal*, Special Issue: Early Childhood Policy. Volume 17, 2014, 71 – 88.

155 M Moloney, 'Childcare regulations: Regulatory enforcement in Ireland. What happens when the inspector calls?' *Journal of Early Childhood Research* (2016) Vol. 14(1) 84–97, 88.

156 UN Committee on the Rights of the Child, General Comment No. 7 (2005) 'Implementing Child Rights in Early Childhood', CRC/C/GC/7/Rev.1, at paras. 22 & 23.

157 Child Care Act 1991 (Early Years Services) Regulations 2016 S.I. No. 221/2016 - Parts, III, IV & V.

funding for early childhood education and care is linked to a clear pathway on improving pay and recognition for workers in the sector.

## Separation From Parents

74. In 2016, the Committee recommended that the State encourage and provide sufficient resources for the training of judges for family law cases involving children and ensure that such cases are prioritised in the court system.
75. **Family Courts:** Ireland does not have a specialist family court system. Most child and family proceedings are heard by the District Court, a generalist court of first instance, which also hears criminal, civil, and licensing matters. The District Court comprises 24 Districts, each of which is operationally independent. This has permitted differential practices to develop between the districts. For example, in child care proceedings variations have been observed in relation to the type and nature of the order sought and granted, how the views of the child are heard and the reviews of orders by the court.<sup>158</sup> The District Court is overworked and under resourced.<sup>159</sup> It deals with a large volume of child and family matters each year and capacity varies within the 24 Districts to manage this workload and allocate sufficient time to hear cases.<sup>160</sup> There can be lengthy waits to secure a date for a hearing and extensive case lists.<sup>161</sup> In some Districts the list may be up to and over 100 cases for one judge to hear in a single day.<sup>162</sup> This leads to pressure to hear cases quickly or to engage in informal negotiation, and can contribute to a lack of privacy and over-crowding.<sup>163</sup> Proceedings may also be delayed due to difficulties in securing assessment and expert reports leading to the adjournments of proceedings.<sup>164</sup> In the context of a child care proceeding, this may lead to a child remaining in care under interim care orders for protracted periods, which can have an emotional toll on a child and create a momentum towards a full care order.<sup>165</sup> There are also challenges with the availability and regulation of supports for those attending court, including independent advocates for persons with impaired capacity and cultural mediators.<sup>166</sup> In addition, there is no approved panel of independent experts who may be commissioned by the court to carry out assessments or reports to support its decision-making.<sup>167</sup>
76. Following decades of calls for reform,<sup>168</sup> in 2020, the General Scheme of the Family Court Bill was published.<sup>169</sup> If enacted, it will establish a Family Court to hear all child care and private family law matters within a unified jurisdiction comprising of District, Circuit and High Court

---

158 Carol Coulter, 'Second Interim Report' (Child Care Law Reporting Project 2014); Conor O'Mahony and others, 'Representation and Participation in Child Care Proceedings: What about the Voice of the Parents?' (2016) 38(3) *Journal of Social Welfare and Family Law* 302-322; Maria Corbett, 'An Analysis of Child Care Proceedings Through the Lens of the Published District Court Judgments' (2017) 20(1) *Irish Journal of Family Law* 7-14.

159 Maria Corbett, 'Child Care is Crying Out for a Specialist, Separate, Supported and Unified Family Court', *Irish Journal of Family Law* (2022) 25(1) 7.

160 See for example, Mary Carolan, Simon Carswell, 'Inside the Family Courts: 'Decent people with great sadness in their lives'', *The Irish Times* (22 January 2022).

161 Child Care Law Reporting Project *Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings* (CCLRP, 2021) viii.

162 *ibid* 22.

163 *ibid*.

164 Carol Coulter, 'An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court' (Child Care Law Reporting Project 2018) 42.

165 Child Care Law Reporting Project, *Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings* (CCLRP, 2021) viii.

166 Maria Corbett and Carol Coulter, 'Child Care Proceedings: A Thematic Review of Irish and International Practice' (DCYA 2019) Theme 7.

167 Maria Corbett and Carol Coulter, 'Child Care Proceedings: A Thematic Review of Irish and International Practice' (Department of the Children and Youth Affairs 2019) Theme 5.

168 See for example, The Law Reform Commission, *Report on Family Courts* (LRC 52-1996, 1996).

169 A copy of the General Scheme is available at:

<<http://justice.ie/en/JELR/Family%20Court%20Bill%20General%20Scheme.pdf/Files/Family%20Court%20Bill%20General%20Scheme.pdf/>> accessed 25 July 2022.

divisions<sup>170</sup> and would ensure judges in these courts have specialised training, skills or experience.<sup>171</sup> In 2020, the Department of Justice established a Family Justice Oversight Group to discuss widespread reform of the family justice system and consultations took place on the development of a Family Justice Strategy in early 2021. The Strategy has yet to be published.<sup>172</sup>

77. **Physical Conditions:** A review of the courts found that in many venues the physical facilities are poor,<sup>173</sup> with many court facilities lacking basic privacy. There is a dearth of consultation rooms which results in delays in the hearing of family law applications and can lead to the provision of legal advice in hallways, rather than in child-friendly consultation rooms.<sup>174</sup> Generally, there is no special provision to accommodate children involved in family law proceedings. Child and family cases are often heard on the same day as civil and criminal matters.<sup>175</sup> Children present in court may witness or experience violence or other upsetting behaviour due to insufficient staffing of Gardaí in courthouses.<sup>176</sup>
78. **Judicial Training:** The independence of the judiciary is guaranteed by the Constitution.<sup>177</sup> In 2019, legislation was passed to allow for the establishment of a Judicial Council, with a remit to achieve excellence in the performance of judicial functions and high standards in judicial conduct.<sup>178</sup> As part of its work, the Judicial Council has set up a Judicial Studies Committee to oversee a modern training programme for the members of the judiciary. While barristers and solicitors have a requirement to undertake continued professional development courses every year, at present, there is no requirement for judges, court staff and legal professionals to have engaged in specialist education programmes before hearing family and child law cases. In addition, training supports provided to the judiciary vary geographically.<sup>179</sup>
79. **Recommendation:** The Committee is urged to recommend that the State establish a unified and specialist Family Court as a matter of urgency by progressing the passage of the Family Court Bill and investing in a network of regional family court venues that can afford families dignity and privacy and provide for private consultations with their lawyers. The State must publish the Family Justice Strategy and Implementation Plan as a matter of urgency and ensure adequate funding to support its full implementation. The Committee is further urged to recommend judicial education and training to support the implementation of children's rights in private law and child care proceedings.
80. **Measures to ensure the protection of children with imprisoned parents:** In April 2022, 3,980 prisoners in custody in Ireland,<sup>180</sup> of whom 2,068 self-disclosed that they had children at committal stage, with the total number of children declared being 5,150.<sup>181</sup> The Irish Prison Rules 2007 (currently undergoing review by the Department of Justice)<sup>182</sup> provide that a child

---

170 Family Court Bill General Scheme (September 2020) Heads 6, 11 and 16.

171 *ibid* Heads 6(4), 11(4) and 16(4).

172 Minister for Justice, Helen McEntee TD, Dáil Debates, Written Answers, Legislative Matters, 10 December 2020 [41560/20].

173 Child Care Law Reporting Project, 'District Court Child Care Proceedings: A National Overview' (CCLRP, 2019). See also Conor O'Mahony and others, 'Child Care Proceedings and Family Friendly Justice: The Problem with Court Facilities' (2016) 19(4) *Irish Journal of Family Law* 85.

174 The Bar of Ireland, 'Submission by Council of The Bar of Ireland to the Joint Oireachtas Committee on Justice and Equality on the Reform of the Family Law System' (The Bar of Ireland 2019) 7.

175 Carol Coulter, *District Court Child Care Proceedings: A National Overview* (Child Care Law Reporting Project, 2019).

176 *Ibid*.

177 Article 36.2.

178 Judicial Council Act 2019.

179 Conor O'Mahony, Kenneth Burns, Aisling Parkes and Caroline Shore, 'Child Care Proceedings in Non-Specialist Courts: The Experience in Ireland' [2016] *International Journal of Law, Policy and The Family* 133–57; 144.

180 Irish Penal Reform Trust, 'Facts and Figures' (IPRT, 2022) <<https://www.iprt.ie/prison-facts-2/>> accessed 27 July 2022.

181 Houses of the Oireachtas, 'Parliamentary Question 466 – April 2021' <<https://www.oireachtas.ie/en/debates/question/2021-05-05/466/>>.

182 Department of Justice, 'Public Consultation on the Review of Prison Rules' (DoJ,

2021)<[https://www.justice.ie/en/JELR/Pages/Review\\_of\\_Prison\\_Rules](https://www.justice.ie/en/JELR/Pages/Review_of_Prison_Rules)> [accessed 25 July 2022] As the data collated by the Irish Prison

can be admitted to a prison and remain with their mother until the age of 12 months.<sup>183</sup> Only the Dóchas centre women's prison in Dublin has facilities for new born children, with no such facilities present in Limerick's female prison. As a result, expectant mothers are transferred from Limerick to the Dóchas centre in their final trimester.<sup>184</sup> A new facility in Limerick Prison is currently being developed.<sup>185</sup> Significant concerns remain regarding the lack of specialised supports for mothers who have given birth and are pregnant in Dóchas and the risk posed to children when pregnant and new mothers are routinely forced to mix with the general female prison population.<sup>186</sup>

81. When a parent or family member is imprisoned, it can have a profound impact on children and families, emotionally, educationally, financially and practically.<sup>187</sup> Children with parents in prison require significant support to address the impact of parental imprisonment. Some 11,079 children physically visited an adult in prison in 2020 and 2,238 children physically visited an adult in prison in 2021.<sup>188</sup> This represents an approximately 80 per cent decrease in the number of children visiting adults in prison between 2020/2021, and an approximately 96 per cent decrease in the number of children visiting imprisoned adults in 2018 (pre-pandemic visiting levels).<sup>189</sup> Due to the onset of the Covid-19 pandemic, in-person physical visits to prisons ceased in March 2020. A phased reintroduction of physical visits began in July 2021.<sup>190</sup> Despite this, physical visits remain limited to twice a month, with prisoners offered a video visit on the week they don't have a physical visit.<sup>191</sup> It is unclear how many families may not have effective access to the video visit option due to digital exclusion and no timeline has been provided for the reintroduction of weekly physical visits – such is said by the Irish Prison Service to “remain under review.”<sup>192</sup>
82. When children and young people do visit a parent in prison, they experience unsuitable visiting conditions, with issues including: a lack of physical contact with parents, an absence of toys and suitable play areas, and a lack of accommodation for the needs of autistic children and children with health conditions.<sup>193</sup> The current *Irish Prison Service Strategic Plan 2019-2022* fails to include measures to provide support to prisoners' families and children.<sup>194</sup>
83. **Recommendation:** The Committee is urged to recommend that the State: develop a database to track the number of prisoners with children and how many children each prisoner has and to produce publicly available, aggregated data from this information. The State must reintroduce physical visits to prison and allow prisoners to continue video visits as an alternative and conduct an audit on how many families of people in prison have access to digital technology which will allow them to engage in video visits. The State should establish child-friendly visiting spaces and procedures in all Irish prisons. Finally, the Committee is urged to recommend that the State adopt a charter of rights and research, design and

---

Service is solely based on self-declaration from new prison admissions, the number of children with a parent in prison may be higher in reality.

183 Prison Rules 2007, S.I. 252/2007 Rule 17

184 Houses of the Oireachtas, 'Parliamentary Question 348 – 10 March 2022' <<https://www.justice.ie/en/JELR/Pages/PQ-10-03-2022-348>>

185 *ibid.*

186 F. Donson and A Parkes (eds) *Parental Imprisonment and Children's Rights* (Routledge & CRC Press 2022) <https://bit.ly/3Qkf21D>> accessed 29 July 2022.

187 Irish Penal Reform Trust, 'Piecing it Together – Supporting Children and Families with a Family Member in Prison in Ireland' (IPRT 2021) 11 <<https://bit.ly/3Qlghh4>> accessed 29 July 2022

188 Department of Justice, 'Parliamentary Question 150 – 24' <<https://bit.ly/3vZ717o>> accessed 25 July 2022.

189 Minister for Justice, Charlie Flanagan T.D., Dáil Debates, Written Answers, Prison Visiting Regulations, 16 May 2017 [21051/19].

190 Department of Justice 'Parliamentary Questions 560 – 31 May 2022' <<https://bit.ly/3QlgEZ0>> accessed 25 July 2022.

191 *ibid.*

192 *Ibid.*

193 Irish Penal Reform Trust, 'Piecing it Together – Supporting Children and Families with a Family Member in Prison in Ireland' (IPRT 2021) 23, 34 <<https://bit.ly/3pey9hG>> accessed 27 July 2022.

194 Irish Prison Service, *Strategic Plan 2019-2022* (IPS 2019).

develop a national support and information service for families and children with a family member in prison.

## Children deprived of a family environment

84. In 2016, the Committee made recommendations to address: (a) Inadequate measures for individual needs assessments and care planning as well as record keeping; (b) Insufficient alternative care services for children with special needs, resulting in outside-of-the-State placements; (c) Inappropriate use of single isolation in special care units; (d) Inadequate coordination between the State agencies responsible for child protection, mental health and disabilities resulting in fragmented or inadequate care being provided for children in such situations; and, (e) Inadequate aftercare services and support provided to children leaving care, particularly those who have experienced homelessness.<sup>195</sup>
85. There were 5,869 children in care at the end of April 2022,<sup>196</sup> 90 per cent of whom were in a foster care placement (64 per cent in general foster care and 26 per cent in relative foster care).<sup>197</sup> The remaining seven per cent were in residential care and three per cent were in “other” care placements.<sup>198</sup> Of the 439 children in residential care, 15 children were in special care where they are civilly detained for the purpose of care and education.<sup>199</sup> Data on the ethnicity of children in care is not available. However, data from the Child Law Project indicates that a disproportionate number of children from Traveller and ethnic minority backgrounds are subject to child care proceedings.<sup>200</sup>
86. The principal statute governing child protection, the Child Care Act 1991, was amended by the Child Care (Amendment) Act 2022 (see section B). In 2017, the Minister announced a broad review of the Child Care Act 1991. While consultations have taken place,<sup>201</sup> legislative proposals have yet to be published.
87. **Recommendation:** The Committee is urged to recommend that the State finalise its review of the Child Care Act 1991 and amend the legislation to ensure that it protects the rights of children and young people.
88. **Voice of the Child in Care:** Concerns have been raised that children’s right to express their views “is not consistently implemented in all actions and decisions regarding their care”. Complaints received by the Office of the Ombudsman for Children have highlighted children’s “lack of input in day-to-day decision-making affecting them, including children not being systematically facilitated to express their views in care placement reviews and in care planning.”<sup>202</sup> For example, a key issue for children and young people in care is family contact and sibling access.<sup>203</sup> Most children in the care system emphasise the importance of their sibling relationships.<sup>204</sup> Benefits of sibling contact reported by children and carers include

---

195 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (2016) UN Doc CRC/C/IRL/CO/3-4 para 44(a).

196 Tusla – Child and Family Agency, ‘Monthly Service Performance and Activity Report April 2022’ (CFA 2022) 3.

197 Ibid, 16.

198 Ibid f.

199 Ibid, 16.

200 Child Care Law Reporting Project *Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings* (CCLRP, 2021) 58.

201 Department of Children, Equality, Disability, Integration and Youth, ‘Review of the Child Care Act 1991’ <<https://bit.ly/3diD1PX>> accessed 12 August 2022.

202 Ombudsman for Children’s Office, *UN Committee on the Rights of the Child 2021 Day of General Discussion Children’s Rights and Alternative Care September 2021* (OCO 2021) 4.

203 F Daly, Report on Advocacy Cases, EPIC, August 2020 (unpublished) 25.

204 A Wojciak, et al, ‘Sibling relationships and internalizing symptoms of youth in foster care’ *Children and Youth Services Review*, 2013, 35(7), 1071-1077.

improved family relationships, reassuring a child of a sibling's welfare, and the promotion of identity and belonging.<sup>205</sup>

89. **Recommendation:** The Committee is urged to recommend that the State ensure that the views of children in care are heard at every stage in the care planning process.
90. **Care Placements:** Progress made over the past two decades in alternative care risks being undermined due to a shortage of foster and residential care placements. In 2022, HIQA identified that that “children remained at home or in short-term placements longer than necessary due to the absence of the appropriate foster care placement for them”; and that “a small number of children were left in potentially unsafe situations, due to the lack of available placements for them”.<sup>206</sup> HIQA notes that “while it has always been a challenge to find placements for children with complex needs, the lack of placement options for all children is now also becoming an increasing challenge.”<sup>207</sup>
91. In 2022, the CFA published a Strategic Plan for Residential Care Services for Children and Young People 2022-2025, which among other things commits to increase residential capacity by 110 beds by 2025.<sup>208</sup> The lack of capacity meant that as of 31 January 2022, 126 children, who has been assessed as requiring a residential care placement, were placed on a waiting list.<sup>209</sup> The pressure on beds can also be seen in the statistics for emergency beds. The CFA notes that as its 26 emergency beds were occupied children were “being placed and cared for in hotel rooms, or holiday accommodation with staff on-site to provide care and support.”<sup>210</sup> From January to November 2021, there were 117 placements of children in emergency hotel accommodation. Most of whom were teenagers, but two children were under four years of age. The average length of stay in such emergency placements is exceeding the ideal maximum number of 21 days.<sup>211</sup> The figure of 117 excludes separated children but may include some double counting of the same child.<sup>212</sup>
92. There has been a significant increase in the use of private, for-profit care providers over the past six years.<sup>213</sup> Of all the children in care at the end of April 2022, 14 per cent were in placements with private providers.<sup>214</sup> The CFA has indicated its intention to phase out the use of private providers, which is welcome.<sup>215</sup>
93. **Secure Care:** In 2016, the Committee recommended that the State “[p]rioritise the development of its special care services to ensure that the needs of such children are addressed, that this takes place within the territory of the State party”.<sup>216</sup> Applications for special care orders are heard in the High Court. If granted, a child (between 11 and 17 years) may be detained as a means of securing their safety and for therapeutic and educational purposes. In April 2022, there were 15 children in special care.<sup>217</sup> For the past 20 years, the High Court has been detaining children in special care under its inherent jurisdiction. In late 2017 a statutory framework for these interventions was commenced which limited the

---

205 E Neil et al, ‘Supporting Direct Contact after Adoption’ 2011 London: BAAF.

206 Health Information and Quality Authority, *Annual overview report on the inspection and regulation of children's services – 2019* (HIQA 2020) 77.

207 *ibid*

208 Child and Family Agency, *Strategic Plan for Residential Care Services for Children and Young People 2022-2025*.

209 *ibid* 30.

210 *ibid*.

211 *ibid*.

212 *ibid*.

213 Tusla - Child and Family Agency, *Review of Adequacy Report 2020* (CFA 2021), Table 38, 82.

214 Tusla – Child and Family Agency, ‘Monthly Service Performance and Activity Report April 2022’ (CFA 2022) 17.

215 Jack Power, ‘Tusla payments to private care providers surge’ *The Irish Times* (10 January 2022) < <https://bit.ly/3C0w14B> > accessed 12 August 2022.

216 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 44.

217 Tusla – Child and Family Agency, ‘Monthly Service Performance and Activity Report April 2022’ (CFA 2022) 16.

detention to a maximum period of nine months.<sup>218</sup> It has been observed that in several cases, a child was deemed fit to be discharged from civil detention in a special care unit, but the court was left with no option but to make a short extension of the special care order, to provide time for a suitable follow-on placement to be identified and secured.<sup>219</sup>

94. **Recommendations:** The Committee is urged to recommend that the State implement in full the Child and Family Agency's *Strategic Plan for Residential Care Services for Children and Young People 2022-2025* to ensure a suite of alternative care placements is available to meet the needs of the child.
95. **Health services:** Many children in care or at risk of entering care require out- and in-patient health services related to disabilities, mental health issues, addictions, and emotional and behavioural difficulties often as a response to past traumas.<sup>220</sup> Delays or difficulties in accessing such therapeutic services can lead to an escalation of a child's difficulties and consequently require a more intensive response.<sup>221</sup> A Joint Protocol is in place between the CFA and HSE which sets out their respective roles, duties and legal requirements and on accessing services from both Agencies.<sup>222</sup> Under the Protocol a child in care access disability and mental health services the same way as other children and such access is prioritised based on clinical needs, however, their 'in care' status must be considered "an additional vulnerability factor".<sup>223</sup> Of concern, the CFA notes that despite the protocol being in place, "staff report consistent challenges accessing services with long waiting lists. In addition, children and young people with significant mental health issues who do not meet the criteria for accessing mental health services, fall outside of the protocol and Tusla staff struggle to find the appropriate therapeutic services to meet their needs."<sup>224</sup>
96. **Recommendations:** The Committee is urged to recommend that the State ensure the *Joint Protocol for Interagency Collaboration Between the Health Service Executive and Tusla – Child and Family Agency to Promote the Best Interests of Children and Families* is adhered to in full; and commission an audit of Compliance and Independent Review of cases where compliance was not evident, to understand factors contributing to non-compliance and ensure shared learning for the future.
97. **Family Reunification:** The International Protection Act 2015 provides a statutory framework for family reunification for persons living in Ireland who have an international protection declaration. This entitlement for adults is restricted to spouses, civil partners, and dependent children,<sup>225</sup> and for children to parents or siblings once under 18 years. This is a narrower definition of the term "family" than appeared under the Refugee Act 1996. There is no state-provided legal aid available for applicants and there is no independent accessible appeals mechanism for those whose application has been refused.
98. **Recommendation:** The Committee is urged to recommend that the State enact rights-based legislation on family reunification to provide wide protection for migrant and refugee families to reunite; and establish an independent appeals mechanism to provide an inexpensive and effective process for applicants.

---

218 Child Care (Amendment) Act 2011, section 10.

219 Child Care Law Reporting Project *Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings* (CCLRP, 2021) 83, 84.

220 Child Care Law Reporting Project *Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings* (CCLRP, 2021) 35 and 80.

221 *ibid* 36-37.

222 Tusla – the Child and Family Agency, Health Service Executive, 'A Joint Protocol for Interagency Collaboration Between the Health Service Executive and Tusla – Child and Family Agency to Promote the Best Interests of Children and Families' (CFA, HSE 2020).

223 *ibid* 3.

224 Child and Family Agency, *Strategic Plan for Residential Care Services for Children and Young People 2022-2025*, 32.

225 Dependent children are classified as those under 18, once they are not married.

99. **Adoption (National and Inter-Country)** In 2016, the Committee expressed concern at the lack of a comprehensive legal framework for ensuring that children who have been adopted have access to information regarding their origins and services for family tracing. While much progress has been made, gaps remain. The adoption system is a closed system. There is no communication between the birth parent/s and the child after the adoption, even in cases of non-consensual adoption from care. Further, any agreement regarding access or communication is not legally enforceable.<sup>226</sup> There is no mechanism to retain and respect the child's right to identity nor any entitlement to access birth records. In 2022, the Birth Information and Tracing Act 2022 was enacted which will provide adoptees with the right to seek personal information including birth certs, establish a tracing service for persons wishing to make contact, share or seek information and a new register to register contact preferences.
100. **Recommendation:** The Committee is urged to recommend that the State party implement the recommendations of the 2019 Report on a Review and Consultation in respect of the Potential Introduction of Open or Semi-Open Adoption in Ireland.

---

<sup>226</sup> DCEDIY, *Review and Consultation in respect of the Potential Introduction of Open or Semi-Open Adoption in Ireland Report produced in accordance with Section 42 of the Adoption (Amendment) Act 2017* November 2019 *Review and Consultation in respect of the Potential Introduction of Open or Semi-Open Adoption in Ireland Report produced in accordance with Section 42 of the Adoption (Amendment) Act 2017* (DCEDIY 2019) 39,69.

## F. Children with Disabilities (art. 23)

102. The number of children in special classes<sup>227</sup> has increased by 63 per cent between 2014 and 2018.<sup>228</sup> Currently it is estimated that 20 per cent of the school going population has special educational needs and of these, two per cent – approximately 17,000 students – are supported in special classes and schools.<sup>229</sup> The remainder attend mainstream schools with additional teaching and care supports.<sup>230</sup> Traveller children and young people are more likely to experience disability than the general population, with almost one in five Travellers categorised as having a disability.<sup>231</sup> The Government has increased investment in special educational needs support over the last decade amounting to over one-quarter of the overall education and training budget, an increase of more than 60 per cent since 2011.<sup>232</sup> Budget 2022 saw an increased allocation of €16 million for special education teachers and €12 million for Special Needs Assistants (SNA).<sup>233</sup> Despite increased funding, significant issues persist regarding access to school places for children with Special Educational Needs (SEN) and the quality of education and educational outcomes for children and young people who do access a school place. Children and young people with SEN in Ireland are more likely to dislike school, have lower wellbeing scores and experience bullying in school.<sup>234</sup>

103. **Access to School Places:** Special schools are oversubscribed, with high numbers of children on waiting lists for special classes in mainstream schools, and in many cases, the only place that parents can find a school place may be outside their local school-catchment area.<sup>235</sup> Some 4,000 children are currently on waiting lists for an assessment to access a school place.<sup>236</sup> The Department of Education has undertaken to improve data collection, but significant issues in matching the need and provision of school places remain.<sup>237</sup> The Ombudsman for Children has noted that there is a “lack of centralised data with respect to how many children with SEN require a school placement or require a more appropriate school placement”.<sup>238</sup> The continued failure by the State to provide sufficient special educational school places results in many children with SEN being denied equal access to education. This group of children and young people have a right to access education on the basis of equal opportunity and without discrimination.<sup>239</sup> Due to a lack of school places, many children and young people, who would prefer to be in a school environment, are forced to accept home tuition,<sup>240</sup> leading to them missing out on the vital opportunities for social integration and holistic learning that the

227 Classes in mainstream schools for students with special educational needs arising from certain disabilities.

228 Department of Education and Skills, ‘Education Indicators for Ireland’ (DES 2019) 19 <<https://bit.ly/2Sc5tpQ>>

229 Communication received by the Children’s Rights Alliance from the Department for Education, 17 December 2021.

230 *ibid*.

231 CSO, Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion <<https://bit.ly/2CGbmTc>> accessed 29 July 2022.

232 Minister of State at the Department of Education, Josepha Madigan TD, Dáil Debates, Written Answers, 1 February 2022 [4612/22].

233 Communication received by the Children’s Rights Alliance from the Department for Education, 17 December 2021.

234 National Council for Special Education, ‘Educational Experiences and Outcomes of Children with Special Educational Needs: Phase 2 – from age 9 to 13 A Secondary Analysis of Data from the Growing Up in Ireland Study’ 174, 175 (NCSE 2018).

235 AslAm, *Invisible Children: Survey of School Absence and Withdrawal in Ireland’s Autism Community* (AslAm 2019)

236 Ombudsman for Children’s Office, *Plan for Places – Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children’s Rights Issue* (OCO 2022) 68.

237 *ibid* 6

238 Ombudsman for Children’s Office ‘*Plan for Places – Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children’s Rights Issue*’ (OCO 2022) 15.

239 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Arts 2, 28.

240 The Home Tuition scheme is provided by the Department of Education and offered to children with special educational needs and medical grounds, for example: children who cannot attend school due to chronic illness; children with special education needs who are seeking a school place; and early educational intervention for children with autism. Children and young people who are seeking a school place or require early educational intervention apply for Home Tuition under the HTSEN1 stream. Children who have a significant medical condition or school phobia apply for Home Tuition under the HTMED1 stream. Successful applicants under the HTSEN1 stream, who are seeking a school placement, may receive a maximum grant based on 20 hours of Home Tuition per week. Parents must then recruit a tutor who is registered with the Teaching Council to deliver the Home Tuition. See: Department of Education, ‘Home Tuition Grant Scheme 2022/2023, Circular Number 0046/2022’ (DOE 2022).

school setting provides. It must also be noted that major issues remain regarding the recruitment and retention of home tutors, resulting in cases where families are unable source a tutor to fulfil their full home tuition hours.<sup>241</sup>

104. The Education (Admissions to Schools) Act 2018 has provided the Minister for Education with the power to compel a school to open a special needs class where the National Council for Special Education (NCSE) identifies a need in a given area.<sup>242</sup> However, 270 children with autism requiring a place in a special school are without a place for September 2022.<sup>243</sup> In May 2022 it was announced that where schools, who have capacity to open a special class, have not effectively engaged with the NCSE, the Minister of State for Special Education, may use the section 37A process in the Education Act 1998 to compel the school to provide additional places.<sup>244</sup>

105. **Education for Persons with Special Educational Needs Act:** Almost 20 years on, the Education for Persons with Special Educational Needs (EPSEN) Act 2004 remains only partially commenced<sup>245</sup> - not all parts of this Act are in full effect.<sup>246</sup> The EPSEN Act provides that children with special educational needs should be educated in an inclusive mainstream environment, unless doing so would not be in the best interests of the child.<sup>247</sup> The EPSEN provision to prepare a tailored, annually-reviewed, individual Education Plan for a pupil following assessment of need is not yet operational,<sup>248</sup> nor has the Special Education Appeals Board – the independent mechanism for review and redress – been established.<sup>249</sup> The delay in establishing the Board means families who are concerned their child is not receiving their full entitlements under the EPSEN Act, have no mechanism through which the child's rights could be vindicated except to litigate via the Courts. The State have commenced a review of the EPSEN Act, due to be completed by early 2023.<sup>250</sup> This process must be prioritised, with all sections commenced as a matter of urgency.

106. **Seclusion and Restraint:** The inappropriate use of seclusion and restraint on children with disabilities in school settings remains a grave concern. In 2019 a report was published highlighting the experiences of fourteen families who shared stories of children: being held face down; left in seclusion every day for up to one year; left unattended in dark rooms without handles and locked into a toilet.<sup>251</sup> There is limited data available on the extent of the use of seclusion and restraint, as there is no legal requirement for schools to record or report when the practices are used.<sup>252</sup> There is no independent oversight or monitoring of the use of seclusion and restraint in schools. This is in contrast with the legislative basis for the use of seclusion and restraint in approved centres<sup>253</sup> under the Mental Health Act 2001.<sup>254</sup> In 2019, the Department of Education began work on guidelines on the use of physical intervention in

---

241 Conor McMorow, "Let them get a school place" – Mother of autistic boys' RTÉ (18 May 2022) < <https://bit.ly/3AfmJR6> > accessed 05 August 2022.

242 Department of Education and Skills, 'Minister Bruton Delivers Historic Reform of School Admissions' (Press release 9 May 2018) < <https://bit.ly/2YadvBB> > accessed 28 January 2021.

243 Carl O'Brien, 'Almost 270 children with autism do not have appropriate school places – survey', *Irish Times* (30th May 2022)

244 Department of Education, 'Statement from Minister of State for Special Education and Inclusion Josepha Madigan' (DE 2022) < <https://bit.ly/3dfZjlq> >; Education Act, 1998, section 37A.

245 D Doyle et al., 'Education in Ireland: accessible without discrimination for all?' (2020) *International Journal of Human Rights*, 11.

246 N Kenny et al., 'Special education reforms in Ireland: changing systems, changing schools' (2020) *International Journal of Inclusive Education*.

247 Education for Persons with Special Educational Needs Act 2004, section 2.

248 *ibid* sections 9-13.

249 *ibid* section 36, 37.

250 Minister for Special Education, Josepha Madigan T.D. Dáil Debates, Written Answers, Legislative Reviews, 21 June 2022.

251 Inclusion Ireland, 'Shining a light on seclusion and restraint in schools in Ireland: The experience of children with disabilities and their families' (Inclusion Ireland 2018) 10-14.

252 *ibid* 23.

253 An "approved centre" is defined in the Mental Health Act 2001, section 62 as a "hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder".

254 Mental Health Act 2001, section 69(2).

the prevention and management of crisis student behaviour in school, but this has yet to be completed.<sup>255</sup>

107. **Assessment of Need:** Currently, children are assessed under the Disability Act 2005, which provides that all persons with a disability are entitled to an Assessment of Need (AON) to determine the health or educational services required. This is a diagnosis-led, rather than a needs-led, model which assesses the need *for services*, rather than the need itself.<sup>256</sup> Demand for AONs has outpaced system capacity, with a fourfold increase in applications over the past 11 years, leading to a failure to complete assessments within the statutory timeframes.<sup>257</sup> Currently, the AON must be commenced within three months of the date of application, with an Assessment Officer given a total of six months to complete the AON and write up the Assessment Report.<sup>258</sup> At the end of June 2021 there were 3,609 AONs overdue for completion.<sup>259</sup> At the start of June 2022 there were 1,464 AONs overdue for completion.<sup>260</sup> The failure of the State to commence parts of the EPSEN Act has meant that many families have no option but to pursue Court action to try to ensure their child receives an AON and the appropriate follow-up support.<sup>261</sup>
108. In 2020, the HSE introduced a standard operating procedure for AON, which shortened the time taken to make an AON from 29 clinical hours to 90 minutes, a reduction of 99.95 per cent in clinical hours for an assessment.<sup>262</sup> In April 2022, the High Court ruled the Standard Operating Practice that the HSE applied to Assessments of Need since 2020 was non-compliant with the Disability Act 2005. As a result, 10,000 children have been left awaiting assessments,<sup>263</sup> and are delayed in accessing services, often resulting in missed opportunities for vital early intervention and poorer outcomes.
109. **Children's Disability Services:** Progressing Disability Services (PDS) is a national programme to reconfigure children's disability services which aims to "provide equitable child and family-centred services based on need rather than diagnosis".<sup>264</sup> However, the PDS programme of reconfiguration has resulted in children and young people with disabilities not receiving the services they need, losing access to services, and facing lengthy waiting periods to access service.<sup>265</sup> The Minister overseeing the roll-out of the PDS reforms has acknowledged the impact of "recruitment issues" on the programme and noted "the PDS programme has tried to do everything at once and that simply has not worked."<sup>266</sup>
110. Children's Disability Network Teams are currently operating at only 75 per cent staffing levels.<sup>267</sup> A survey of families of children with disabilities in March 2022 found that more than 50 per cent were not in receipt of any service.<sup>268</sup> The survey also found that 85 per cent said they had been waiting over a year for services and almost 20 per cent criticised the quality of

---

255 Department of Education, 'Minister McHugh invites views and contributions on the development of guidelines for schools on the use of physical intervention for the prevention and management of crisis situations' (Press Release 2 April 2019).

256 Ombudsman for Children's Office, 'Unmet Needs: A report by the Ombudsman for Children's Office on the challenges faced by children in Ireland who require an assessment of their needs' (OCO 2020) 15

257 *ibid*,

258 Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 SI No. 263/2007.

259 Health Service Executive, 'Letter from the HSE to Deputy Sean Sherlock, 21 September 2021' <<https://bit.ly/3rb2iQS>> accessed 26 June 2022.

260 Health Service Executive, 'Letter from the HSE to Deputy Holly Cairns, 8 June 2022' <<https://bit.ly/3JNQhsf>> accessed 22 July 2022.

261 Mary Carolan, 'Disabled children affected by 'extraordinary' failure to bring 2004 law into force – judge', *Irish Times*, 30 July 2020.

262 Dáil Éireann debate – Assessment of Needs for Children with Special Education Requirements: Motion (Resumed) [Private Members] (8 March 2022)

263 *CTM (A Minor) v Assessment Officer* [2022] IEHC 131.

264 Minister of State for Disability Anne Rabbite TD, Joint Meeting with Joint Committee on Children, Equality, Disability, Integration and Youth Progressing Disability Services: Discussion 2 June 2022.

265 *ibid*

266 *ibid*

267 Dáil Éireann debate, 'Topical Issue Debate' (20 January 2022) <https://www.oireachtas.ie/en/debates/debate/dail/2022-01-20/35/#s38>

268 Inclusion Ireland, 'Progressing Disability Services for Children and Young People: Parent Experience Survey Report' (February 2022)

services, citing high staff turnover and excessive caseloads as problems.<sup>269</sup> The report found some families had waited as long as nine years for services, with five per cent reporting a wait of over six years, 16 per cent waiting four to six years and 27 per cent waiting two to four years.<sup>270</sup> In May 2022, it was reported that 17,000 children across the country are waiting for their first contact from a Children's Disability Network Team to access vital services such as speech and language therapy, psychological therapy, and occupational therapy.<sup>271</sup> For children waiting for speech and language therapy, nearly 1,300 have been waiting in excess of one year, with over 450 waiting more than two years.<sup>272</sup> Similarly, for psychology services, as of October 2021, there are 6,029 waiting longer than six months and 4,272 waiting longer than 12 months.<sup>273</sup> Children on waiting lists are being denied access to services that they need and facing delays that can result in poorer outcomes across various aspects of their development.<sup>274</sup>

**111. School Inclusion Model (SIM) and Access and Inclusion Model (AIM):** The SIM demonstration project was developed by the Departments of Education, DCEDIY, Health, and the Health Service Executive in 2019 and is managed and co-ordinated by the National Council for Special Education.<sup>275</sup> The purpose of the project was to test a model of tailored therapeutic supports by providing speech and language and occupational therapy within "educational settings."<sup>276</sup> Initially designed as a one- year pilot, it was continued for the 2019/2020 school year and again for the 2020/2021 school year however delivery was interrupted by the redeployment of therapists during the Covid pandemic.<sup>277</sup> The government has confirmed that planning for an expansion of the model is underway but there are no details available for this.<sup>278</sup> AIM is in place for pre-school children and has helped support children with disabilities through a child-centred, progressive universal model. This is welcome, however it is only available for pre-school children who are aged over two years and eight months.<sup>279</sup> In 2020/2021, 4,244 children were supported under AIM by 2,045 services representing a 26 per cent decrease on the number of children receiving support from the previous year, owing to the Covid-19 pandemic, with parents of many children with additional needs supporting their children at home rather than availing of centre-based care.<sup>280</sup>

**112. Recommendations:** The Committee is urged to recommend that the State develop a long-term roadmap for inclusive education, expedite the review of the EPSEN Act and pending review, provide a timeline for the commencement of the remaining sections of the Act. The State should improve systems to ensure that future planning is undertaken, as there are significant deficits in matching the need and provision of school places. The State must also undertake the development of a national strategy aimed at improving outcomes for children with SEN, in both special schools and special classes in mainstream schools. Such a strategy should be accompanied by a detailed implementation framework and adequate resources.

---

269 *ibid*

270 *ibid* 14.

271 Darragh Bermingham, 'Over 17,000 children awaiting first contact from short-staffed child disability teams' *Irish Examiner* (04 August 2022).

272 Neil Michael, '11-year-old Cara Darmody: Dearth of autism resources 'needs to be treated like a crisis, like Covid'' *Irish Examiner* (05 August 2022).

273 Dáil Éireann Debate, 'Child and Adolescent Mental Health Service: Motion [Private Members]' (01 February 2022).

274 Peter McGuire, 'Disability assessments: 'We're burnt out, exhausted. Our savings are spent' *The Irish Times* (10 May 2022); Pat McGrath, 'Significant challenges' to disability services recruitment – Reid' *RTÉ* (27 June 2022); Aine Kenny, 'More than 18,000 children waiting for initial occupational therapy assessment' *The Irish Times* (08 December 2021); Darragh Bermingham, 'More than 60,000 children on waiting lists for vital services' *Irish Examiner* (12 August 2022).

275 Minister of State for Special Education, Josepha Madigan TD., Dáil debates, Written Answers, Special Educational Needs, 5 July 2022 [35423/22]

276 *ibid*.

277 *ibid*.

278 *ibid*.

279 Department of Children and Youth Affairs, 'AIM FAQs' <<https://bit.ly/34Uhs4i>> accessed 12 August 2022.

280 Pobal, Annual Early Years Sector Profile Report 2020/ 2021 (2021) 12.

113. The Committee is urged to recommend that the State establish a legislative basis and guidelines on the use of physical intervention in the prevention and management of crisis student behaviour in school.
114. The Committee is urged to recommend that the State address the staffing issues in children's disability teams and take measures to address the high waiting lists for services and expand the School Inclusion Model to all schools.

## G. Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

### Health and health services

115. In 2016, the Committee called on Ireland to address socio-economic disadvantages in accessing healthcare, particularly for children in one-parent families, children living in poverty, as well as Traveller and Roma children.<sup>281</sup> While there have been some positive developments generally in the area of health, such as the publication of *Sláintecare*, a ten-year programme to transform health and social care services in Ireland, the *Sláintecare* Implementation Strategy does not include new child-specific measures regarding access to primary care. The Programme for Government committed to establishing a 'Delivering Equality of Opportunity in Schools' type programme for health, providing General Practitioner (GP) practices, community pharmacies and public health staff with dedicated additional resources to communities, focused on improved health outcomes and driven by strong data.<sup>282</sup> Despite this, there remains no overarching statutory basis or national policy on children's access to healthcare services.
116. **Primary Care:** The Government, in the policy framework, *Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014–2020* committed to introducing universal GP services.<sup>283</sup> Differences in the health of children from less well-off areas are obvious from as early as three years of age.<sup>284</sup> Access to healthcare in Ireland is severely undermined by an entrenched two-tier healthcare system. Those on low incomes who are reliant on the public health system must wait for extended periods for tests and procedures, while those who can afford to purchase private health insurance,<sup>285</sup> can get a much faster service through the private system and bypass the lengthy public waiting lists.<sup>286</sup>
117. The Health (General Practitioner and Service and Alteration of Criteria for Eligibility) Act 2020 provides for the extension of the GP visit card for children under the age of 13<sup>287</sup> which will be introduced in three phases.<sup>288</sup> Funding was provided in Budget 2022 to cover the first phase of expansion which will see GP care provided for six and seven year olds, with the timing for further phases of expansion yet to be announced.<sup>289</sup>

281 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 50.

282 Department of the Taoiseach, 'Programme for Government: Our Shared Future' (Department of the Taoiseach 2020) 45.

283 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (Stationery Office 2014) Commitment Goal 9, 30; see also Department of Health, *Future Health: A Strategic Framework for Reform of the Health Service 2012–2015* (DOH 2012) ii.

284 A Nolan and R Layte, 'Understanding Use of General Practitioner Services Among Children in Ireland: Infant Cohort (Report 7)' *Growing Up in Ireland: National Longitudinal Study of Children* (Department of Children and Youth Affairs, 2017) 4.

285 *ibid* 7.

286 *ibid*; C Keane, et al, 'Failure to take-up public healthcare entitlements: Evidence from the Medical Card system in Ireland' *Social Science & Medicine* (2021) 281, 283.

287 Health (General Practitioner Service and Alteration of Criteria for Eligibility) Act 2020 section 6.

288 The three phases are six to seven years olds, eight to nine year olds, and 10 to 12 year olds Minister for Health, Stephen Donnelly TD Dáil Debates, Covid 19 (Health) Statements, 24 July 2020 [995/6].

289 Department of Finance, *Budget 2022 Draft Budgetary Plan* (DoF 2022) p.21

118. In Ireland, a full medical card provides eligible households with free access to primary care, including GP, oral, opticians and aural services, medicines and prescriptions, in-patient and out-patient services, medical appliances and maternity care.<sup>290</sup> Medical Card holders may also be exempt from paying school transport charges and exam fees.<sup>291</sup> Notably, the income thresholds for receiving a Medical Card have not been revised since 2005. This means many families living below <sup>292</sup> the poverty line who are deriving income from a combination of work and social welfare cannot qualify for a Medical Card.<sup>293</sup> A review of these thresholds for accessing the Medical Card for people living on low incomes is urgently needed. In 2016, the Committee recommended the introduction of Medical Cards for Traveller and Roma children, to guarantee that such children “enjoy the same access to and quality of health services”,<sup>294</sup> but no such measure has been introduced since the State’s last examination.
119. **Waiting lists:** Under the public health system, thousands of children face prolonged waiting lists to access health care - the situation further deteriorated during the pandemic, as resources were redirected from children’s care into the Covid-19 response.<sup>295</sup> As of February 2022, there were nearly 25,000 children on waiting lists for speech and language therapy, with nearly half of these children awaiting an initial assessment.<sup>296</sup> Over 7,000 children were waiting for psychological therapy, of which 4,166 were waiting for more than six months and 2,421 were waiting for over a year.<sup>297</sup> There were 11,510 waiting for occupational therapy with 4,500 children waiting over a year.<sup>298</sup> As of May 2022, the average wait time for a child in need of a dietitian appointment was 25 weeks.<sup>299</sup> This has resulted in children missing out on receiving vital services when they are needed, and often their medical conditions deteriorating.
120. **Recommendation:** The Committee is urged to recommend that the State intensifies its efforts to introduce a universal healthcare system, address waiting lists for children to access health care and revise the income thresholds for the Medical Card to ensure that all families with children who are at risk of poverty will have access.
121. **Public Health Nursing:** The Public Health Nursing service provides one-to-one support for parents of all babies and has a critical role in ensuring that babies and young children have access to primary, preventative and specialist healthcare. Public Health Nurses are a consistent point of contact for parents and children in the first three years of a child’s life and are an important link to early childhood education and care services, particularly prevention and early intervention services.<sup>300</sup>
122. Public Health Nursing is under pressure due to a historical hiring embargo, current recruitment challenges and the implications of a generalist model of Public Health Nursing.<sup>301</sup> The redeployment of Public Health Nurses throughout the pandemic, including their

---

290 Citizens Information ‘Medical Cards’ (Citizen’s Information, 2022) <<https://bit.ly/3ivgLae>> accessed 22 July 2022 .

291 *ibid*.

292 Citizens Information, ‘Medical Card’ <<https://bit.ly/3QCKPuf>> accessed 12 August 2022.

294 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (29 January 2016) UN Doc CRC/C/IRL/CO/3-4 para 50.

295 Michael McNamara TD, Dáil Debates “Topical Issue Debate: Health Services” (2 December 2021) [1015/2].

296 Health Service Executive, ‘Correspondence to Sean Sherlock T.D. in Response to Parliamentary Questions 15247/22 and 15248’ (6 April 2022) < <https://bit.ly/3bwHtKf> > accessed 02/09/2022. 11,582 children are waiting on an initial assessment, 5,538 are waiting on initial therapy and 7,489 are waiting on further therapy.

297 *Ibid*.

298 *Ibid*.

299 Health Service Executive, ‘Correspondence to Mark Ward T.D. in Response to Parliamentary Question 20689/22’ (12 May 2022) <<https://bit.ly/3QIZmuz>> accessed 02 August 2022.

300 Citizen’s Information, ‘Maternal Care and the Public Health Nurse’ <<https://bit.ly/3SLLQ51>> accessed 12 August 2022.

301 G Martina et al, ‘Work Environment Challenging Irish Public Health Nurses’ Care Quality: First Post-natal Visit’ (2022) 39 *Public Health Nursing* 202.

involvement in the vaccination programme, has severely curtailed routine visits and checks undertaken by these health professionals.<sup>302</sup> This reduced level of contact with new-born babies and their parents has meant that just 55 per cent received their developmental screening within 10 months between July and September 2020.<sup>303</sup> In 2021 this fell to 53.6 per cent.<sup>304</sup> In 2019, prior to the pandemic, the rate was 98 per cent.<sup>305</sup> The community-based nature of the service has meant that any interactions with the service has varied based on where families live.<sup>306</sup> In some areas, the HSE informed parents that they will not receive any Public Health Nurse development checks, due to staff shortages.<sup>307</sup>

**123. Recommendation:** The Committee is urged to recommend that the State invest in creating a dedicated Public Health Nurse service for children and develop a home visiting strategy to ensure every child has access to prevention and early intervention supports in their own community.

**124. Consent and refusal of medical treatment:** Despite the recommendation of the Committee in 2016 that Ireland “enact legislation that explicitly and comprehensively provides for children’s consent to and refusal of medical treatment”<sup>308</sup> the law in Ireland does not expressly state when a child can consent to medical treatment without the agreement of their parents. However, by virtue of the Non-Fatal Offences Against the Person Act 1997,<sup>309</sup> which applies in the context of a criminal law defence, the *de facto* position is that children aged 16 and over can consent to medical treatment without the agreement of their parents.<sup>310</sup> The Act is very limited in its scope— for example, it does not provide guidance on whether a child under 16 years can provide consent or whether a child aged 16 or 17 years can refuse medical treatment or social care interventions. Even when a child does consent at 16 or 17 to medical treatment, confidentiality cannot be assured as their parents may have rights to access their medical records.<sup>311</sup> The HSE’s *National Consent Policy*, which sets out best practice principles, notes that only in exceptional circumstances should a health and social care intervention be provided to a child under 16 years without the knowledge or consent of their parent or guardian, following an assessment of the rights and best interests of the child.<sup>312</sup> However, the *National Consent Policy* is not legally binding, limiting the effectiveness of its guarantees.

**125. Recommendation:** The Committee is urged to recommend that the State implements a comprehensive legal framework for the child’s right to consent to or refuse treatment in physical and mental health and social care settings.

**126. Non-Medical Cost of Healthcare:** There are limited financial supports available for families when a child has a long-term illness, particularly where long-term hospital care is required. The entitlement to Domiciliary Care Allowance is removed if a child is in hospital for more than six months. If an application is made when a child is first admitted or they require

302 Niamh Griffin, ‘Thousands of babies miss out on developmental health checks, HSE figures show’ *The Irish Examiner* (9 May 2021)

303 Health Service Executive, ‘Performance Profile July – September 2020’ (HSE 2020) < <https://bit.ly/3w1h2Ud> > accessed 02 August 2022.

304 *ibid*

305 *ibid*

306 Sheila Wayman, ‘Child development checks in a time of pandemic’, *Irish Times*, 24 March 2021.

307 Oonagh Smyth, ‘Key development checks for babies withdrawn by the HSE’ *RTÉ* (22 July 2022) < <https://bit.ly/3C0Gk8M> > accessed 02 August 2022.

308 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (29 January 2016) UN Doc CRC/C/IRL/CO/3-4, 54(a).

309 Non-Fatal Offences Against the Person Act 1997, s23 (1).

310 HSE, *National Consent Policy 2022* (HSE 2022) 46.

311 Freedom of Information Act, 1997 (Section 28(6)), Regulations 2009, Regulation 4(1)(a)(i) 2009 (SI 387/2009)

312 HSE, *National Consent Policy 2022* (HSE 2022).48

hospitalisation from birth, access to this payment is not granted until they are discharged.<sup>313</sup> Research shows that the non-medical costs of childhood illness and hospitalisation can contribute significantly to child and family poverty and social exclusion.<sup>314</sup>

**127. Recommendation:** The Committee is urged to recommend that the State introduce means tested social welfare supports to assist families with the non-medical financial costs arising from childhood illness.

**128. Breastfeeding:** In 2016 the Committee recommended that the State “strengthen its efforts to promote exclusive and continued breastfeeding by providing access to materials and raising awareness concerning the importance of breastfeeding and the risks of formula feeding and to develop and implement a national strategy on breastfeeding”.<sup>315</sup>

**129.** The HSE published *Breastfeeding in a Healthy Ireland – HSE Action Plan 2016-2021*, a strategy setting out priority areas to be addressed to enhance breastfeeding supports and to enable more mothers in Ireland to breastfeed.<sup>316</sup> Due to the impact of the pandemic, the plan has been extended until 2022,<sup>317</sup> but there is no indication when a successor strategy will be developed. Budget 2021 provided for €1.58 million of funding to provide an additional 24 lactation consultants across hospital and community settings.<sup>318</sup> Despite investment, breastfeeding rates in Ireland are low by international standards and the lowest in Europe.<sup>319</sup> Just over half of mothers (56 per cent) initiate breastfeeding in hospital compared with over 90 per cent in Scandinavian countries.<sup>320</sup> This figure falls to 48 per cent once mothers leave hospital and just a quarter of mothers who initiate breastfeeding continue to do so at six months.<sup>321</sup> Only 2.2 per cent of Traveller mothers initiate breastfeeding.<sup>322</sup>

**130. Recommendation:** The Committee is urged to recommend that the State promotes increased understanding among healthcare professionals and the general public of breastfeeding and its benefits and adopts measures to support women on their return to work, to allow them to continue to breastfeed beyond 26 weeks. A monitoring system to track breastfeeding rates after hospital discharge should be developed and resourced. A successor strategy to *Breastfeeding in a Healthy Ireland – HSE Action Plan 2016-2021* must be developed and implemented, with specific targeted measures included to increase breastfeeding rates in specific populations who have been reported in the past to experience low-levels of breastfeeding, such as Traveller and Roma women.

---

313 Domiciliary Care Allowance (DCA) may be provided to a parent or guardian where a child is under the age of 16 and has a severe disability that has continued or is expected to last for at least a year, and which means that the child needs substantially more care than another child their age. The payment is not means tested. The child must be living at home and in continuous care if the child is in residential care but returns home two or more days a week the parent or guardian may qualify for a reduced rate of payment. The DCA may also be paid where parents do not live together but are sharing the full-time care of the child.

314 Children in Hospital Ireland, ‘Childhood Illness, Financial Stress: The Hidden Costs of Hospital Care for Children’ (CHI, 2020) 31.

315 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (29 January 2016) UN Doc CRC/C/IRL/CO/3-4, para 52.

316 Health Services Executive, *Breastfeeding in a Healthy Ireland: Health Service Breastfeeding Action Plan 2016 – 2021* (HSE 2016) f

317 Minister of State with responsibility for Public Health, Well Being and National Drugs Strategy, Frank Feighan TD, Dáil Debates, Written Answers, Health Promotion 15 September 2021 [43546/21].

318 Minister of State with responsibility for Public Health, Well Being and National Drugs Strategy, Frank Feighan TD, Dáil Debates, Written Answers, Healthcare Policy, 8 March 2022 [12645/22].

319 R. Layte & C. McCrory, *Growing up in Ireland, National Longitudinal Survey on Children, Maternal Health Behaviours and Child Growth in Infancy, Analysis of the Infant Cohort of the Growing Up in Ireland Study*, (ESRI 2014).48; Women from the original twelve EU countries and African countries are four and 10 times more likely, respectively, to be breastfeeding at discharge from hospital compared to an Irish woman.

320 Economic and Social Research Institute and HSE National Office of Health Promotion *Breastfeeding in Ireland 2012: Consequences and Policy Response* [press release], (ESRI, 2012).

321 R. Layte & C. McCrory, *Growing up in Ireland, National Longitudinal Survey on Children, Maternal Health Behaviours and Child Growth in Infancy, Analysis of the Infant Cohort of the Growing Up in Ireland Study*, (ESRI 2014).45.

322 Department of Health, *All Ireland Traveller Health Study: Our Geels – The Birth Cohort Study Follow-up* (UCD 2011) 66.

131. **Junk food Marketing:** It is predicted that by 2025, 241,000 school children in Ireland will be overweight or obese and as many as 9,000 will have impaired glucose intolerance; 2,000 will have type 2 diabetes; 19,000 will have high blood pressure; and 27,000 will have first stage fatty liver disease.<sup>323</sup> European research with children aged between three and five years found that they recognised more unhealthy brands than healthy brands.<sup>324</sup> The proliferation of digital food and beverage marketing has led to concerns about the influence of this type of exposure on the health and wellbeing of children.<sup>325</sup> The current Government undertook to work with stakeholders “to introduce a Public Health Obesity Act, including examining restrictions on promotion and advertising aimed at children”<sup>326</sup> but no timeline is in place for the drafting and development of this Bill.<sup>327</sup>
132. **Recommendation:** The Committee is urged to recommend that the State strengthens legislation and regulations in relation to the broadcast and online digital marketing of food that is high in sugar, salt and fat, and develops and implements the Public Health Obesity Bill as a matter of urgency.
133. **Alcohol:** Pre-natal exposure to alcohol can leave children compromised from a neurobiological perspective, resulting in problems carried with them throughout their lives. Ireland is estimated to have the third highest prevalence of Foetal Alcohol Spectrum Disorder (FASD) in the world.<sup>328</sup> Implementation of key action points addressing alcohol consumption during pregnancy, as contained in *Creating A Better Future Together: National Maternity Strategy 2016-2026*, have not been implemented.<sup>329</sup>
134. *Growing Up In Ireland* studies found that 89 per cent of 17 and 18 year olds drink alcohol, while 15 per cent of 13 year olds drink alcohol.<sup>330</sup> In 2018, the Public Health (Alcohol) Act was passed into law which restricts alcohol advertising at events where children are present and at places frequented by children, including public transport, sports events or in grounds where the majority of competitors or participants are children. It also prohibits alcohol advertising targeted at children.<sup>331</sup> Other positive measures include the introduction of minimum unit pricing;<sup>332</sup> mandatory health warnings on advertising;<sup>333</sup> a prohibition on price-based promotions; mandatory health warnings on labels and structural separation.<sup>334</sup> Some sections of the Act, including those related minimum unit pricing<sup>335</sup> have been commenced. However, provisions relating to the content of advertising<sup>336</sup> and the introduction of a broadcast watershed for advertising<sup>337</sup> have yet to be commenced. Given that the proposed legislative amendments to limit this type of marketing simpliciter were not passed,<sup>338</sup> these sections are more vital than ever to address concerns that the legislation does not tackle the

323 World Obesity Federation, ‘Ireland National Infographic’ (World Obesity Federation, 2017) <<https://bit.ly/3pedKJv>> accessed 12 August 2022.

324 Safe Food, ‘New research highlights links between advertising and preschoolers’ food brand knowledge’ [Press Release] (Safe Food, 2014) <<https://bit.ly/3QW1xFp>> accessed 12 August 2022.

325 WHO Regional Office for Europe, Tackling food marketing to children in a digital world: trans-disciplinary perspectives. (WHO, 2016) <<https://bit.ly/3QBzTgy>> accessed 12 August 2022, 6.

326 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications, 2020) 46.

327 Children’s Rights Alliance, *Report Card 2022* (CRA 2022).

328 Alcohol Ireland, ‘Global Prevalence of Fetal Alcohol Spectrum Disorder Among Children and Youth A Systematic Review and Meta-analysis’ (Alcohol Ireland, 2017) <<https://bit.ly/3dme5qW>> accessed 23 June 2022.

329 Department of Health, *Creating a Better Future Together: National Maternity Strategy 2016-2026* (DOH 2016) 65, 112, 113.

330 Growing up In Ireland, Key Findings: Cohort ‘98 at 20 years old in 2018/19, No. 2 Physical Health (GUI, 2019) <<https://bit.ly/2OIJMAj>> accessed 5 June 2020.

331 Public Health Alcohol Act 2018, section 17 to 19.

332 *ibid* s 11.

333 *ibid* s13.

334 *ibid* s 11.

335 *ibid* s 11.

336 *ibid* s 13.

337 *ibid* s 14.

338 Ailbhe Conneely, ‘Sinn Fein Amendment to Public Alcohol Bill Opposed by Government’ (RTÉ 2018) <<https://bit.ly/2vETOCj>> accessed 23 June 2022.

issue of alcohol sports sponsorship more generally. There also remains a need to address the digital marketing of alcohol to children and young people.<sup>339</sup> The Government's failure to progress the commencement of these sections undermines the impact of the Public Health Alcohol Act.

135. **Recommendation:** The Committee is urged to recommend again that the State enact the remaining sections of the Public Health (Alcohol) Act 2018 as a matter of urgency and that they introduce robust legislation to prohibit the digital marketing of alcohol to children and young people.

## Mental Health

136. In 2016, the Committee called on the State to improve its mental healthcare services for children and adolescents, particularly in the areas of “inpatient treatment, out-of-hours facilities and facilities for treating eating disorders”.<sup>340</sup> Approximately one in three young people in Ireland will have experienced some type of mental disorder by the age of 13, with this rate rising to more than one in two by the age of 24 years.<sup>341</sup> While mental health problems are not selective, certain groups of children are at greater risk of poor mental health, including; children who have experienced abuse or neglect,<sup>342</sup> including domestic abuse;<sup>343</sup> children living in poverty;<sup>344</sup> children who have experienced discrimination,, including homophobia or transphobia;<sup>345</sup> and children with chronic physical health conditions.<sup>346</sup> Children in care may have multiple such experiences that place them at higher risk of poor mental health. It is of particular concern that between 2010 and 2020, 49 young people died while in State care, with 23 dying by suicide or from a drug overdose.<sup>347</sup> In 2020 alone, three young people in State care died from suicide and two young people died from a drug overdose.<sup>348</sup> Travellers also have higher rates of suicidal ideation and self-harm, when compared to non-Travellers,<sup>349</sup> as well as deaths by suicide (for male Travellers).<sup>350</sup> In 2020 the State made a commitment to develop a Traveller and Roma Mental Health Action Plan,<sup>351</sup> but this has not been progressed.<sup>352</sup> In 2020 the Government published *Sharing the Vision – a Mental Health Policy for Everyone*,<sup>353</sup> Ireland's new ten-year mental health policy.

339 Seventy-seven per cent of children aged 13 to 17 have reported exposure to online marketing. Alcohol Action Ireland and the Health Promotion Research Centre NUI Galway, *Alcohol marketing and young people's drinking behaviour in Ireland* (Alcohol Action Ireland 2015) 4.

340 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' (29 January 2016) UN Doc CRC/C/IRL/CO/3-4, para 53 (b).

341 Cannon and Coughlan *et al*, *The Mental Health of Young People in Ireland: a report of the Psychiatric Epidemiology Research across the Lifespan (PERL) Group* (Royal College of Surgeons in Ireland 2013) p.7.

342 Norman and Byambaa *et al*, *The long-term health consequences of child physical abuse, emotional abuse, and neglect: a systematic review and meta-analysis*, PLoS Medicine, 2012; Schaefer and Moffitt *et al*, *Adolescent victimization and early-adult psychopathology: Approaching causal inference using a longitudinal twin study to rule out non-causal explanations*, (2018) Clinical Psychological Science 352.

343 Roberts and Campbell *et al*, *The role of parenting stress in young Children's mental health functioning after exposure to family violence* (2013) 26(5) *Journal of Traumatic Stress*, 605.

344 Wickham, Whitehead, Taylor-Robinson, Barr, *The effect of a transition into poverty on child and maternal mental health: A longitudinal analysis of the UK millennium cohort study* (2017) 2(3) *The Lancet Public Health*, 141

345 Tina Dürbaum, Frank A. Sattler, *Minority stress and mental health in lesbian, gay male, and bisexual youths: A meta-analysis* (2020) 17(3) *Journal of LGBT Youth* 298; Liu & Mustanski, *Suicidal Ideation and Self-Harm in Lesbian, Gay, Bisexual, and Transgender Youth* (2012) 42(3) *American Journal of Preventative Medicine*, 221.

346 Vanessa E. Cobham, *et al.*, *Systematic Review: Anxiety in Children and Adolescents With Chronic Medical Conditions*, (2020) 59(5) *Journal of the American Academy of Child & Adolescent Psychiatry* 595.

347 National Review Panel, *National Review Panel Annual Report 2020* (NRP 2020) 15.

348 *Ibid*.

349 Chakraborti, K, Arensman, E and Leahy, D, 'The Experience and Meaning of Repeated Self-Harm Among Patients Presenting to Irish Hospital Emergency Departments' *Issues in Mental Health Nursing*, 42(10) 942-950;

350 Department of Health, *All Ireland Traveller Health Study: Our Geels – The Birth Cohort Study Follow-up* (UCD 2011) 94.

351 Health Service Executive, *National Traveller Health Action Plan* [online] < <https://bit.ly/3JOMGdc> > accessed 02 August 2022.

352 Pavee Point Traveller & Roma Centre, 'Urgent action on Traveller Health Plan needed as COVID-19 adds to Traveller mental health crisis' (PPTC 2021) < <https://bit.ly/3Qm0e2j> > accessed 02 August 2022.

353 Department of Health, *Sharing the Vision – A Mental Health Policy for Everyone* (DH 2020).

137. **CAMHS:** In April 2022, 4,003 children and young people were on the waiting list for Child and Adolescent Mental Health Services (CAMHS) compared to 2,919 in April 2021.<sup>354</sup> There were 9,554 children on Primary Care Psychology waiting lists in October 2021, 4,272 of whom were waiting longer than 12 months.<sup>355</sup> CAMHS faces a number of ongoing issues, including poor investment<sup>356</sup> and workforce recruitment and retention issues.<sup>357</sup>
138. In January 2022, the *Maskey Report* into South Kerry CAMHS found that the care received by 240 young people did not meet the required standards, with serious clinical and governance failings resulting in unreliable diagnoses; inappropriate and over prescription of medication; the poor monitoring of treatment; and potential adverse effects.<sup>358</sup> It was found that these failings caused significant harm to 46 children and young people.<sup>359</sup> The absence of a Consultant Clinical Lead in the affected area contributed to the failure to deliver and sustain a high-quality service.<sup>360</sup> There was no regular nor effective oversight of the prescribing doctor in question, and where concerns about their practice were identified, no effective action was taken to address them.<sup>361</sup> On foot of the *Maskey Report* the Government has requested the HSE to undertake a full national audit of prescribing practice in CAMHS nationwide.<sup>362</sup> It is of particular concern that the national audit will explicitly exclude autistic children and young people from its remit.<sup>363</sup>
139. Many mental health services across Ireland are only open Monday-Friday, 9am to 5pm.<sup>364</sup> Currently, most children and young people can only access out-of-hours mental health treatment through hospital emergency departments as most CAMHS do not offer this support.<sup>365</sup> Young service users have highlighted difficulties in accessing CAMHS, including long waiting times and differences in availability and consistency of services across the country.<sup>366</sup> In 2019, the *Health Service Executive Service Plan* included a commitment to develop a seven day per week CAMHS service, but this commitment remains unfulfilled.<sup>367</sup> In the absence of proper mental health services, children's lives are put at risk, with preventable deaths from substance abuse, eating disorders, and suicide arising while children are on

354 Dyane Connor, 'CAMHS waiting list grows by more than a quarter' *The Irish Times* (23 May 2022)

<<https://www.rte.ie/news/ireland/2022/0523/1300631-camhs-delays/>> ,accessed 22 July 2022

355 Mark Ward TD, Dáil Éireann debate, 'Child and Adolescent Mental Health Service: Motion' (1 February 2022) [1017/2].

356 Irish Hospital Consultants Association, 'New mental health policy fails to address critical staffing deficits, says IHCA' Press Release 7 June 2020 (HCA 2020) <<https://bit.ly/3qPT2OV>> accessed 23 June 2022.

357 Ibid.

358 Dr Sean Maskey, 'Report on the Look-Back Review into Child and Adolescent Mental Health Services County Kerry MHS (HSE 2022) 49.

359 ibid 49

360 ibid 49-51

361 ibid 50. The Report identified several contributory factors to the failing to deliver a high quality service, which included: "The absence of a consultant in Team A meant that there was not regular, effective oversight of Non-Consultant Hospital Doctor 1's (NCHD1) work through formal supervision and frequent joint working with a senior doctor. A. Supervision of NCHD1 did not identify the extent of their experience, skills, ability or limitations or the problems as they developed in 2017 and 2018. B. When concerns about NCHD1's practice were first described by CP4 in 2018, no effective action was evident to address them. C. Concerns regarding prescribing by NCHD1 were clearly identified in 2019. The supervising consultant and the Executive Clinical Director 2 (ECD2) in the main, "advised", rather than directed changes in practice to prevent further problems. d. NCHD1 was known to have been working excessive hours and to be tired, if not exhausted, at work. e. Internal processes and procedures to address these types of problems through Occupational Health and Human Resources were not activated. f. There was no systematic supervisory check of the prescribing practice, or more broadly the quality of service provided by NCHD1, by their consultant and the ECD2. g. In 2020 NCHD1 was recognised as hardworking and still considered an important asset to the service. Despite the concerns that ECD2 had attempted to address recently, because of the perceived threat to service continuity, they agreed that NCHD1 could come off the adult mental health on-call rota by moving to an agency locum post. h. The serious concerns about NCHD1's practice were not handed over to ECD3 in the summer of 2020."

362 Minister of State at the Department of Health, Mary Butler T.D. Dáil Debates, Written Answers Mental Health Services, 26 April 2022 [20864/22].

363 Michelle McGlynn, 'Blatant discrimination': Charity criticises exclusion of some autistic people in Camhs review' *Irish Examiner* (19 July 2022).

364 Ombudsman for Children's Office, 'Take My Hand: Young People's Experiences of Mental Health Services' (OCO 2018)

365 Note: In July 2021 the Oireachtas Sub-Committee on Mental Health called for the State to develop access to critical mental health services and a 24/7 emergency mental health service "as a matter of priority"; see Oireachtas Sub-Committee on Mental Health, 'Interim Report on Covid-19 and its effect on Mental Health Services in the Community' (2021) 11, 13 <<https://bit.ly/3Ad3dVs>>

Don366 Ombudsman for Children's Office, 'Take My Hand: Young People's Experiences of Mental Health Services' (OCO 2018) 40. The need for an out-of-hours service for young people in significant distress across Ireland is recognised in Department of Health, *Sharing the Vision – A Mental Health Policy for Everyone* (DH 2020) 60.

367 Children's Rights Alliance, *Report Card 2020*, 68.

waiting lists.<sup>368</sup> Research in the United Kingdom exploring young adults' experiences of waiting lists within mental health services found that all participants expressed in some form an inability to function sufficiently and the emergence of negative beliefs, emotions and thoughts while waiting to access mental health services.<sup>369</sup>

140. **Recommendation:** The Committee is urged to recommend that the State takes measures to ensure that all children under 18 years have equitable and timely access to age-appropriate, quality mental health treatment and services that are adequately staffed. The State must urgently design and implement a Traveller and Roma Mental Health Action Plan and create a designated pathway to CAMHS for children in care.

141. **Mental Health Advocacy Service:** In 2016 the Committee recommended the State consider establishing a mental health advocacy and information service that is specifically for children, and accordingly accessible and child-friendly.<sup>370</sup> A pilot advocacy project that was run in the CAMHS in-patient unit in Galway has been extended to the CAMHS in-patient unit in Dublin,<sup>371</sup> and is currently being evaluated. Following the completion of the evaluation, the service was expected to be rolled out nationally to all CAMHS services in early 2020, but this has not taken place.<sup>372</sup> As a result, children in Ireland still do not have access to child-friendly information on their mental health treatment options, and families have no independent service to turn to when they are experiencing issues with their child's mental health care.

142. **Recommendation:** The Committee is urged to recommend that the State expedite the establishment of a well-resourced independent national advocacy service for children and young people accessing mental health services, accompanied by an implementation timeline and budget. All associated front-line medical professionals and caseworkers in the national advocacy services must undergo training in children's rights and child-friendly communication.

143. **Inpatient Mental Health:** The Mental Health Commission's Code of Practice states that the placement of children in adult wards would be phased out by the end of 2011.<sup>373</sup> Over a decade later, significant issues persist, and children continue to be cared for in age-inappropriate facilities. In 2021, 27 children were placed in adult psychiatric facilities.<sup>374</sup> Young people have described this experience of being placed in an adult psychiatric ward as "traumatic".<sup>375</sup> While this is less than half the number admitted in 2019,<sup>376</sup> specialist inpatient provision for children and young people is under-resourced. At the end of October 2021 there were 72 in-patient beds in four public child inpatient units in Galway, Cork and Dublin.<sup>377</sup>

368 Alan O'Keefe, 'Mentally ill children and adolescents face 'inhumane' delay for treatment' *Irish Independent* (26 September 2021) < <https://bit.ly/3PjWvkW> > accessed 23 July 2022.

369 Puntton G, Dodd AL, McNeill A "You're on the waiting list": An interpretive phenomenological analysis of young adults' experiences of waiting lists within mental health services in the UK' *PLoS ONE* 17(3): e0265542 (2022) <<https://doi.org/10.1371/journal.pone.0265542>> accessed 02 August 2022

370 Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland' (29 January 2016) UN Doc CRC/C/IRL/CO/3-4, para. 54(c).

371 Communication received by the Children's Rights Alliance from the Department of Health, questions for CAMHS on report card 2020.

372 Communication received by the Children's Rights Alliance from the Department of Health, 22 November 2019.

373 Mental Health Commission, *Code of Practice Relating to Admission of Children under the Mental Health Act 2001: Addendum* (MHC 2009).

374 Oireachtas Joint Sub-Committee on Mental Health, 'Official Report 25 January 2022' (2022) 7 <<https://bit.ly/3C1yR9J>> accessed 12 August 2022.

375 Ombudsman for Children's Office, "Take My Hand" *Young People's Experiences of Mental Health Services – A report by the Ombudsman for Children's Office* (OCO 2018) 40.

376 Mental Health Commission, *Annual Report 2020* (MHC 2021) 29.

377 Communication received by the Children's Rights Alliance from the Department of Health 7 January 2022.

144. Official HSE policy states that children should only be placed in adult units when “all alternative options have been exhausted.”<sup>378</sup> However in practice, poor capacity in child inpatient units, the absence of 24/7 mental health services, and the nature of the immediate safeguarding risk, means that children, particularly those who present at the weekend to emergency departments with significant acute needs, may be admitted to adult units given the scarcity of alternative options.<sup>379</sup> Of the six public and private child inpatient units, only two will take an out-of-hours referral, for example, over the weekend.<sup>380</sup> This is despite the HSE Clinical Guidelines stating that all four public units take out-of-hours referrals.<sup>381</sup> The Mental Health Commission noted with concern that there was zero per cent compliance with the code of practice on the admission of children to approved centres,<sup>382</sup> as services did not provide age-appropriate facilities and programmes of activities to children admitted to adult units.<sup>383</sup> The new *Sharing the Vision* mental health strategy provides that children and young people may be admitted to adult units in “exceptional cases where children and adolescent beds are not available”.<sup>384</sup> Where children and young people are admitted to such units, the “CAMHS inpatient Code of Governance” must be adhered to.<sup>385</sup>
145. The General Scheme of the Mental Health (Amendment) Bill 2021 states that the provision of care in an age-appropriate environment is to be included as a guiding principle to apply to all decisions that concern the care or treatment of a child.<sup>386</sup> However, the guiding principle is limited by the clause “in so far as is practicable”.<sup>387</sup> Given the resource constraints that are currently fuelling child admissions to adult units, this is likely to undermine the other safeguards contained in the Bill. Furthermore, it is of particular concern that the admission of children to adult inpatient facilities is expressly included in the General Scheme, albeit in a provision that requires the Mental Health Commission to be notified of these placements and to put in place rules by which the services should abide in cases where it does happen.<sup>388</sup> While the provision aims to incorporate the current Mental Health Commission code of practice into law,<sup>389</sup> it means that for the first time, the admission of children into adult units is placed on a statutory footing. This would appear to contradict the *Programme for Government* commitment to end such practice<sup>390</sup> and would be a retrograde step in the context of a child’s right to be treated in an age-appropriate settings.<sup>391</sup>
146. **Recommendation:** The Committee is urged to recommend that the State takes immediate steps to end the practice of placing children in adult mental health facilities and urge the State to increase bed capacity in children and adolescent mental health inpatient units. The Committee is urged to recommend that the State revise the General Scheme of the Mental Health (Amendment) Bill 2021 to ensure that the admission of children to adult psychiatric units is prohibited.

378 HSE, ‘HSE Performance Profile October-December 2019 Quarterly Report’ (HSE, 2020) <<https://bit.ly/39fn2hm>> accessed 31 January 2022, 34.

379 This reality in the provision of CAMHS is acknowledged in the new *Sharing the Vision* strategy, which notes: “Quite often, people in need of support or urgent care attend emergency departments (EDs) to access mental health treatment.” on p 45; “Adult inpatient units are, generally speaking, not appropriate environments for children and adolescents. However, in the event that there is no CAMHS inpatient bed available and short-term admission to an adult unit is the only option, then a range of actions are necessary.” at 47.

380 Mental Health Commission, *Annual Report 2019* (MHC, 2020) <<https://bit.ly/3iKEcq5>> accessed 30 January 2022, 27.

381 Communication received by the Children’s Rights Alliance from the Department of Health 7 January 2022.

382 Mental Health Commission, *Code of Practice Relating to Admission of Children under the Mental Health Act 2001* (MHC 2006); Mental Health Commission, *Code of Practice Relating to Admission of Children under the Mental Health Act 2001 Addendum* (MHC 2009).

383 Mental Health Commission, *Annual Report 2020* (MHC 2021) 20.

384 Department of Health, *Sharing the Vision – A Mental Health Policy for Everyone* (DH 2020) 60.

385 *ibid.*

386 Draft Heads of a bill to amend the Mental Health Act 2001, Head 104, Section 84(1)(d).

387 *Ibid.*

388 *ibid* Head 128, s.108.

389 Mental Health Commission, *Code of Practice Relating to Admission of Children under the Mental Health Act 2001: Addendum* (MHC 2009). It calls for the placement of children in adult wards to be phased out by the end of 2011.

390 Government of Ireland, ‘Programme for Government, Our Shared Future’ (Government Publications, 2020) 49.

391 UNCRC ‘General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child’ (2003) UN Doc CRC/GC/2003/4 para 29.

**147. Age of Consent for Mental Health Services and the Mental Health (Amendment) Bill 2021:**

The age of consent for mental health treatment for children and young people is 18.<sup>392</sup> The Mental Health Act 2001 allows for children to be detained in an inpatient mental health unit for treatment on the consent of their parents alone. When a parent does not consent, the HSE can bring proceedings before the District Court for the involuntary detention of the child.<sup>393</sup> The child or young person does not have access to an independent review of their detention in the same manner an adult does under the 2001 Act. The Expert Group on the Review of the Mental Health Act 2001 recommended that children over the age of 16 be given the right to consent to mental health treatment and admission.<sup>394</sup> It is welcome that the Draft Heads of Bill to Amend the Mental Health Act 2001 make provision for young people aged 16 and above to be able to consent to mental health treatment,<sup>395</sup> however no provision is made to address the ability of children under the age of 16 to consent to such treatment. The Draft Heads of Bill contain provision for the continued use of seclusion and restraint upon children and young people and does not provide for access to advocacy services where a child has been subjected to these practices.<sup>396</sup>

**148. Recommendation:** The Committee is urged to recommend that the State urgently amend the Mental Health Act 2001 to provide for children over the age of 16 to be given the right to consent to mental health treatment and to make provision for children under the age of 16 to consent to mental health treatment, in accordance with the age and maturity of the child. The State is also urged to amend the Draft Heads of Bill to amend the mental Health Act 2001 as they relate to the use of seclusion and restraint upon children.

**149. Eating Disorders:** In 2018 the HSE published a *National Model of Care for Eating Disorders* in partnership with College of Psychiatrists of Ireland and Bodywhys, the Eating Disorders Association of Ireland. Children and adolescents with an eating disorder diagnosis who require inpatient treatment can be referred to one of the CAMHS inpatient approved centres.<sup>397</sup> There are four CAMHS Units across the HSE; Linn Dara Approved Centre (Dublin), St Josephs Approved Centre (Dublin), Eist Linn Approved Centre (Cork) and Merlin Park Approved Centre (Galway). Specialist eating disorder beds are available in Merlin Park (Galway) and Linn Dara (Dublin).<sup>398</sup> There are plans for an Eating Disorder Unit in the new National Children's Hospital.<sup>399</sup>

**150.** There are currently three CAMHS eating disorders (ED) specialist teams in operation but staffing for these teams is below recommended levels.<sup>400</sup> As a result, the health of children with ED is being negatively affected, while they wait to access proper care. Retrospective studies in this area have also shown that when people have a shorter period of an untreated

---

392 Mental Health Act 2001, s2.

393 *ibid* s25.

394 Health Services Executive, 'Report of the Expert Group on the Review of the Mental Health Act 2001' (HSE 2014) 90 rec 114

395 Draft Heads of Bill to Amend the Mental Health Act, 2001, Head 124 - Section 104, Head 125 – Section 105.

396 *ibid* Head 127 – Section 107, 285. See also the comments of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)' (CPT 2020) [114]-[115]: 114. "At Sliabh Mis [an Approved Centre], the delegation learned that the 17-year-old accommodated on the ward had been placed in seclusion twice in August 2019 and once since her readmission to the unit in September, despite her status as a voluntary patient. The Committee is of the view that children should in principle never be subjected to means of restraint on account of their vulnerability. In extreme cases where it is deemed necessary to intervene physically to avoid harm to self or others, the only acceptable intervention is the use of manual restraint, that is, staff holding the child until he/she calms down. The CPT recommends that such an approach be systematically applied to any child in a psychiatric hospital. More generally, less intrusive alternatives to seclusion should be available. A relaxation room had been set aside in St Aloysius Ward several months prior to the visit, but it had yet to be refurbished. At the Department of Psychiatry, St Luke's Hospital [an Approved Centre], a de-escalation room was planned for some point in the future."

397 HSE reply to Mark Ward T.D. 22 April 2022 [16682/22] <<https://bit.ly/3AbqfuH>> accessed 9 June 2022.

398 *ibid*.

399 *ibid*.

400 *ibid*.

eating disorder, this may be related to a higher chance of remission.<sup>401</sup> It is therefore crucial that children and young people are afforded expedient access to specialist ED treatment. When children and young people in Ireland do access CAMHS treatment for ED, they can have adverse experiences. Research undertaken into the experiences of people with ED in Ireland, found that no children and young people with ED surveyed felt their support needs were adequately met by CAMHS staff.<sup>402</sup>

151. **Recommendation:** The Committee is urged to recommend that the State increases staffing and capacity to provide care for children and young people with eating disorders and to expedite the delivery of the *National Model of Care for Eating Disorders*.

## Standard of living

152. **Poverty:** In 2016 the Committee expressed concern at the significant increase in the number of children living in consistent poverty and recommended that the State “strengthen its efforts to reduce poverty among children in vulnerable situations, particularly Traveller, Roma, refugee children and children living in single-parent households.”<sup>403</sup>
153. In 2021, over 160,000 children were living in households at risk of poverty, i.e. households with an income below 60 per cent of the national median income. There was also almost 205,000 or one-in-six children in households experiencing deprivation.<sup>404</sup> Children are most vulnerable to consistent poverty. This measure of poverty takes account of the proportion of the population at risk of poverty and who experience deprivation. The rate of consistent poverty for children was 5.2 per cent in 2021 versus an overall rate of 4 per cent.<sup>405</sup> Children living in households headed by a lone parent are significantly more vulnerable to consistent poverty at a rate of 13.1 per cent compared to three per cent of two parent families.<sup>406</sup> The prevalence of poverty in Traveller and Roma households is not captured in official statistics. However, research shows they have greater difficulty making ends meet when compared to the general population.<sup>407</sup>
154. At a European level, it is recommended that child poverty and social exclusion are tackled through integrated strategies encompassing not only children’s material security but also the promotion of equal opportunities.<sup>408</sup> Therefore a whole-of-government approach is important, and it requires a concerted focus and a real driver for change to develop, fund and implement a national action plan to end child poverty. Overall responsibility for implementation of such an action plan should be led by a dedicated and fully resourced child poverty office. The office should co-ordinate and monitor a whole-of-government approach with specific actions delegated to relevant Departments. The need for this type of approach across Departments is evidently required given the breadth of the challenge.

401 A Austin, ‘Duration of untreated eating disorder and relationship to outcomes: A systematic review of the literature’ *European Eating Disorders Review* (2020) < <https://bit.ly/3perxQn> > accessed 02 August 2022.

402 Nottingham Trent University, Bodywhys, ‘Reflections on Eating Disorder Experiences in Ireland’ (2021).

28. It should be noted that the survey sample size was five children/young people with ED, but the authors further note: “the survey results are in line with insights garnered from the interviews as well as with issues reported by carers, which gives us some confidence in the reliability of the findings.”.

403 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (29 January 2016) UN Doc CRC/C/IRL/CO/3-4, para. 59-60.

404 Social Justice Ireland, ‘More Than 580,000 People Are Still Living in Poverty In Ireland, of which 164,000 are Children’. (SJI May 2022) <<https://bit.ly/3cSbQLD>> accessed 2 August 2022.

405 Central Statistics Office, *Survey on Income and Living Conditions (SILC) 2021*. (CSO 2022).

406 Central Statistics Office, *Survey on Income and Living Conditions (SILC) 2021*. (CSO 2022).

407

European Union Agency for Fundamental Rights: ‘Roma and Travellers in Six Countries’ (EUFR 2020)

408 European Commission ‘Recommendation on Investing in Children: breaking the cycle of disadvantage’ (20 February 2013) C(2013) 778

155. **Recommendation:** The Committee is urged to recommend the State establishes a dedicated and fully resourced child poverty office with a team of staff. The office should drive the implementation of a cross-government strategy to end child poverty.

156. **Habitual Residence Condition:** The Habitual Residence Condition was introduced in 2005<sup>409</sup> and restricts access to certain social welfare payments<sup>410</sup> to those who can prove a close link to Ireland.<sup>411</sup> This has resulted in certain children being denied access to the Child Benefit payment – a monthly universal cash payment and the State’s key mechanism to support children. This amounts to indirect discrimination against children as they are denied the payment due to their parents’ immigration status or migration history. The Habitual Residence Condition has a disproportionate impact on particular groups of children,<sup>412</sup> including Traveller children,<sup>413</sup> Roma children,<sup>414</sup> undocumented children and asylum-seeking child.<sup>415</sup> In January 2022, approximately one in every four applicants for international protection was a child, with 1,822 children being accommodated by the International Protection Accommodation Service.<sup>416</sup> Children living in Direct Provision centres are at a high risk of consistent poverty although they are not counted in the official poverty statistics. Children and young people in Direct Provision have spoken about how a lack of income means they have few opportunities to take part in activities with their friends and peers after school. The financial cost of school trips or the need to take public transport to after sport activities is a major barrier in terms of integrating into the community.<sup>417</sup> The publication of *A White Paper to End Direct Provision and to Establish a New International Protection Support Service in 2021* includes recommendations around the introduction of income supports for families seeking asylum.<sup>418</sup> It has yet to be implemented.

157. **Recommendation:** The Committee is urged to recommend that the State reviews the Habitual Residency Condition to assess its impact on children, and to remove the Child Benefit payment from the ambit of the Habitual Residency Condition as its inclusion is inappropriate given that it is a universal payment not linked to social welfare. The Committee should recommend the State introduce as a matter of urgency the International Protection Child Payment for children living in Direct Provision at the same rate of the universal Child Benefit payment.

---

409 Social Welfare (Consolidation) Act 2005 as amended, s246. The ‘habitual residence’ condition was reinforced in 2009 when s246 of the Social Welfare (Consolidation) Act 2005 was amended by s 15 of the Social Welfare and Pensions (No. 2) Act 2009 which introduced a ‘right to reside’ test. The amended legislation provides that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State.

410 These include Child Benefit, Jobseeker’s Allowance, Disability Allowance and Carer’s Allowance. For a full list see, Citizen’s Information Board, Citizens Information, Residence requirements for social assistance in Ireland, < <https://bit.ly/3pfdLgd> > accessed 5 June 2020.

411 The Social Welfare and Pensions Act 2007 sets out five criteria to determine habitual residence: 1) the length and continuity of living in the State or another country, 2) the length and reason for any absence from the State, 3) the nature and pattern of the person’s employment, 4) the person’s main centre of interest and 5) the future intentions of the person applying for the social welfare payment.

412 Minister for Social Protection, Joan Burton TD, Social Welfare Benefits, [5458/11], Dáil Debates, 23 March 2011. Crosscare, Doras Luimni and Nasc (2012) *Person or Number? Issues Faced by Immigrants Accessing Social Protection*, Limerick: Crosscare, Doras Luimni and Nasc; Immigrant Council of Ireland (2014) *ICI Response to FLAC Questionnaire for Shadow Report under the International Covenant on Economic, Social and Cultural Rights*, Dublin: ICI; Barnardos (2014) *Submission to Shadow Report for Ireland on the International Covenant on Economic, Social and Cultural Rights*.

413 Pavee Point Irish Travellers and Roma Shadow Report: Response to Ireland’s Third and Fourth Combined Report under the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD), (Dublin 2011) 4; Pavee Point Position Paper: The Impact of the Habitual Residence Condition on Travellers and Roma (Dublin 2011); End Child Poverty Coalition Pre-Budget Submission 2015 (Dublin 2014).

414 Pavee Point Traveller and Roma Centre & Department of Justice and Equality, *Roma in Ireland – A National Needs Assessment* (2018) 42.

415 Department of Social Protection, *Guidance for Deciding Officers on the Determination of Habitual Residence*, <<https://bit.ly/3JMk44x>>, section 5 and section 7, accessed 23 June 2022; S. Arnold, *State Sanctioned Child Poverty and Exclusion: The Case of Children in Accommodation for Asylum- Seekers*, (Dublin 2011)

416 Department of Children, Equality, Disability, Integration and Youth, *International Protection Accommodation Services Monthly Report – January 2022* (DCEDIY January 2022) accessed 15 June 2022.

417 Ombudsman for Children, *Direct Provision Children’s views and experiences of living in Direct Provision* (OCO 2020) 28.

418 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government of Ireland 2021).

158. **Food Poverty:** Based on the latest data, 8.9 per cent of the population experience food poverty.<sup>419</sup> A healthy diet is out-of-reach for families with inadequate disposable incomes with food costs rising as children grow older.<sup>420</sup> A household with a teenager, reliant on social welfare, is required to spend 30 per cent of their income to meet the cost of a healthy food basket.<sup>421</sup>
159. In Ireland, by age three, children from lower socio-economic backgrounds are more likely to have consumed energy-dense food like hamburgers and crisps, but less likely to have eaten fresh fruit or vegetables.<sup>422</sup> Lower levels of education have been found to be a predictor of food poverty in Ireland.<sup>423</sup> Being able to buy nutritious food locally or having access to transport to a local supermarket helps to prevent food poverty, and more economically advantaged households do not have to travel as far for food shopping.<sup>424</sup>
160. Ireland does not provide a universal school meal programme.<sup>425</sup> However, a targeted School Meals Programme is funded by the Department of Social Protection. The programme provides funding towards the provision of food through the allocation of a per pupil rate for breakfast, lunch and dinner. Currently, funding is provided to 1,506 schools and benefits 230,000 children.<sup>426</sup> In September 2019, the Department launched a hot school meals pilot which was expanded in 2022 meaning hot school meals will reach over 55,000 children.<sup>427</sup> The universal provision of hot meals in a school setting counters stigma and provides a social environment where children can access and enjoy food without financial constraints.<sup>428</sup> Generally, the school meals programme does not provide funding to cover school holidays or for days when the school is closed and there is no separate programme in place to tackle holiday hunger.
161. **Recommendation:** The Committee is urged to recommend that the State take measures to address the high cost of healthy foods, this could be partially addressed by expanding hot school meal provision to all schools, expanding the provision of such meals to early years and youth work settings and piloting initiatives to tackle holiday hunger.
162. **Housing:** In 2016, the Committee called on the State to undertake measures to increase the availability of social housing and emergency housing support.<sup>429</sup> Despite the commencement of legislation to protect tenants in January 2017<sup>430</sup> and May 2019,<sup>431</sup> high rents, lack of security of tenure and overall lack of housing supply, have fuelled the housing crisis.
163. In June 2022, there were 3,071 children living in Emergency Homeless Accommodation.<sup>432</sup> The official statistics only give a limited view of the prevalence of homelessness in Ireland.<sup>433</sup> They do not include families that are homeless but are accommodated in own-door accommodation or transitional housing, women and children in domestic violence refuges,

419 Department of Social Protection, 'Minister O'Brien welcomes publication of the Report on Food Poverty – Government programmes, schemes and supports', Press Release, 18 July (DSP 2022).

420 Safe Food, *What is the cost of a healthy food basket in 2020?* (2021).

421 *ibid.*

422 J Williams, et al, *Growing Up in Ireland - Development From Birth To Three Years* (Department of Children and Youth Affairs 2013) 37.

423 Caroline Carney and Bertrand Maitre, *Constructing a Food Poverty Indicator for Ireland using the Survey on Income and Living Conditions* (Department of Social Protection 2012).

424 R Layte et al, *Growing up in Ireland Overweight and obesity among 9 year olds.* (DCYA 2011) 33

425 *ibid.*

426 Department of Social Protection, 'Minister Humphreys announces extension of Hot School Meals Programme' (Press release 22 November 2021) <<https://bit.ly/3GeUvpe>> accessed 31 January 2022.

427 *ibid.*

428 Healthy Food for All, *A good practice guide to School Food Initiatives* (Healthy Food for All 2009).

429 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 62.

430 Planning and Development (Housing) and Residential Tenancies Act 2016.

431 Residential Tenancies (Amendment) Act 2019.

432 Department of Housing, Local Government and Heritage, 'Homeless Report, June 2022' (DHLGH 2022).

433 Colette Bennett 'Rebuilding Ireland for Everyone: A review of the government's housing strategy for young and old' in Brigid Reynolds and Sean Healy (eds) *The Challenges of Success: Addressing population growth in Ireland* (Social Justice Ireland 2019).

asylum seekers living in emergency accommodation, or people who have been granted asylum or some other form of protection but cannot find accommodation outside the direct provision system.<sup>434</sup> In 2020, legislation was introduced in the context of Covid-19 lockdowns which provided better protections for tenants by prohibiting rent increases in all cases, and tenancy terminations in all but limited and exceptional cases.<sup>435</sup> These additional protections appear to have led to a drop of 12 per cent on emergency accommodation usage between March and June 2020.<sup>436</sup> The easing of public health restrictions meant that the number of children experiencing homelessness began to rise again. From June 2021 to June 2022, an additional 942 children were being accommodated in emergency accommodation.<sup>437</sup>

164. Children in specific family structures and ethnic minorities have a higher incidence of homelessness and can be more vulnerable to housing exclusion. In June 2022, over half of all families in emergency accommodation were one parent families.<sup>438</sup> These families are also likely to have more affordability issues and experience housing deprivation, such as an inability to heat their home.<sup>439</sup> Traveller families face significant barriers to accessing their right to housing and are at greater risk of experiencing homelessness than settled families.<sup>440</sup> Based on the European definition of homelessness, applying the ETHOS framework<sup>441</sup>, it is calculated that approximately 39 per cent of Travellers are experiencing some form of homelessness.<sup>442</sup> Since the pandemic began there have been reports that it is increasingly difficult to accommodate homeless Roma families in emergency accommodation, if they were not already registered in PASS (Pathway Accommodation and Support System) and this has exacerbated with time.<sup>443</sup> Furthermore, one of the qualifying criteria for the allocation of social housing is employment,<sup>444</sup> but given that the national needs assessments suggest that just 17 per cent of Roma are employed,<sup>445</sup> most Roma will be ineligible for social housing support.

165. Housing costs often comprise the largest proportion of expenditure in household budgets.<sup>446</sup> The percentage of income that goes on housing can impact on a household's consumption of other goods and services and subsequently economic growth.<sup>447</sup> Low-income households pay between two-fifths and half of their income on housing versus just one-fifth for the general population.<sup>448</sup> Families are supported with private rent costs by availing of Rent Supplement or Housing Assistance Payment (HAP). Rent limits for both Rent Supplement and HAP have not kept pace with market value and the limits for each have not been reviewed since 2016 and 2017, respectively.<sup>449</sup> Local authorities have the flexibility to extend the HAP limit by 20 per

434 Focus Ireland, 'Latest figures on homelessness in Ireland' <<https://bit.ly/35TAB1f>> accessed 12 August 2022; Colette Bennett 'Rebuilding Ireland for Everyone: A review of the government's housing strategy for young and old' in Brigid Reynolds and Sean Healy (eds) *The Challenges of Success: Addressing population growth in Ireland* (Social Justice Ireland 2019).

435 Residential Tenancies and Valuation Act 2020.

436 Focus Ireland, 'Focus on Homelessness: Homeless Figures and the Impact of COVID-19' <<https://bit.ly/3iXzVQf>> accessed 12 August 2022.

437 Department of Housing, Local Government and Heritage, 'Homeless Report, June 2022' (DHLGH 2022), Department of Housing, Local Government and Heritage Homeless Report - May 2021 (DHLGH, 2021)

438 *ibid* 6.

439 *ibid*.

440 Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review* (DHPLG 2019).

441 ETHOS – European Typology of Homeless and Housing Exclusion – was developed by FEANTSA the European network of national homeless organisations. The typology establishes a way of understanding and measuring homelessness in Europe <<https://bit.ly/2LYZn7i>> accessed 2 August 2022 for further detail on ETHOS.

442 Pavee Point, *The Traveller Community and Homelessness*, (Pavee Point 2021) This includes those sleeping rough, in emergency accommodation or doubling up on halting sites.

443 Communication received by the Children Rights Alliance from Pavee Point, 16 October 2020.

444 Department of Housing, Local Government and Heritage, 'Circular Housing 41/2012 - Access to Social Housing Supports for non-Irish nationals' <<https://bit.ly/3oLnUSj>> accessed 4 February 2022.

445 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 75.

446 E Corrigan, 'Exploring Affordability in the Irish Housing Market' *Economic and Social Review* (2019) 50:1, 119.

447 *ibid*.

448 *ibid*.

449 Department of Social Protection, 'Rent Supplement Limits' <<https://bit.ly/3NEjSFj>> accessed 4 February 2022; S.I. No. 56/2017 – Housing Assistance Payment (Amendment) Regulations 2017.

cent should no accommodation be available at the designated rate.<sup>450</sup> The Minister for Housing has increased this discretionary amount to 35 per cent of the limit from July 2022.<sup>451</sup> Although local authorities can use this flexibility at their discretion evidence indicates that not all households who would benefit from accessing a higher rate of HAP are actually receiving it.<sup>452</sup>

166. At an individual level of housing quality, overcrowding is experienced by less than six per cent of all households in the general population.<sup>453</sup> Ethnicity has been identified as a strong variable in terms of overcrowding.<sup>454</sup> For Irish Traveller households overcrowding is a significant issue with 40 per cent living in overcrowded accommodation.<sup>455</sup> The living conditions for Roma have been found to be very poor with many families also living in overcrowded accommodation often without a tenancy agreement.<sup>456</sup> Further measures of poor quality are also evident amongst Roma and Traveller groups. Many Roma children/families live in accommodation without basic facilities such as a kitchen, cooker, running water or heat and some Roma children live in overcrowded housing with rats, damp and sewerage.<sup>457</sup> (See section I for more).

167. **Recommendation:** The Committee is urged to recommend that the State: introduce a data collection mechanism that fully captures the number of families and children who are without a home; introduce legislation allowing for a referendum on whether or not to include a right to housing in the Constitution; develop a Family Homelessness Strategy, which is child-centred, has clear responsibilities, targets and timelines; and strengthen family support services to prevent homelessness as a result of family conflict and ensure that all children experiencing homelessness can access a support worker should they need it.

---

450 Citizens Information, Housing Assistance Payment (HAP) (Citizens Information, November 2021) <<https://bit.ly/3HqkIDu>> accessed 14 June 2022

451 Aisling Kenny, "HAP discretion rate to increase by up to 35%" (RTE, June 2022) <<https://bit.ly/3aYaX3i>> accessed 14 June 2022.

452 Threshold and Society of St Vincent de Paul, *The Housing Assistance Payment (HAP): Making the Right Impact?* (Threshold and SVP 2019) 11-16

453 H Russell et al, *Monitoring Adequate Housing in Ireland* (ESRI 2021) x.

454 *ibid*, 136.

455 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' (CSO 2016) <<http://bit.ly/2AtCuoX>> accessed 12 August 2022.

456 Pavee Point & DJE, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018).

457 *ibid*.

## H. Education, play leisure and cultural activities (arts. 28–31)

### Education

168. **Relationships and Sex Education:** In 2016, the Committee expressed concern at the “lack of access to sexual and reproductive health education” for young people in Ireland and recommended that it should be included as a mandatory part of the school curriculum as well as the adoption of a sexual and reproductive health policy for young people.<sup>458</sup> In a 2017 consultation on young people’s experiences of relationship and sex education (RSE), young people in Ireland reported negative experiences of RSE in schools.<sup>459</sup> They recommended that RSE should be “taught fully and comprehensively, where teachers are not allowed to pick and choose’ topics covered and a set curriculum should be followed “so students are all informed equally and correctly” and “free from biased teacher views.”<sup>460</sup> A 2020 survey found that 29 per cent of females, 10 per cent of males and 18 per cent of non-binary students reported non-consensual penetration by incapacitation, force or threat of force while they were in college.<sup>461</sup>
169. Currently sexual and reproductive health education is taught through schools’ curriculum and is supported by programmes that take place in non-formal education sites, by youth work organisations.<sup>462</sup> It is the responsibility of individual schools to ensure that an RSE programme is made available to all students in accordance with its own ethos,<sup>463</sup> meaning that not all students benefit from the same content. In addition, parents may exempt their child from “instruction in any subject which is contrary to the conscience of the parent”.<sup>464</sup> *The National Sexual Health Strategy 2015–2020* aims to improve sexual health and wellbeing and reduce negative sexual health outcomes.<sup>465</sup> It commits to ensuring that children and young people will have access to “age-appropriate sources of trustworthy and accurate information and support on relationships and sexual health”,<sup>466</sup> as well as to undertaking an evaluation of the State-funded Relationships and Sexuality Education (RSE) programmes.<sup>467</sup> The evaluation, completed in December 2019, highlighted the need to update the curriculum as a key priority and to ensure it provides a continuity of experience in RSE from early childhood education to post-primary education.<sup>468</sup> In July 2022, the Department of Education announced that it was beginning this work by updating the Junior Cycle SPHE curriculum and has commenced consultation on this.<sup>469</sup> It is welcome that there is a core focus on supporting young people to understand the physical, social and emotional changes during adolescence

---

458 UNCRC ‘Concluding Observations: Ireland’ (2016) UN Doc CRC/C/IRL/CO/3-4 para 58.

459 Report on Consultation with Comhairle na nÓg on Relationships and Sexuality Education (2017 National Council for Curriculum and Assessment) 6.

460 *ibid* 10.

461 L Burke *et al*, *The Active\* Consent / Union Of Students In Ireland Sexual Experiences Survey 2020: Sexual Violence And Harassment Experiences In A National Survey Of Higher Education Institutions* (NUIG and USI 2020).

462 Youth work is defined in the Youth Work Act 2001 s3:

“a planned programme of education designed for the purpose of aiding and enhancing the personal and social development of young persons through their voluntary participation, and which is—(a) complementary to their formal, academic or vocational education and training; and (b) provided primarily by voluntary youth work organisations.”

463 ‘Through Relationships and Sexuality Education, formal opportunities are provided for young people to acquire knowledge and understanding of human sexuality, through processes which will enable them to form values and establish behaviours within a moral and spiritual framework’, Department of Education and Science Circular M4/95 ‘Relationships and Sexuality Education’ (Department of Education and Science 1995).

464 Education Act 1998, s. 30(2)(e). This also applies to students who are over the age of 18.

465 Department of Health, *The National Sexual Health Strategy 2015–2020 and Action Plan for 2015–2016* (Department of Health 2015) 17.

466 *ibid* action 3.4.

467 *ibid* action 3.8.

468 National Council for Curriculum and Assessment ‘Report on the Review of Relationships and Sexuality Education (RSE) in primary and post primary schools’ (Department of Education 2019) 79.

469 National Council for Curriculum and Assessment, ‘Draft Junior Cycle Social, Personal and Health Education’ (SPHE): Short Course Curriculum Specification’ (NCCA, 2022).

and that young people will be supported to appreciate sexual orientation, gender identity and gender expression,<sup>470</sup> which was lacking in the previous approach.

170. **Recommendation:** The Committee is urged to recommend again that the State completes work to update the Junior Cycle SPHE curriculum as a matter of priority and puts in place resources to ensure its full implementation and ensure it is rolled out across all schools in the State, regardless of individual school ethos.

171. **Guidance counselling and in-school psychology:** Guidance counselling (encompassing career, personal/social and educational guidance) is “multifaceted with benefits to both the individual and to the wider economy”.<sup>471</sup> Research has shown that guidance counsellors are the only other professionals children and young people turn to when they suffer from mental health issues and are reluctant to seek help from health services.<sup>472</sup> The Education Act 1998 provides that schools should “ensure that students have access to appropriate guidance to assist them in their educational and career choices.”<sup>473</sup> While there has been some increase in the number of full-time guidance counsellors,<sup>474</sup> the number is still far below the resources that were in place in 2012 when there was an ex-quota system in place. Today, there are concerns that even an increase back to the 2012 levels will not be sufficient to deal with the high level of student need, following the impact of the Covid-19 pandemic.<sup>475</sup>

172. While there has been a welcome increase in educational psychologists employed in Irish schools over the past five years, current provision is just 221 posts<sup>476</sup> to support all students in almost 4,000 primary and secondary schools.<sup>477</sup> Two reports published by the Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, one on the Impact of Covid on Primary and Secondary Education<sup>478</sup> and a second on mental health and school bullying<sup>479</sup>, have recommended that emotional counselling and therapeutic supports be provided in all primary and secondary schools. Research indicates that the needs of children in Irish primary schools in relation to their psychological wellbeing are complex and highlights the serious nature of critical incidents that schools are dealing with.<sup>480</sup> A new service, offering a model through which primary school children could receive the mental health awareness and support they require is being piloted in Limerick and is indicating positive outcomes.<sup>481</sup> Such a service would not only strengthen and support the mental wellbeing of thousands of children, but would also support parents and teachers, and would reduce the number of children requiring specialist mental health treatment.

---

470 National Council for Curriculum Assessment, *Draft Junior Cycle Social, Personal and Health Education (SPHE) Short Course curriculum specification* (NCCA 2022).

471 Institute of Guidance Counsellors, ‘Pre-Budget Submission 2023’ (Institute of Guidance Counsellors, 2022) 1 <<https://bit.ly/3nq9mX3>> accessed 28 June 2022.

472 *ibid.*

473 Section 9 (c).

474 Department of Education, ‘Circular 0022/2022: Staffing arrangements in Voluntary Secondary Schools for the 2022/23 school year’ (Department of Education, 2022) <<https://bit.ly/3y0seRd>> accessed 28 June 2022. Department of Education, ‘Circular 0023/2022: Staffing arrangements in Community and Comprehensive Schools for the 2022/23 school year’ (Department of Education, 2022) <<https://bit.ly/3y3yisp>> accessed 28 June 2022. Department of Education, ‘Circular 0024/2022: Staffing arrangements in Education and Training Boards for the 2022/23 school year’ (Department of Education, 2022) <<https://bit.ly/3u30OZV>> accessed 28 June 2022.

475 Institute of Guidance Counsellors (n 12)p.3.

476 Communication received by the Children’s Rights Alliance from the Department of Education, 28 January 2022.

477 Oireachtas Library and Research Services, ‘Education in Ireland Statistical snapshot’ (Oireachtas Library and Research Services, 2020) <<https://bit.ly/2LZzlWh>> accessed 12 August 2022.

478 Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, *The Impact of Covid on Primary and Secondary Education* (Houses of the Oireachtas 2021).

479 Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, *School Bullying and the Impact on Mental Health* (Houses of the Oireachtas 2021).

480 R McElvaney, et al, *The Primary Schools Counselling Study (PSCS): Demand and provision of school based counselling in Ireland.* (DCU 2017).

481 University of Limerick, ‘Psychotherapeutic support, disadvantaged area, families, children, DEIS primary school, mindfulness, psychological well-being’ <<https://bit.ly/3JMWiW9>> accessed 12 August 2022.

173. **Recommendation:** The Committee is urged to recommend that the State increase the number of guidance counsellors and expand the in-school psychology service and implement a pilot programme which would situate emotional and therapeutic services in a select number of secondary schools across the country. New primary school-based mental health supports should be established in Ireland on a pilot basis as a matter of urgency, and subject to evaluation, be expanded and made available on a national basis.
174. **Reduced school days:** A 2020 study revealed that approximately a quarter of national schools reported children being placed on reduced school days.<sup>482</sup> In recent years, there has been growing unease that schools' use of reduced school days is infringing the education rights of children, with this practice disproportionately affecting children with special educational needs and disabilities; children of Traveller and Roma communities; and children who are experiencing trauma or adversity.<sup>483</sup> Research conducted with almost 400 parents found that one in four children with a disability has been put on short school days.<sup>484</sup> Reduced school days can have a long lasting impact on a child's life and it reduces their opportunities to build relationships with their peers and fulfil their full potential.<sup>485</sup> In September 2021, the Government published guidelines for schools on the use of reduced school days to provide clarity to school authorities, parents and guardians on the use of reduced school days and to ensure that this practice is limited to only those circumstances where it is deemed absolutely necessary and in the best interests of the child.<sup>486</sup> Schools are obligated to notify Tusla when a child is placed on a reduced timetable.<sup>487</sup> It is intended that reports on data collected will be submitted from the Tusla Education Support Service to the Department of Education, which will inform policy.<sup>488</sup> While the publication of the guidelines on the use of reduced school days is a welcome first step, it is key that these guidelines are implemented consistently across all schools and there is concern that there will be under reporting of the use of reduced timetables.
175. **Recommendation:** The Committee is urged to recommend that the State ensure that there are enough staff in place to enforce the guidelines and that schools are given adequate resources and support services to assist them in implementation. The Committee is also urged to recommend that the Tusla Educational Support Service have enough staff across the country to enforce the guidelines.
176. **Alternative Education:** In Ireland, young people who leave school before the age of 16 have limited<sup>489</sup> state-funded opportunities for continuing their education. With the exception of Youthreach, a state-provided programme of "second chance" education, the area of alternative education is not explicitly defined in the Irish education system.<sup>490</sup> While

482 Dympna Devine et al. *Children's School Lives: An Introduction, Report No.1*, (University College Dublin 2020) 17.

483 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).

484 Dympna Devine et al *Children's School Lives: An Introduction, Report No.1*, (University College Dublin 2020) 17.

485 Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2020* (CRA 2021) 15.

486 Department of Education and Tusla Education Support Service, *Guidelines for schools on recording and notification of the use of Reduced School Days* (Department of Education 2021) 3.

487 *ibid* 3.

488 Communication received by the Children's Rights Alliance from the Department of Education, 28 January 2022.

489 Youth Encounter Projects (YEPs) provide non-residential educational facilities for children who have either become involved in minor delinquency, or are at risk of becoming involved. A pupil may be referred to one of these schools by a number of agencies or by the court system. Youth Encounter Projects provide these children with a lower pupil teacher ratio and a personalised education plan. Department of Education, 'High Support Special Schools, Youth Encounter Projects (YEP) and Children Detention Schools' (Department of Education, 2019) < <https://bit.ly/3bPZKmd> > accessed 28 June 2022.

The Youthreach programme provides two years integrated education, training and work experience for unemployed early school leavers without any qualifications or vocational training who are between 15 and 20 years of age. Department of Further and Higher Education, Research, Innovation and Science, Youthreach (Department of Education, Research, Innovation and Science, 2019) < <https://www.gov.ie/en/service/5666e9-youthreach/> > accessed 28 June 2022.

490 T Kovačič, C Forkan, P Dolan, L Rodriguez, *Enabling An Inclusive And Equitable Quality Education For All, Through The Implementation Of A New, Evidence-Based Model On Educational Progression And Transformation, Findings From An Evaluation Of Rethink Ireland's Education Fund June, 2021* (UNESCO NUIG 2021) < <https://bit.ly/3wDL53v> > accessed 12 November 2021, p2.

Youthreach supports some students in their progression in education (an evaluation of the programme has demonstrated its positive impact),<sup>491</sup> it does not meet the needs of all students who leave school early. In this context some alternative education providers have stepped in to provide education at both Junior and Leaving Cert level. However, there is no dedicated funding or sufficient information on the types and numbers of alternative programmes of education in Ireland. In May 2022, the *Review of Out-of-School Education Provision* was published by the Department of Education.<sup>492</sup>

177. Alternative Education settings continue to provide different pathways for young people who have become disengaged within the mainstream education system, and they have had a highly positive impact on the lives of many young people.<sup>493</sup> Despite Ireland having a high retention rate to Leaving Certificate, there is a small cohort of students who find it difficult to engage in mainstream education.<sup>494</sup> Factors that may contribute to this include the young person's own needs and personal situation and/or their relationship with school and their learning. The nature of the provision of Alternative Education to date has been unstructured and the *Review* commits to address this to ensure a consistency of approach and governance standards. There is also a welcome commitment to provide a framework of supports and services to schools for students who are at risk of becoming disengaged from education.
178. **Recommendation:** The Committee is urged to recommend that the State grow, expand upon and fund out-of-school education provision to ensure a child-centred approach to education by providing alternatives best suited to the individual child.
179. **Vulnerable children impacted by Covid:** Children in Ireland experienced one of the longest periods of school closure among rich countries during the first wave of the Covid-19 pandemic.<sup>495</sup> All schools were closed from 12 March 2020 until late August 2020, and again from Christmas 2020 until a phased reopening began in late February 2021, with many post-primary students not returning to in-person education until mid-April 2021.<sup>496</sup> Some children who themselves have a medical condition or where family members have medical conditions have not returned to school.<sup>497</sup> While at-home learning is provided for these children, the quality and opportunities for engagement with other children varies hugely across the country. The failure to offer remote learning to children who were unable to return to school due to living with a medically vulnerable family member has meant that some children received no educational support, even when schools reopened in September 2020.<sup>498</sup>
180. **Recommendation:** The Committee is urged to recommend the State carry out an audit to identify the learning needs of vulnerable groups of children and young people and to set down an approach that provides safe spaces for vulnerable children and young people to learn and that gives them a chance for peer learning and engagement.
181. **School Bullying:** Ireland's approach to tackling bullying has focused largely on the education system. In 2013, the Department of Education and Skills published a *National Action Plan on Bullying in schools*. Before this, the last guidelines for tackling bullying in schools dated from 1993. The plan sets out the approach to tackling bullying and promoting anti-bullying culture in schools. It contains 12 actions that focus on support for schools, teacher training and

491 E Smyth et al, *Evaluation of the National Youthreach Programme* (ESRI 2019).

492 Department of Education, *Review of Out-of-School Education Provision* (DE 2022).

493 *ibid.*

494 *ibid.*

495 Y. Chzhen *School's Out: How lockdown highlighted educational inequality in Ireland* (TCD 2022).

496 C. O'Mahony, *Annual report of the Special Rapporteur on Child Protection 2021* (DCEDIY 2021).

497 Carl O'Brien, 'Covid-19: Thousands of children did not return to school following closures', *Irish Times* 30 April 2021.

498 C. O'Mahony, *Annual report of the Special Rapporteur on Child Protection 2021* (DCEDIY 2021).

research, awareness-raising and aims to ensure that all forms of bullying are addressed.<sup>499</sup> The last Programme for Government undertook to review implementation of the *National Action Plan on Bullying in schools* as an LGBTI+ specific action.<sup>500</sup> No progress was made on this commitment. The Department of Education should conduct this review and consider other forms of bullying and harassment against other children and young people in relation to gender, race, religion or other grounds.

182. **Recommendations:** The Committee is urged to recommend that a review and update is carried out of the *National Action Plan on Bullying in Schools* and the associated procedures to consider other forms of bullying and harassment against other children and young people in relation to gender, race, religion or other grounds. This should also include a focus on cyberbullying. Further, the Department of Education should introduce a comprehensive monitoring system to understand the prevalence of bullying in Irish schools, and provide up-to-date professional development, supports and resources, including appropriate professional advice to principals, school staff and boards of management on anti-bullying procedures and guidelines including specific training to recognise, prevent and address identity-based bullying.

## Play, rest, leisure, recreation, and cultural and artistic activities

183. **Play:** The Growing up in Ireland survey found that nine per cent of mothers of nine-year-olds felt it was not safe to play outdoors in their local area during the day, and 42 per cent felt there were no safe parks, playgrounds and play spaces in their local area.<sup>501</sup> Housing and communities that are not child or youth friendly, or are perceived by children and their parents to have unsafe public spaces, are associated with poverty and non-participation in play and recreational opportunities.<sup>502</sup> Children living in temporary accommodation, Traveller and Roma children and young people and those living in Direct Provision centres do not have adequate access to safe play and recreation facilities.<sup>503</sup>

184. Children with disabilities are also at risk of play deprivation and many playgrounds are not accessible for children with disabilities.<sup>504</sup> Children in hospital also face many barriers in accessing play including an underinvestment in the provision of qualified hospital play specialists with Covid-19 further limiting their access to play.<sup>505</sup> The negative implications of play deprivation can be significant to a child's development, as play impacts their social, emotional, cognitive and physical development.<sup>506</sup> Play also has a crucial role in creating stronger bonds between parents and their children.<sup>507</sup> *First Five A Government Strategy For Babies & Young Children* acknowledges the emergence of child-friendly approaches to local planning and design internationally, as well as the importance of local planning and delivery structures to the successful implementation of the strategy. The commitment in *First Five* to

499 Department of Education and Skills, *Action Plan On Bullying Report of the Anti-Bullying Working Group to the Minister for Education and Skills* January 2013 <<https://www.education.ie/en/Publications/Education-Reports/Action-Plan-On-Bullying-2013.pdf>> accessed 9 August 2022.

500 Government of Ireland, *A Programme for a Partnership Government* (Government of Ireland 2016) 106.

501 Growing up in Ireland., 'The Lives of 9-Year-Olds' (Economic and Social Research Institute and Trinity College Dublin, 2009).

502 National Children's Office, *Teenspace: National Recreation Policy for Young People* (The Stationery Office 2008) and National Children's Office, *Ready, Steady! A National Play Strategy* (The Stationery Office 2004).

503 Kathy Walsh, and Brian Harvey, *Family Experiences of Pathways into Homelessness - The Families' Perspective* (DRHE 2015) <<https://bit.ly/2UpaT4J>>; Working Group on the Protection Process, *Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (Working Group on the Protection Process 2015) para 1.59,2.22. Ombudsman for Children's Office *No End In Site* (OCO 2021) 12.

504 Dr Catriona Moloney et al *Mind the Gap* (OCO and NUIG 2021) 52.

505 Children in Hospital Ireland, *Submission to the National Policy Framework for Children and Young People* <<https://bit.ly/3vo7O46>> accessed 29 July 2022.

506 RM Milteer et al., 'The Importance Of Play In Promoting Healthy Child Development And Maintaining Strong Parent Child Bond: Focus On Children In Poverty' (2012) 129 *Pediatrics* 204,

507 *ibid*.

develop guidelines for local authorities on the development of child-friendly communities will ensure that children have “safe environments to play, explore and learn”.<sup>508</sup> It is welcome that a review of existing guidelines has been completed as part of this action, but further progress is needed on the development of best practice in the incorporation of a child-centred approach to planning.<sup>509</sup>

**185. Recommendation:** The Committee is urged to recommend that the State develop a new National Play and Spatial Strategy. This Strategy should have a focus on the need for green spaces, play spaces and recreational facilities in local communities and place an obligation on local authorities to develop play and recreation facilities for all children and young people, with a particular emphasis on those experiencing poverty, children with disabilities and Traveller children living in Local Authority accommodation sites. Children and young people should also be involved in the designing of local play spaces.

**186. Youth Work:**<sup>510</sup> Ireland has one of the highest levels of involvement by young people in youth work organisations and student organisations in the European Union (61 per cent- 20 per cent higher than the EU average).<sup>511</sup> Participation in youth work has fallen over the course of the pandemic, with the number of young people engaged in youth work declining by 46.5 per cent between 2020 and 2021.<sup>512</sup> Based in local communities, youth work organisations have unique engagements with young people outside of formal education or family structures. Youth work organisations work across many areas including mental health, social and political education, training, youth justice, equality and school completion and 80 per cent of youth work organisations are engaged in arts, cultural or sports activities.<sup>513</sup> Universal youth work is primarily delivered by thousands of trained adult volunteers within local communities, and has a prevention and early intervention aspect, fostering relationships, networks, and communities across the country that enable issues to be caught and addressed early.<sup>514</sup>

**187.** Just over half, 53 per cent,<sup>515</sup> of an estimated 380,000 young people involved in youth work organisations annually,<sup>516</sup> come from economically or socially disadvantaged communities. Youth work organisations play a key role in supporting young people who experience social and economic disadvantage and youth work in Ireland is delivered through a mixture of universal and targeted interventions as well as in providing essential personal, social, and emotional skills development opportunities outside the formal education system.<sup>517</sup> Youth work helps to prepare young people for adulthood and independence, by focusing on developing the knowledge, skills and attitudes they need in order to thrive in the 21st century.<sup>518</sup> Targeted interventions focus on at-risk young people and work with small numbers impacted by issues such as family conflict, school engagement, anti-social behaviour, drug and alcohol misuse, and more.<sup>519</sup>

508 Government of Ireland, *'First 5: A Whole of Government Strategy for Babies, Young Children, and their Families 2019 – 2028'* (Government of Ireland, 2019).

509 Ibid, 82

510 Youth work is defined in the Youth Work Act 2001 s3:

“a planned programme of education designed for the purpose of aiding and enhancing the personal and social development of young persons through their voluntary participation, and which is—(a) complementary to their formal, academic or vocational education and training; and (b) provided primarily by voluntary youth work organisations.”

511 EU Eurobarometer, ‘How do we build a stronger, more united Europe? The views of young people’ (2019) 478 < <https://bit.ly/3vZ4htA> > accessed 30 June 2022.

512 National Youth Council of Ireland, *Pre-Budget Submission 2022: Restart, Restore, Renew* (NYCI 2022) 8-9.

513 National Youth Council of Ireland, *Assessment of the Economic Value of Youth Work* (NYCI 2012) 42.

514 Information received by the Children’s Rights Alliance from Foróige, 28 July 2022.

515 Youth.ie, ‘Assessment of the Economic Value of Youth Work by Indecon Economic Consultants’ (Youth.ie, 2012) p.49

516 National Youth Council of Ireland, ‘Annual Review 2020’ (NYCI, 2020)

517 Information received by the Children’s Rights Alliance from Foróige, 28 July 2022.

518 Ibid.

519 National Youth Council of Ireland, ‘Targeted vs mainstream Youth Work’ (NYCI 2022) <<https://bit.ly/3AgA0ZR>> accessed 30 June 2022.

188. Investment in youth work organisations decreased by 31.8 per cent over an eight-year period, from €73.1m in 2008 to €49.8m in 2014.<sup>520</sup> In the last three Budgets incremental increases have been allocated to youth work organisations. Today, youth work funding stands just below funding levels of over a decade ago, but the youth population is growing significantly, along with rising inflation for services. Continued and sustained investment is needed to expand the reach of such programmes to all young people needing them. Youth work organisations play a pivotal role in preventing and redressing the intergenerational cycle of poverty. All young people should be able to access and benefit from youth work, especially those marginalised, or at-risk young people, in urban and rural communities.

189. **Recommendation:** The Committee is urged to recommend that the State increase investment in youth work organisations by a further 10 per cent to restore the value of funding this sector received previously and that the State make a commitment to universal youth work, to ensure that all young people who want and need it are able to access it, recognising the value of youth work by encouraging the support and expansion of services.

---

<sup>520</sup> NYCI, *Budget 2022 "Progress on Youth Work but Youth Issues ignored again"* (NYCI 2022).

## I. Special protection measures (art. 22, 30, 32, 33, 35, 36, 37 (b)–(d), 38 - 40)

### Administration of child justice

191. **Age of Criminal Responsibility:** The Criminal Justice Act 2006 raised the age of criminal responsibility in Ireland from seven to 12 years for most criminal offences, but also provided that, in the case of allegations of serious offences such as murder, manslaughter, rape or aggravated sexual assault, a child aged ten and eleven years may be prosecuted with the consent of the Director of Public Prosecutions.<sup>521</sup> In 2016, the Committee reiterated its call for the Government to increase the minimum age of criminal responsibility.<sup>522</sup> Since this time, the Committee has also published General Comment 29, advocating again for a minimum age of criminal responsibility of least 14 years.<sup>523</sup>
192. Article 17 of the European Social Charter guarantees children legal protection and in its 2019 report on Ireland, the European Committee on Social Rights held, ‘the situation in Ireland is not in conformity with Article 17§1 of the Charter on the ground that the age of criminal responsibility is too low.’<sup>524</sup> This has been echoed by the Council of Europe Commissioner for Human Rights, who pronounced that setting the age of criminal responsibility at 14 is ‘an absolute minimum.’<sup>525</sup>
193. In the replies to the list of issues prior to reporting for the Fifth and Sixth Periodic Reports, the Irish Government argued that Ireland’s youth justice system ‘ensures children are prosecuted only as a last resort and when diversion is not appropriate’.<sup>526</sup> This approach is echoed in Ireland’s recent *Youth Justice Strategy 2021 – 2027*,<sup>527</sup> but this not in line with international best practice in this area, nor the previous recommendations of the Committee.
194. **Recommendation:** The Committee is urged to recommend the State increase the age of criminal responsibility to 14 years for all criminal offences.
195. **Youth Justice Strategy:** The principal policy document addressing the State’s approach to youth justice is the new *Youth Justice Strategy 2021-2027*.<sup>528</sup> The Strategy contains several welcome developments, such as the expansion of the Bail Supervision Scheme nationally<sup>529</sup>, a commitment to increase access to the Young Persons Probation Projects,<sup>530</sup> and the adoption of a children’s rights approach as one of its guiding principles.<sup>531</sup> In the *Strategy*, the State undertakes to review Garda station procedures to ensure that the practices comply with “fundamental human rights standards, including in relation to access to parents and legal

---

521 Criminal Justice Act 2006, section 129; Children Act 2001, section 52

522 Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland’ (2016) UN Doc CRC/C/IRL/CO/3-4 para 72.

523 UN Committee on the Rights of the Child, ‘General Comment No.24 (2019) on children’s rights in the child juvenile justice system’ (UNCRC 2019) CRC/C/GC/24 para. 22.

524 European Committee of Social Rights, ‘European Social Charter Conclusions 2019: Ireland’ 35.

525 Dunja Mijatović, ‘Commissioner for Human Rights Letter to the Convener of the Scottish Parliament Equalities and Human Rights Committee’ (CoE 2019).

526 Department of Children, Equality, Disability, Integration and Youth, ‘Replies to List of Issues prior to Reporting: The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure’ (DCEDIY 2022) para 54

527 Department of Justice, ‘Youth Justice Strategy 2021-2027’ (DOJ 2021) 33.

528 *ibid*

529 *ibid* 24.

530 *ibid* 26.

531 *ibid* 4.

representatives and the provision of information”.<sup>532</sup> The State has also committed to ensure the provision of effective and specialised legal representation and appropriate information to young people throughout the court process in the *Strategy*.<sup>533</sup> Despite these positive developments, it is of particular concern that the Strategy envisages the extension of the Garda Youth Diversion Project (GYDP) to groups of children aged eight to 11 years, below the age of criminal responsibility<sup>534</sup> instead of placing the focus on a child welfare, social services-based intervention led by children’s services.<sup>535</sup> The *Strategy* also contains limited mention of Traveller<sup>536</sup> children and young people, a significant oversight considering that Traveller children and young people are overrepresented in Oberstown Children Detention Campus.<sup>537</sup>

196. **Recommendation:** The Committee is urged to recommend that the State do not extend the application of the Garda Youth Diversion Project to groups of children aged eight to 11 years but adopt a child welfare, social services-based intervention model for these groups. The State should prioritise the implementation of the Youth Justice Strategy to ensure the provision of age-appropriate access to information and timely access to specialised legal representation for all young people accused of a criminal offence or engaged in the court process

197. **Prosecutorial delay:** The principal legislation addressing children and young people in the Irish criminal justice system is the Children Act 2001 (“the Act”)<sup>538</sup>. The Act was passed by the legislature over twenty years ago, but work is required to bring the legislation in line with contemporary international children’s rights standards.

198. It is essential that young people accused of a criminal offence have the matter brought to trial with speed and efficiency,<sup>539</sup> so they may benefit from specific protections available to child defendants under the Children Act 2001. These protections include a presumptive right of anonymity for the child defendant; the availability of child-specific sentencing provisions; the hearing of the matter before the Children’s Court; and the availability of some alternative measures to detention, such as the Garda Youth Diversion Programme.<sup>540</sup> Several recent cases have highlighted that some defendants have been deprived of the opportunity to have their case, relating to charges alleged to have been committed while under 18, heard without delay.<sup>541</sup> Juvenile justice procedures should be extended to all those who were under 18 at the time of the offence but who turn 18 during trial/their sentence.<sup>542</sup>

532 Department of Justice, ‘Youth Justice Strategy 2021-2027’ (DOJ 2021) Key Action 3.2.3.

533 *ibid*, Strategic Objective [3.3], 30 This is to be achieved through the introduction of requirements for legal representation; information provision; and guidelines for professionals involved in court processes on providing information to and engaging with young people.

534 *ibid* 26; Department of Justice, ‘Minister Browne launches Youth Justice Strategy 2021-2027’ (DOJ 2021)

<<https://www.justice.ie/en/JELR/Pages/PR21000079>> accessed 23 July 2022.

535 See the comments of the UN Committee on the Rights of the Child in ‘General Comment No 24, replacing General Comment No. 10 (2007) Children’s rights in juvenile justice’ at para 27: “Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to obtain that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding”.

536 According to Kelleher et al., and the Department of Health (n 23) there are just over 36,000 Irish Travellers in Ireland. Travellers have been recognised by the State as an ethnic group since 2017. For a short history of Irish Travellers, see the following video produced by Pavee Point Traveller & Roma Centre (2019) < <https://bit.ly/3zTEe7Y> > accessed 12 August 2022.

537 Making up 19 per cent of its total population in the first quarter of 2019 Oberstown Children Detention Campus, ‘Key characteristics of young people in detention: A snapshot (Q1, 2019)’ (OCDC, 2019) < <https://bit.ly/3BVW5ho> > accessed 12 August 2022.

538 A consolidated version of the Children’s Act 2001 can be found on the Law Reform Commission’s website:

<<https://revisedacts.lawreform.ie/eli/2001/act/24/front/revised/en/html> > accessed 12 August 2022.

539 See the comments of the UN Committee on the Rights of the Child in ‘General Comment No 24, replacing General Comment No. 10 (2007) Children’s rights in juvenile justice’ at para 65: “The Committee reiterates that, for children in conflict with the law, the time between the commission of the offence and the final response to this act should be as short as possible.”

540 Children Act 2001, sections 23, 75, 93, 96.

541 *Wilde v Director of Public Prosecutions* [2020] IEHC 385; *Cerfas v Director of Public Prosecutions* [2022] IEHC 70.

542 The UN Committee on the Rights of the Child in ‘General Comment No 24, replacing General Comment No. 10 (2007) Children’s rights in juvenile justice’ 41.

199. **Recommendation:** The Committee is urged to recommend that the State engage in a children's rights review of the Children Act 2001 and in particular, amend the Act to ensure its protections apply to all persons who were a child at the material time the offence is alleged to have been committed, regardless of the age the young person is when the matter comes before the court.

## Traveller and Roma Children and Young People

200. In 2016, the Committee made recommendations in relation to Traveller and Roma children across a range of areas including discrimination,<sup>543</sup> adequate standard of living<sup>544</sup> and health.<sup>545</sup> Census 2016 recorded that 30,987 people identified as Irish Travellers, representing a five per cent increase since 2011.<sup>546</sup> In 2016, half of the Traveller population were under the age of 19 years.<sup>547</sup> There is limited data available on the size of the Roma population in Ireland, but it is estimated to be 5,000.<sup>548</sup> The Traveller community was recognised as an ethnic group in 2017,<sup>549</sup> a welcome development. Persistent discrimination against the Traveller community contributes to poorer outcomes in health, education, accommodation and employment and lower life expectancy.<sup>550</sup> Similarly, for the Roma community, persistent poverty and inadequate standards of living and accommodation conditions jeopardise their health and wellbeing, as well as access to education.<sup>551</sup> Research from the EU Fundamental Rights Agency found that in 2018, 38 per cent of Traveller and Roma families experienced difficulties in making ends meet.<sup>552</sup> However, there is no disaggregated data on Traveller and Roma families captured in the annual Survey on Income and Living conditions (SILC), making it difficult to gain a full picture of the number of Traveller and Roma children living in poverty. A *National Roma Needs Assessment* was published in 2018, which found that members of the Roma community face high levels of discrimination, marginalisation, extreme poverty and social exclusion.<sup>553</sup>
201. It is welcome that the updated *National Traveller and Roma Inclusion Strategy 2017-2021* (NTRIS) was published in 2017 with a strategic theme focusing on children and youth.<sup>554</sup> The implementation of NTRIS was slow and NTRIS itself lacked a robust implementation plan and a much-needed 'whole of Government' approach.<sup>555</sup> It is of concern that the development of the next NTRIS has been postponed following the delay in the original NTRIS.

---

543 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 28(a).

544 *ibid* para 60.

545 *ibid* para 50, 52(a).

546 Central Statistics Office, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' (CSO 2017)

<<https://bit.ly/2UDwPH4>>. accessed 12 August 2022.

547 *ibid*.

548 Pavee Point Traveller & Roma Centre, Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (PPTRC 2018) 42.

549 Dáil Éireann, Traveller Ethnicity: Statements, Dáil Debates, 1 March 2017 [941/01]

550 Central Statistics Office, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' (CSO 2017)

<<https://bit.ly/3rpzhxR>> accessed on 2 February 2022; Department of Health, 'All Ireland Traveller Health Study: Our Geels' (UCD 2010).

551 Pavee Point Traveller & Roma Centre, Department of Justice and Equality, 'Roma in Ireland: A National Needs Assessment' (PPTRC 2018) 59-66.

552 European Agency for Fundamental Rights, 'Roma and Travellers in six countries' (FRA 2020) <<https://bit.ly/3zDz4yx>> accessed 15 June 2022.

553 Pavee Point Traveller & Roma Centre, Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (PPTRC 2018) 12- 13, 62.

554 Department of Justice and Equality, 'The National Traveller and Roma Inclusion Strategy 2017-2021' (DJE2017).

555 Irish Traveller Movement, 'Four Years on From State Acknowledgement of Traveller's Ethnicity National Traveller Organisations call for Urgent Government Action to Address Traveller Equality' (ITM 2021) < <https://itmtrav.ie/four-years-on-from-state-acknowledgement-of-travellers-ethnicity/#>> Accessed 12 August 2022.

202. A report published in July 2022, which examined the relationship between members of the Traveller community and the criminal justice system<sup>556</sup> found that Travellers' trust in the Irish criminal justice system is extremely low and that fears of wrongful arrest, excessive use of force, wrongful conviction, disproportionately high sentences and wrongful imprisonment frame the way Travellers engage with and experience the criminal justice system.<sup>557</sup> Half of respondents to a survey conducted for the project had been present in a home that the Gardaí entered without permission. These raids are reported to be particularly impactful on children.<sup>558</sup>
203. **Housing and Homelessness:** The number of Travellers living in temporary accommodation increased between 2011 and 2016 from 3,560 to 3,718 accounting for 12.2 per cent of all Travellers.<sup>559</sup> The vast majority of Travellers live in local authority accommodation. Overcrowding remains a significant issue for Traveller households; 40 per cent live in overcrowded accommodation compared to less than six per cent of all households in the general population.<sup>560</sup> Traveller families are more at risk of homelessness - despite making up less than one per cent of the population, they make up nine per cent of the homeless population<sup>561</sup> and approximately 39 per cent of Travellers meet the European (European Typology of Homelessness and housing exclusion) definition of homelessness.<sup>562</sup>
204. The poor quality of Traveller housing is particularly apparent in Local Authority halting sites where 952 families were living in 2019 (the latest available data).<sup>563</sup> Of this number, 350 families had particularly poor quality accommodation with only an outside cold tap, no electricity and shared access with other families to a port-a-loo or outside toilet.<sup>564</sup> In addition, 311 families were living on unauthorised sites and 218 of these families have no access to any services at all, including sanitation, heat, or electricity.<sup>565</sup> Many Roma live in accommodation without basic facilities such as a kitchen, cooker, running water or heat and some Roma children live in overcrowded housing with rats, damp and sewerage.<sup>566</sup> In May 2021 the Ombudsman for Children published an investigative report, *No End in Site*, which found serious and significant failings on the part of a Cork Local Authority, where 66 children were found to be living in extremely overcrowded and rodent-infested accommodation without adequate heat, sanitation or safe play areas. Instead, they were playing amongst rubbish which had not been removed, arriving to school with dirty clothes and shoes because the route they took was muddy and full of water.<sup>567</sup> The report highlighted the abject failure of the Local Authority to consider the best interests of children living on the site, including those with additional needs.<sup>568</sup>

---

556 Sindy Joyce, Olive O'Reilly, Margaret O'Brien, David Joyce, Jennifer Schweppe, and Amanda Haynes, 'Irish Travellers' Access to Justice' (IHREC, 2022)

557 *ibid* 8 -12.

558 *ibid*, 11.

559 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' (CSO 2017) <<https://bit.ly/2OLLvQv>>. Note: these are the most recent census figures, new figures from Census 2022 are due to be made public in 2023.

560 *Ibid*.

561 Raffaele Grotti, Helen Russell, Éamonn Fahey & Bertrand Maitre, *Discrimination and Inequality in Housing in Ireland* (Irish Human Rights and Equality Commission 2018) ix.

562 Pavee Point Traveller & Roma Centre, 'The Traveller Community and Homelessness' (PPTRC 2021) 2 <<https://www.paveepoint.ie/wp-content/uploads/2015/04/Pavee-Point-Traveller-Homelessness-Advocacy-Paper-Oct2021.pdf>> Accessed 29/07/2022.

563 *Ibid*.

564 *Ibid*.

565 *Ibid*.

566 Pavee Point Traveller & Roma Centre, Department of Justice and Equality, 'Roma in Ireland: A National Needs Assessment' (PPTRC 2018) 59-66.

567 Ombudsman for Children's Office, *No End in Site* (OCO 2021) 57 - 60.

568 Ombudsman for Children's Office, *No End in Site* (OCO 2021) 57.

205. Travellers face the highest levels of discrimination when accessing housing<sup>569</sup> and Roma also experience significant discrimination in accessing accommodation.<sup>570</sup> Budget 2021 allocated €18 million to Traveller-specific accommodation, an increase of €2.5 million on the previous year.<sup>571</sup> A culture of underspending on Traveller accommodation is entrenched in the State's local authorities – an Equality Review conducted by the Irish Human Rights and Equality Commission found that between 2008 and 2018 just two-thirds of the €168.8 million budget for Traveller accommodation was drawn down by local authorities.<sup>572</sup> In 2020 and 2021 the full available Traveller-specific accommodation budgets were drawn down, for the first time since 2014, but in 2020 no new accommodation was provided – the budgeted funds were primarily directed at maintenance of existing accommodation and Covid-19 mitigation measures.<sup>573</sup>

206. **Recommendation:** The Committee is urged to recommend that the State: conduct a review of all local authority practices concerning the delivery of Traveller Accommodation Programmes; implement the recommendations of the Independent Expert Group on Traveller Accommodation with a clear, targeted and well-resourced implementation plan; introduce clear actions in the next NITRS addressing the Roma and Traveller housing crisis; and establish an independent national Traveller accommodation authority as a matter of urgency.

207. **Education:** School completion rates for Travellers are significantly lower than the general population,<sup>574</sup> and analysis of census data suggests Travellers benefitted less from overall improvements in educational levels since the 1960s.<sup>575</sup> The *Roma Needs Assessment*<sup>576</sup> found Roma children face significant barriers in education, including financial constraints, yet many Roma families are not deemed eligible for the Back-to-School Footwear and Clothing Allowance due to the Habitual Residence Condition.<sup>577</sup>

208. While the overall educational attainment level of Irish Travellers increased between 2011 and 2016, with more Travellers completing secondary school than before, many still do not.<sup>578</sup> Comprehensive data on Roma children and young people is lacking, however, recent analysis highlights that the number of Roma children attending mainstream and special primary school classes has increased across the 2016 to 2018 period.<sup>579</sup> Given the absence of accurate population numbers, the proportion of Roma children attending primary or secondary school is not available.

209. The marginalisation of Traveller and Roma culture within the Irish education system adversely affects young people's sense of belonging and place.<sup>580</sup> A review of the position of

---

569 *ibid.*

570 Pavee Point Traveller & Roma Centre, Department of Justice and Equality, '*Roma in Ireland: A National Needs Assessment*' (PPTRC 2018) 75.

571 Department of Housing, Local Government and Heritage, 'Minister Burke welcomes full budget expenditure relating to the provision of Traveller-specific accommodation in 2021' (DHLGH 2021) <<https://bit.ly/3Ah6Qte>> accessed 29 July 2022.

572 Pavee Point Traveller & Roma Centre, 'The Traveller Community and Homelessness' (PPTRC 2021) 8 <<https://www.paveepoint.ie/wp-content/uploads/2015/04/Pavee-Point-Traveller-Homelessness-Advocacy-Paper-Oct2021.pdf>> accessed 29 July 2022; Irish Human Rights and Equality Commission, 'Equality Review on Traveller Accommodation' (IHREC 2021).

573 *ibid.*

574 Central Statistics Office (n 35)

575 Dorothy Watson, Oona Kenny, and Frances McGinnity, 'A social portrait of Travellers in Ireland' (ESRI 2017) 34.

576 Pavee Point Traveller & Roma Centre, Department of Justice and Equality, '*Roma in Ireland: A National Needs Assessment*' (PPTRC 2018) 110- 111.

577 Habitual residence in Ireland is a condition that you must satisfy for certain social welfare payments and Child Benefit. This condition took effect from 1 May 2004 and affects all applicants regardless of nationality. Habitual residence means you are residing in Ireland and have a proven close link to the State. The most important factors for providing this link include: satisfying the right to reside; length of time you have spent in Ireland; continuity of your residence and the general nature of your residence.

578 Department of Children and Youth Affairs, 'Statistical Spotlight #4, Young Travellers in Ireland' (DCYA 2020) 32.

579 *ibid.* 44

580 Kathleen Marie Lawrence, '*Traveller outcomes in education: A Traveller perspective*' (Maynooth University 2017); Pavee Point Traveller & Roma Centre, Department of Justice and Equality, '*Roma in Ireland: A National Needs Assessment*' (PPTRC2018).

Traveller history and culture in the school curriculum undertaken by the National Council for Curriculum and Assessment concluded that “the dissonance between the social, linguistic and cultural environments of the home and school can account for disaffection” which is compounded by conscious and unconscious bias against Travellers in the school community.<sup>581</sup> A recent study exploring the experience of Traveller and Roma children in education found that Traveller children and young people experience exclusion and racist name-calling in the school setting which can leave them feeling unwelcome and unsafe in school.<sup>582</sup> For Roma children, insufficient English language and literacy support can compound experiences of bullying and marginalisation at school.<sup>583</sup>

210. A key commitment under the *National Traveller and Roma Inclusion Strategy 2017-2021* (NTRIS) was that access, participation and outcomes for Travellers and Roma in education should be improved to achieve outcomes that are equal to those for the majority population.<sup>584</sup> A number of actions were commenced that attempt to better understand and address the barriers that Traveller and Roma children face in education, including a new two-year inclusion strategy pilot project.<sup>585</sup> The pilot began in September 2019 with three sites and a fourth site added in 2020.<sup>586</sup> The development of the National Traveller Education Strategy, a commitment of the current Government,<sup>587</sup> remains outstanding.
211. **Recommendation:** The Committee is urged to recommend that the State ensure that solutions aimed at improving the experience of Traveller and Roma children in schools are co-created with these communities and to urgently develop a National Education Strategy for Traveller and Roma children and young people, which must be accompanied by a robust implementation and monitoring plan and a consultative structure to drive implementation.
212. **Early Childhood Education and Care (ECEC):** There is also a need to provide practical supports to support Traveller and Roma children to access ECEC. Organisations supporting such families on the ground have found that families are often not aware of the subsidies available for ECEC or how to apply for them. Even with the information about the supports available, families often face other barriers, such as low levels of literacy, to completing the necessary paperwork. This is reflected in the fact that, Traveller and Roma children are significantly less likely to attend ECEC services, with 17 per cent of services reporting having one Traveller child attending their service, and only 7 per cent reporting a Roma child in their service.<sup>588</sup> In total, services reported 1,866 Traveller children and 507 Roma children attending their facility which represents 1.8 per cent and 0.5 per cent respectively of all children enrolled reported by the services.<sup>589</sup> A recent OECD report noted this disadvantage faced by Traveller and Roman children in Irish ECEC setting and recommended that actions be taken to address the sources of this disadvantage.<sup>590</sup>
213. **Recommendation:** The Committee is urged to recommend that the State undertake specific measures to improve access and outcomes for Traveller and Roma children in ECEC, such as investing in community workers on the ground to support Traveller families in accessing ECEC for their children.

---

581 National Council for Curriculum and Assessment, ‘Traveller culture and history in the curriculum: a curriculum audit’ (NCCA 2019) 61.

582 Maria Quinlan, ‘*Out of the Shadows Traveller and Roma Education: Voices from the Communities*’ (Government of Ireland 2021) 18.

583 Pavee Point Traveller & Roma Centre, Department of Justice and Equality, ‘*Roma in Ireland: A National Needs Assessment*’ (PPTRC 2018) 115.

584 Department of Justice and Equality, ‘*The National Traveller and Roma Inclusion Strategy 2017-2021*’ (DJE2017) 25-26.

585 Communication received by the Children’s Rights Alliance from the Department of Education, 20 January 2021.

586 *ibid.*

587 Government of Ireland, ‘*Programme for Government – Our Shared Future*’ (2020) 100.

588 Pobal, ‘*Annual Early Years Sector Profile Report 2020/2021*’ (Pobal 2022) 59.

589 *Ibid.*, p. 12

590 OECD, ‘*Strengthening Early Childhood Education and Care in Ireland Review on Sector Quality*’ (OECD 2021) 16.

## Asylum-seeking, refugee and migrant children

214. **Undocumented children:** In 2016 the Committee recommended that the State adopt a human rights compliant legal framework to address the needs of migrant children, with formal procedures for awarding status on children and families in irregular migration situations.<sup>591</sup> The Committee recommended that children in such irregular migration situations should also be offered independent legal advice and prompt clarifications on their migration status.<sup>592</sup> It is estimated that there are some 15,000 to 17,000 undocumented people, including 2,000 to 3,000 children living in the State.<sup>593</sup>

215. The State's introduction of the *Regularisation of Long-Term Undocumented Migrants Scheme* in 2022 is warmly welcomed and opened in January 2022.<sup>594</sup> It is open to applicants who have lived in the State without an immigration period for at least four years, or three years where they have children, subject to additional eligibility criteria.<sup>595</sup> While the Scheme will be life changing for those eligible, it is a once-off, time-limited initiative - available for just six months. Children and young people who are not eligible to apply by 31 July 2022 will have no avenue to pursue regularisation. Multiple pathways to regularisation are required as part of a sustainable approach to address the needs of undocumented children. Children who are undocumented are often without a Personal Public Service Number (PPSN)<sup>596</sup> and are therefore denied access to essential public services.

216. **Recommendation:** The Committee is urged to recommend that the State ensure that all children, irrespective of their status, have access to a PPSN and access to services.

217. **Ending Direct Provision:** The State's system of providing institutional, segregated accommodation and subsistence, also known as Direct Provision, was first introduced in 2000. The Direct Provision system has been strongly criticised by human rights monitoring bodies,<sup>597</sup> including the Committee on the Rights of the Child.<sup>598</sup> In February 2021, *A White*

---

591 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January

2016 UN Doc CRC/C/IRL/CO/3-4 [68] (a), (b), p 15.

592 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 68 (c).

593 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (2021) < <https://bit.ly/3pcw2eb> > accessed 23 June 2022.

594 *ibid* ; Department of Justice, 'Minister McEntee to make it easier for children to secure Irish citizenship' (DOJ 2021) <<https://www.justice.ie/en/JELR/Pages/PR21000057>> accessed 23 June 2022.

595 Department of Justice, 'Regularisation of Long Term Undocumented Migrant Scheme' (DOJ 2022) <<https://www.irishimmigration.ie/regularisation-of-long-term-undocumented-migrant-scheme/>> accessed 23 June 2022.

596 Personal public service (PPS) number is a unique reference number that helps you access social welfare benefits, public services and information in Ireland.

597 Ombudsman for Children, 'Safety & Welfare of Children in Direct Provision – An investigation by the Ombudsman for Children's Office' (OCO 2021) < <https://www.oco.ie/app/uploads/2021/04/Safety-and-Welfare-of-children-in-Direct-Provision.pdf> > accessed 23 June 2022.; Health Information and Quality Authority, '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 2015).

598 598 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/3-4, 65.

*Paper to End Direct Provision and to Establish a New International Protection Support Service* was published, setting out a roadmap for ending Direct Provision in the State.<sup>599</sup> It advocates for the introduction of a not-for-profit model to international protection accommodation provision. The *White Paper* aims to replace the Direct Provision system by December 2024,<sup>600</sup> but implementation of the plan will be significantly delayed due to the response to the crisis in Ukraine.<sup>601</sup> While the publication of the *White Paper* was a hugely positive step towards ending the manifestly unsuitable Direct Provision system, two years on, major aspects of the *Paper* related to children, youth and family have not been implemented nor substantially progressed.<sup>602</sup> Significant increased funding and a whole of government approach is required to ensure that the current Direct Provision system is phased out in a timely fashion, in keeping with the 2024 target set down in the *White Paper*.

218. **Recommendation:** The Committee is urged to recommend that the State implement the *White Paper* by December 2024, with a prioritised focus upon actions related to children, young people and families.
219. **Accommodation:** The Committee previously voiced concerns that the majority of asylum-seeking and refugee children were accommodated in privately-operated centres which were not subject to adequately independent inspections or covered by national standards.<sup>603</sup> Since Ireland's last examination, the Government introduced *National Standards* which aim to improve the quality of care and accommodation provided to children and families living in Direct Provision centres.<sup>604</sup> This is a welcome development. Despite the introduction of the standards, significant issues remain regarding the quality of accommodation. Due to increasing numbers, it has been reported that a large numbers of people, including children, are sleeping on the floor of a hotel and dozens of makeshift beds in its conference rooms.<sup>605</sup>
220. As of June 2022, there were 2,883 were children and young people living in Direct Provision, over 26 per cent of all residents.<sup>606</sup> Of these 2,883: 79 children and young people were housed in Baleskin Reception Centre; 1,995 were in International Protection Accommodation Services (IPAS) Accommodation Centres; 492 were in Pre-reception centres, 251 were in Emergency Accommodation Centres and 16 were in Temporary Accommodation.<sup>607</sup> The number of children and young people in Emergency Accommodation Centres or Temporary Accommodation has significantly increased from June 2021, when there were 174 children in emergency accommodation.<sup>608</sup> Given that many of these sites operate on a commercial basis, often as hotels, not all staff have training on the needs of those seeking international protection.<sup>609</sup> This lack of awareness is compounded by the

599 Government of Ireland, 'A White Paper to End Direct Provision and to Establish a New International Protection Support Service' (Government Publications 2021).

600 *ibid* 84.

601 Hugh O'Connell, 'Ukraine refugee crisis may sink plans to scrap Direct Provision by end of 2024' *Irish Independent* (17 July 2022) <<https://bit.ly/3vV8nTp>> accessed 12 August 2022.

602 Government of Ireland, 'A White Paper to End Direct Provision and to Establish a New International Protection Support Service' (Government Publications 2021), for example: pg 65 – the International Protection Child Payment for children living in Direct Provision has not been introduced at the same rate of the universal Child Benefit payment; pg 60 the implementation of a vulnerability assessment has been laggard; pg 85 reliance upon emergency accommodation has not been reduced.

603 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, 65.

604 Department of Justice and Equality, 'National Standards' (DOJE 2019).

605 See Irish Refugee Council "'Powerless' Experiences of Direct Provision During the Covid-19 Pandemic August 2020' (IRC 2020) <<https://bit.ly/3SKKNm3>> accessed 12 August 2022; Justin McCarthy, 'Asylum seekers sleeping on floor at Dublin hotel' *RTE* (13 June 2022) <<https://www.rte.ie/news/ireland/2022/0612/1304375-asylum-seeker/>> accessed 12 August 2022.

606 Minister for Children, Equality, Disability, Integration and Youth Roderic O'Gorman TD, Dáil Debates, Written Answers 23 June 2022 [33448/22].

607 *ibid*.

608 European Council on Refugees and Exiles, Asylum Information Database, 'Country Report – Types of accommodation' <<https://bit.ly/3JN6mOV>> accessed 08 August 2022.

609 Department of Justice, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (DOJ 2020) 20, 101.

inability of all these sites to respect the rights of children, especially in relation to independent cooking facilities and appropriate private leisure space. Children living in emergency accommodation have also experienced challenges in accessing their education rights.<sup>610</sup> Child protection is also a concern - in April 2021 an investigation by the Ombudsman for Children's Office found that child safeguarding obligations are "less robust" in Temporary Emergency Accommodation Centres than in other IPAS settings.<sup>611</sup>

221. **Recommendation:** The Committee is urged to recommend that the State expedite the provision of new accommodation options for children, young people and their families through the establishment of a new housing agency or having it added to the remit of the existing housing agency.
222. **Vulnerability assessments:** Children and young people are considered a "vulnerable" population group under the European Communities (Reception Conditions) Regulations 2018.<sup>612</sup> The 2018 Regulations provide that they must be given access to appropriate mental health care and have their special reception needs evaluated through a vulnerability assessment,<sup>613</sup> which is to be completed within 30 working days of the person indicating their intention to seek asylum in the State.<sup>614</sup>
223. The State's progress on implementing a formal vulnerability assessment for international protection applications has been slow. In December 2020, a pilot programme was introduced at one reception centre in the State.<sup>615</sup> The pilot was extended to all new applicants for international protection in February 2021.<sup>616</sup> Civil society groups have raised concerns with the manner and the inconsistency of the pilot assessments that were carried out.<sup>617</sup> As of May 2022, a review of the pilot programme is ongoing but it has been delayed due to "the need to respond to the Ukraine crisis".<sup>618</sup>
224. **Recommendation:** The Committee is urged to recommend the State adopt a comprehensive, human rights compliant vulnerability assessment for all children and young people applying for international protection and temporary protection in the State and expedite the review of the 2021 pilot vulnerability assessment programme.
225. **Unaccompanied minors:** As of July 2022, 386 unaccompanied minors were referred to the State's Child and Family Agency, Tusla, of which 62 were from Ukraine.<sup>619</sup> As of June 2022, there are 164 unaccompanied minors in State care or accommodation.<sup>620</sup> Legislation provides that the Minister for Justice or an international protection officer can arrange for an age assessment of an unaccompanied person, where they have reasonable cause to do so, to determine if they are under 18.<sup>621</sup> The age assessment must be performed with respect for

610 Department of Justice and Equality, 'Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process' (DOJE 2020) 78.

611 Ombudsman for Children's Office, 'Safety & Welfare of Children in Direct Provision – An Investigation by the Ombudsman for Children's Office' (OCO 2021) 13

612 European Communities (Reception Conditions) Regulations 2018, SI No 230/2018, section 2(5).

613 *ibid* section 8.

614 *ibid* section 8(b).

615 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, Question to Children 28 April 2021 [21891/21]

616 *ibid*

617 Asylum Information Database, European Council on Refugees and Exiles, 'Country Report: special reception needs of vulnerable groups' (AID2022)

618 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, Question to Children 28 April 2021 [21891/21]

619 Samantha Libreri, 'Unprecedented' numbers of children seeking protection' RTÉ (20 July 2022) Samantha Libreri, 'Unprecedented' numbers of children seeking protection – Tusla' RTÉ (20 July 2022) <<https://www.rte.ie/news/ireland/2022/0720/1311318-minor-facilities/>> accessed 25 July 2022.

620 *ibid*

621 International Protection Act 2015, section 24.

the young person's dignity, only with the international protection applicant's consent or that of the person responsible for the person or a person appointed by the CFA<sup>622</sup> and the best interests of the child must guide the application of the age assessment procedure.<sup>623</sup> The young person concerned must be informed in a way they can understand about the methods used in the examination and what will happen if they refuse the examination.<sup>624</sup> While the International Protection Office (IPO) holds the power to make age assessments, in practice the IPO refers to the CFA to make a determination regarding age.<sup>625</sup> All age assessments made by the CFA are followed by the IPO, unless "extreme evidence to the contrary is submitted", in which case the matter is likely to be referred back to the CFA for a reassessment of age.<sup>626</sup> Despite the dominant role of the CFA in the age assessment process, little is known about the methods used by the agency when conducting such age assessments,<sup>627</sup> which is of particular concern when considering that just 48 of the 115 referred to the CFA for an age assessment between 2016 and 2020 were determined to be children.<sup>628</sup>

226. When unaccompanied minors are under the care of the CFA, they are reliant upon the CFA to make an application for international protection on their behalf. A 2018 study found that most unaccompanied minors do not receive a decision on their international protection application before they turn 18 and alternative immigration permissions are not commonly applied for.<sup>629</sup> As a result, only a small percentage of unaccompanied minors in the State have an immigration status.<sup>630</sup> Delays in applying for international protection can result in an unaccompanied minor losing the ability to be treated as a child asylum seeker in the international protection process and having a lack of status when they turn 18.

227. **Recommendation:** The Committee is urged to recommend: that unaccompanied minors are specifically provided access to legal aid, particularly where such children and young people are applying for family reunification; that all care arrangements accommodating unaccompanied minors people are subject to regular State inspection and material assistance programmes are offered to those caring for such children and young people, having regard to their special needs; and as a matter of urgency, that the age assessment procedures employed by Tusla – the Child and Family Agency are made public.

---

622 *ibid*.

623 *ibid* section 25.

624 *ibid* section 25(3).

625 This information was released to a journalist on foot of a Freedom of Information request. It featured in the following article: Shamim Malekmian, 'The State Has No Guidelines for Judging If Asylum Seekers Are Children, but It Does So Anyway' *Dublin Inquirer* (10 November 2021). It was first prepared by the State in response to a request for information on age assessment procedures, made by the Czech Republic to the European Migration Network: <<https://bit.ly/3QAP8Hb>> accessed 12 August 2022.

626 *ibid*, quoting correspondence between Shamim Malekmian, *Dublin Inquirer* and the International Protection Office, available here: <<https://www.documentcloud.org/documents/21098283-foi-47-2021-final-response>> accessed 12 August 2022.

627 *ibid* (n 124); European Commission: European Website on Integration, 'Ireland: Issues in the age assessment of unaccompanied child asylum seekers' (EC 2021) <[https://ec.europa.eu/migrant-integration/news/ireland-issues-age-assessment-unaccompanied-child-asylum-seekers\\_en](https://ec.europa.eu/migrant-integration/news/ireland-issues-age-assessment-unaccompanied-child-asylum-seekers_en)> accessed 12 August 2022.

628 *ibid*

629 Economic & Social Research Institute, S Groarke, S Arnold, 'Approaches to unaccompanied minors following status determination in Ireland' (ESRI 2018) 31 <<https://www.esri.ie/system/files/publications/RS83.pdf>> accessed 12 August 2022.

630 *ibid* 31

### III. Appendix 1 – List of Contributors

The following provided feedback on the Report:

- Alcohol Action Ireland
- Child Law Project
- Childhood Development Initiative
- Dr. Aisling Parkes
- Dr. Fiona Donson
- Dr. Maria Corbett
- Immigrant Council of Ireland
- Irish Penal Reform Trust
- McPaths
- Mental Health Reform
- National Youth Council of Ireland
- One Family
- Pavee Point
- St. Patrick's Mental Health Services
- Teachers Union Ireland
- The Anne Sullivan Foundation

In addition, the following provided input through two thematic consultations held on Traveller and Roma Children and Young People and Children with Disabilities:

- AsIAM
- Child Law Reporting Project
- Childhood Development Network
- Children in Hospital Ireland
- Down Syndrome Ireland
- Dyslexia Ireland
- Foróige
- Galway Traveller Movement
- Good Shepard Cork
- Irish Traveller Movement
- National Council for the Blind
- Pavee Point Traveller and Roma Centre

A Steering group has been established to help guide this work to date. The members are:

- Alcohol Action Ireland
- Childhood Development Initiative
- Children in Hospital Ireland
- Feach
- Immigrant Council of Ireland
- Inclusion Ireland
- Irish Society for the Prevention of Cruelty to Children
- Katherine Howard Foundation Ireland
- National College of Ireland
- Pavee Point Traveller and Roma Centre
- St. Patrick's Mental Health Services
- The Anne Sullivan Centre