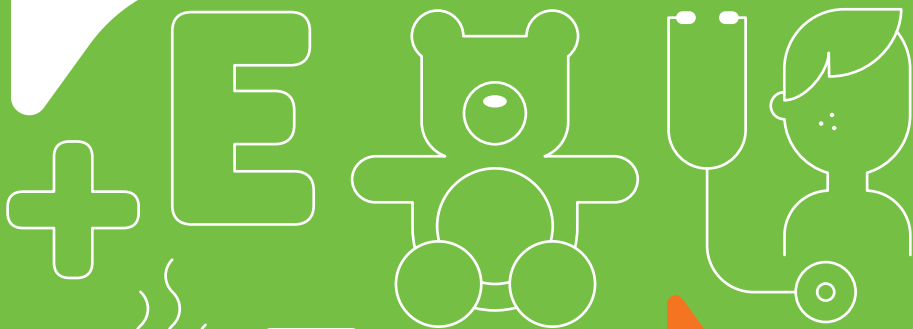
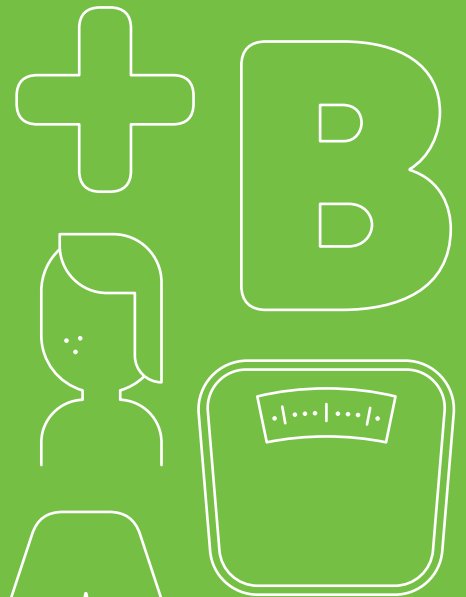
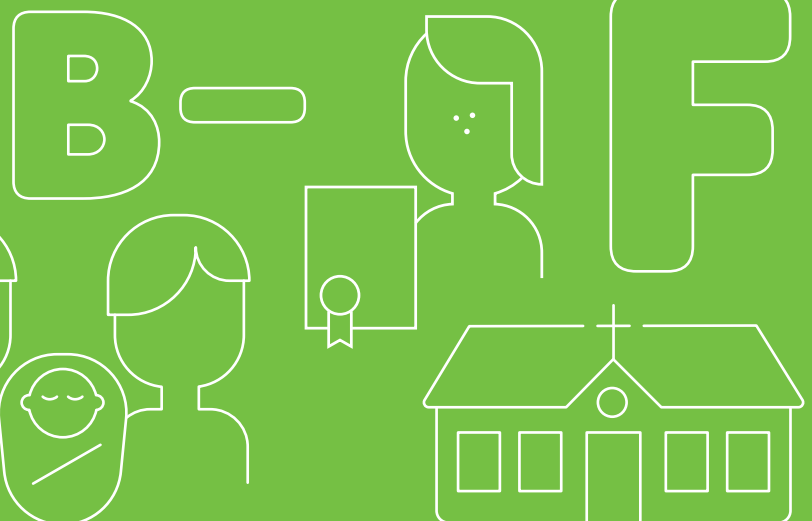
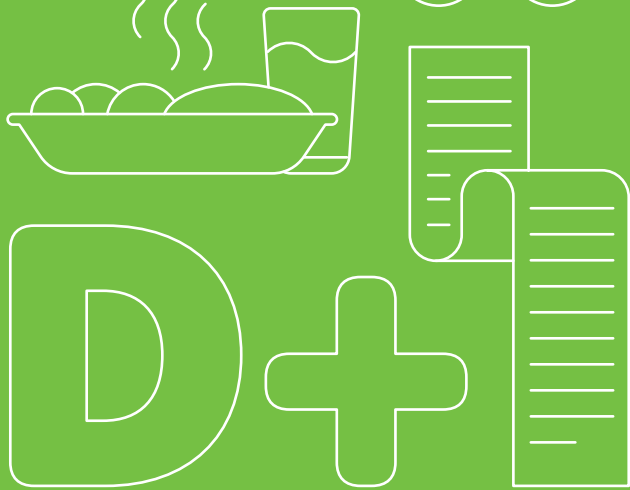




# Report Card 2022



Is Government  
keeping its promises  
to children?



**CHILDREN'S  
RIGHTS  
ALLIANCE**

Uniting Voices For Children

# Contents

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# Foreword

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Report Card 2022 is the second analysis of Fianna Fáil, Fine Gael and the Green Party's joint *Programme for Government: Our Shared Future* and how it performed for children in 2021. We have once again closely analysed 16 promises made to children and young people and have rated the Government on its efforts. As always, our independent panel of experts, chaired by Judge Catherine McGuinness graded the Government's performance.

It is hard to believe that Report Card is now in its fourteenth year, yet the challenges we face for our children are as serious as ever, if not even more so. Childhood is short. Getting our country's systems and structures right for our youngest people will support them now as children, and throughout their life. It's that simple.

As with last year's report, the backdrop for this year's publication is Covid-19. The pandemic changed so much for children and young people again in 2021 – school closures, reduced availability of services and stoppages of those activities that make life normal like playdates, parties and piano. The current focus on the increased cost of living has further compounded the inequalities heightened by the pandemic's effect and must be addressed.

For many families, the extraordinary circumstances of the pandemic created new hardships and vulnerabilities. These issues will have long-term consequences if they are not dealt with now. The impact of Covid-19 has heightened the need for sustained investment to close this inequality gap and ensure all families receive the support they need so their children can thrive.



**The current focus on the increased cost of living has further compounded the inequalities heightened by the pandemic's effect and must be addressed.**



The Children's Rights Alliance continually called for children and young people's rights and needs to be at the centre of decision-making in response to the pandemic, and we are pleased that headway was made in prioritising them in the reopening of schools and other areas of life.

2021 was far from a normal year and, to its credit, the Government made good progress in some areas. To reflect this, a 'B' grade was awarded on the commitment to create new pathways for long-term undocumented people and their children. There were three 'B-' grades for work to end the Direct Provision system, for reform of the childcare system and for the long-awaited guidelines on reduced timetables.

Meanwhile, the highest grade was awarded for the commencement of the Harassment and Harmful Communications Act – an 'A' grade. However, Online Safety secured a 'C-' as the draft legislation was only published in January 2022, and we still have some way to go before an Online Safety Commissioner is put in place. We will be closely watching the work of the Expert Group on a potential independent complaints system, and we are hoping that it will be included in the final legislation.

Things were less stellar at the other end of the spectrum with two 'E' grades awarded – the lowest in Report Card 2022. The first of these is given for the increase in the number of children and their families experiencing homelessness. The fact that there were nearly 300 more children and young people in emergency accommodation at the end of the 2021 compared to the beginning of that year, is deeply disappointing particularly given the positive actions taken in 2020 resulting in a fall in homeless families.

Meanwhile, another 'E' grade is awarded for the continued practice of admitting children to adult psychiatric units. While there was a slight reduction in 2021 from 27 to 25 young people put on adult wards, even one child in an adult ward is one too many. Placing a child or young person who is experiencing mental ill health in a ward with adults is not right and should not continue. The fall in grade is also due to the fact that for the first time, the admission of children to adult inpatient facilities will be placed on a statutory footing in forthcoming legislation appearing to contradict the Government's commitment to end the practice.

A slew of 'D' grades was attained in five out of the 16 areas. This shows a lack of progress in establishing a new Childcare Agency, failure to continue the free school books pilot and for not yet completing the evaluation of the Traveller and Roma education inclusion pilot. Other unfulfilled promises include a clear lack of progress on introducing a Public Health Obesity Act or developing an updated National Youth Homelessness Strategy.

Despite the need for change in so many areas there are opportunities in 2022 to turn things around. We are still waiting on a new national children and young person's strategy, which is a good place to start. Here, we have the potential to develop a robust recovery strategy for all children and young people, especially for those who need it most.

The European Child Guarantee also provides an opportunity to ensure that children and young people experiencing the highest levels of poverty and deprivation are prioritised. We look forward to seeing the Government's national action plan to tackle child poverty and social exclusion due out in June 2022. This will be a key focus of next year's Report Card.

Though somewhat delayed, Ireland will come under international scrutiny by a top group of independent experts, the UN Committee on the Rights of the Child culminating in a review in Geneva, most likely in 2023 given current delays. The Committee on the Rights of Persons with Disabilities will also shine a spotlight on Ireland in its review later this year. This is our opportunity for Ireland to reflect and take a critical look at where we have fallen short for our most vulnerable children and young people, and ensure that going forward, no one is left behind.

Pandemic recovery and the impact of the cost of living are key themes for 2022. While the pandemic may have abated, the long-term impacts for children remain real. Responses to addressing increased living costs must be child poverty proofed and ensure that families experiencing disadvantage are protected.

This year will mark the mid-term point of the Government's term in office. It must seize the opportunities at hand and fulfil the promises it has made sooner rather than later. Our children and young people are relying on it.

# Children's Rights Alliance Members

Founded in 1995, the Children's Rights Alliance unites over 130 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.)
- Ag Eisteacht
- 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
- Catholic Guides of Ireland
- Child Care Law Reporting Project
- Childhood Development Initiative
- Childminding Ireland
- Children in Hospital Ireland
- Children's Books Ireland
- Children's Grief Centre
- Clarecare
- COPE Galway
- Cork Life 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
- Educate Together
- EPIC
- Equality for Children
- Extern Ireland
- FamiliBase
- Féach
- Focus Ireland
- Foróige
- Gaelscoileanna Teo
- Galway Traveller Movement
- Good Shepherd Cork
- 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
- 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 Project
- 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
- Private Hospitals Association
- 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
- Women's Aid
- Youngballymun
- Young Social Innovators
- Youth Advocate Programme Ireland (YAP)
- Youth Work Ireland



# Acknowledgements

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The Children's Rights Alliance wishes to thank all those who contributed to researching and compiling this report. In particular, the Children's Rights Alliance would like to thank our partners in helping to produce Report Card 2022 including Pobal, the Department of Rural and Community Development, the Community Foundation for Ireland, RTE Does Comic Relief Fund, Rethink Ireland, Katharine Howard Foundation, the Bar of Ireland and the Family Lawyers' Association of Ireland..

The Children's Rights Alliance would like to thank the Government Departments, statutory and non-statutory agencies for their assistance, comments and co-operation in preparation of this report:

- Department of Children, Equality, Disability, Integration and Youth
- Department of Education
- Department of Housing, Local Government and Heritage
- Department of Health
- Department of Justice
- Department of Social Protection
- Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
- Health Service Executive

The expert contributions of Children's Rights Alliance member organisations are gratefully acknowledged, in particular:

- Alcohol Action Ireland
- Childhood Development Initiative
- Children in Hospital Ireland
- CyberSafeKids
- Dublin Rape Crisis Centre
- Educate Together
- Equality for Children
- Focus Ireland
- Irish Aftercare Network
- Irish Heart Foundation
- Irish Penal Reform Trust



- Irish Traveller Movement
- Mental Health Reform
- Migrant Rights Centre of Ireland
- National Youth Council of Ireland
- One Family
- Rape Crisis Network Ireland
- Safe Ireland
- Society of St Vincent de Paul
- St. Patrick's Mental Health Services

Particular thanks are also due to the Children's Rights Alliance Board for their support and oversight of the process.

The Alliance would also like to acknowledge the work of Children Now, based in California, whose annual report card provided the initial inspiration for this series.

We extend our thanks to the members of the Assessment Panel who, by assessing the grades in each section and adding their considerable experience, validate this report. The grades allocated represent the collective views of the Panel rather than the views of any individual.

The Assessment Panel comprised:

- Tom Costello, Member of the National Advisory Committee Children and Young People
- Professor Maurice Devlin, Director of the Centre for Youth Research and Development, Department of Applied Social Studies, Maynooth University.
- Professor Áine Hyland, Emeritus Professor of Education and former Vice-President of University College Cork
- David Joyce, Equality Officer, Irish Congress of Trade Unions
- Dr Sindy Joyce, Post-Doctoral Researcher at University of Limerick, Human Rights Activist and Member of President Michael D Higgins' Council of State
- Judge Catherine McGuinness, former member of the Supreme Court of Ireland (Chair)
- Dr Aisling Parkes, Senior Lecturer, School of Law, University College Cork

Finally, massive thanks go to the Report Card team for their incredible hard work and commitment to produce a superb publication once again this year.

# Research Methodology

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Report Card 2022 is the second analysis of the progress for children under the new *Programme for Government: Our Shared Future*.

In Report Card 2021, the Children's Rights Alliance selected 16 commitments in *Our Shared Future* to track over the course of this Government's term in office. Commitments were shortlisted based on several core criteria:

- The commitment directly impacts children, defined as those under the age of 18.
- The commitment wording is clear and measurable.
- The commitment relates to one of the Alliance's strategic goals, or of our members.
- If achieved, the commitment has significant potential to improve the quality of life for children growing up in Ireland.

We sought to ensure that the commitments covered multiple different groups of children, including those who are marginalised; that they related to the whole of a child's development from infancy through to adolescence; and finally, that they spanned multiple different policy areas to reflect the broad range of issues that can affect children's lives.

The research approach comprised of detailed children's rights analysis of relevant legal and policy documents and academic literature which was then supplemented with insights and evidence gained from members and subject specialists. We engaged with relevant Government departments and statutory agencies to capture developments which happened in 2021, as per our research timeframe. This enabled us to draw on the most up to date facts and figures when drafting each commitment section.

As in other years, members, Government officials and sector representatives had an opportunity to feed into our analysis, and once finalised, this went to an independent panel of experts for grading on the progress made in 2021. Details of panel membership are contained in the acknowledgements section.

# Grades Table

| Government Commitment, June 2020                                                                     | 2021 | 2022 |
|------------------------------------------------------------------------------------------------------|------|------|
| Reform the childcare system                                                                          | C    | B-   |
| Establish a central agency, Childcare Ireland                                                        | D    | D    |
| Commence a free school books pilot                                                                   | C-   | D-   |
| Introduce national monitoring of reduced timetables                                                  | D-   | B-   |
| Ensure each child with a special educational need has an appropriate school place                    | D    | C-   |
| Undertake an independent assessment of the education inclusion pilot for Traveller and Roma children | D+   | D    |
| End the admission of children to adult psychiatric units                                             | C    | E    |
| Address food poverty in children                                                                     | D    | C+   |
| Introduce a Public Health Obesity Act                                                                | C    | D    |
| Reduce the number of homeless families                                                               | C    | E    |
| Develop a National Youth Homelessness Strategy                                                       | D    | D    |
| End the Direct Provision system and replace it with a not-for-profit accommodation model             | C+   | B-   |
| Create new pathways for long-term undocumented people and their children                             | D    | B    |
| Enact the Harassment and Harmful Communications Bill                                                 | B    | A    |
| Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner        | D-   | C-   |
| Enact a Family Court Bill and build a new Family Court Building                                      | C    | C-   |

## ⊕ Explanation of Grades:

**A:** Excellent, making a real difference to children's lives  
**B:** Good effort, positive results for children  
**C:** Satisfactory attempt, but children still left wanting  
**D:** Barely acceptable performance, little or no positive impact on children

**E:** Unacceptable, taking steps in the wrong direction, no positive impact on children

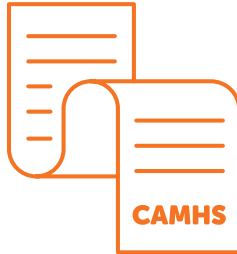
**F:** Fail, taking steps that undermine children's wellbeing

**N/A:** Not applicable, due to vague nature of Government commitment

# Key Facts & Statistics



those who leave school early are **three times more likely** to be unemployed than others aged 18-24 who are not early school leavers



**170** children waiting over one year for CAMHS appointment

**2,384** children waiting on CAMHS appointment

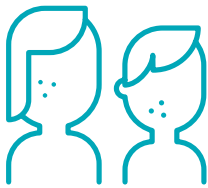
Q1 **2,166**

Q2 **2,167**

Q3 **2,344**

Q4 **2,451**

## Children homeless in Ireland in 2021



**929**

number of 18-24 year olds who are homeless



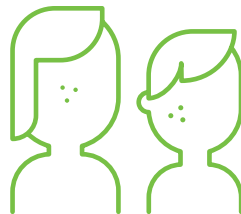
### European Child Guarantee

Under the EU Child Guarantee, Member States are required to develop a national child poverty action plan outlining how they will progress the six commitments including the provision of free access to education.



**84%**

of 8 to 12 year-olds are on social media platforms despite current age restrictions



**1,794**

children and young people in Direct Provision (October 2021)



**230,000**

children currently benefit from the School Meals Programme

**1**

# Reform of the Early Childhood Education and Care System

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Section Grade:

**B-**



## The Programme for Government commits to:

Reform the childcare system to create one that brings together the best of community and private childcare provision, focused on children's rights, quality outcomes, reducing inequalities, supports staff retention as well as substantially reducing costs to parents. We will do so in consultation with providers, staff and parents.

---

▶ Progress: **Good**

'Reform of the Early Childhood Education and Care system' received a 'B-' grade up from the 'C' grade awarded last year. In 2021, the Government made significant investment in the early years sector in Budget 2022. There was clear progress as a number of key initiatives came to fruition. The publication of the Expert Group on the Funding Model Report and the Workforce Development Plan provides a strong foundation for the systemic change needed to reform the early childhood education and care system in Ireland. Other significant developments include the commencement of a Joint Labour Committee and the publication of the National Action Plan on Childminding. It is critical that momentum towards reform keeps apace in 2022.



## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) calls for an understanding that early childhood is not merely preparation for adulthood and requires that children, including the very youngest children, be respected as persons in their own right.<sup>1</sup> While Article 5 recognises parents and carers as primary caregivers, Article 18 imposes a duty on States to provide assistance, including quality childcare services.<sup>2</sup> Article 2 clearly requires that no child should experience discrimination in early childhood and that all children should be able to access the vital services that contribute to their survival and development, in line with Article 6.<sup>3</sup> It is acknowledged that potential discrimination is a particular concern in cases 'where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations'.<sup>4</sup> Recognising that the traditional divisions between "care" and "education" services have not always been in children's best interests, the Committee recommends a coordinated, holistic, and multisectoral approach to early childhood.<sup>5</sup>

Ireland committed to promote, respect and protect children's rights when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee did not make any general recommendations around the organisation of Ireland's childcare but did express concern that children with disabilities do not have adequate access to early childhood education services.<sup>6</sup> With regard to this group specifically, the Committee recommended that Ireland train and employ a sufficient number of specialised teachers to rectify this.<sup>7</sup>

1 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 15.

2 *ibid.*

3 *ibid* para 12.

4 *ibid.*

5 *ibid* para 30.

6 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 47c

7 *ibid* para 48c.

## ► What is the context for this commitment?

The perinatal, infancy and early childhood period is a formative time for child development and wellbeing. There is clear evidence that experiences during these early years play a unique role in shaping a child's brain, with long-term consequences for health and wellbeing, as well as learning.<sup>8</sup> No other stage of life depends more on the external environment for growth and development.<sup>9</sup>

In the first few years of life, the brain is at its most flexible and rapidly developing through new experiences, with more than one million new neural connections formed every second.<sup>10</sup> A crucial element of healthy brain development is the nurturing of high-quality 'serve and return relationships' between children and caregiving adults in their homes and communities. To ensure all children can achieve their full developmental potential in line with their rights under UNCRC Article 6 (the right to survival and development), it is vital that all those in the ecosystem of early childhood education and care – parents or carers, wider family, and early years professionals – are equipped with the requisite knowledge and skills to foster these pivotal relationships.

While parents and caregivers hold primary responsibility, the wider system plays a very important role in supporting all children's healthy cognitive and socio-emotional development through interactive play and learning. While all children stand to benefit from high-quality early childhood education and care, it can be of particular value for more disadvantaged children by helping to redress inter-familial inequalities,<sup>11</sup> ensuring all children receive a baseline level of developmental support irrespective of home circumstances and parenting capacity. This is particularly important because there is robust evidence to show that children who are disadvantaged at age three are at increased risk of disadvantage across the life cycle.<sup>12</sup> One of the longest

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8 Harvard Centre for the Developing Child, 'What Is Early Childhood Development? A Guide to the Science' <<https://bit.ly/3rj2M4x>> accessed 14 February 2022.

9 J Clinton, A Feller, R Williams, 'The importance of infant mental health' (2016) *Paediatrics & Child Health*, 21(5), 239–241.

10 Harvard Centre for the Developing Child, 'What Is Early Childhood Development? A Guide to the Science' <<https://bit.ly/3rj2M4x>> accessed 14 February 2022.

11 A Pearce et al, 'Pathways to inequalities in child health' (2019) *Archives of Disease in Childhood*, 104:998–1003.

12 A Caspi, RM Houts, DW Belsky, et al, Childhood forecasting of a small segment of the population with large economic burden, (2016) *Nature Human Behaviour*, 1.

running cohort studies in the world has found that children who were in high-risk groups at age three require disproportionately greater public expenditure by the time they are 38 years old, through overrepresentation on indicators such as hospital stays, injury insurance claims, welfare receipts and criminal convictions.<sup>13</sup> This highlights the importance of the provision of wrap-around support in early childhood, not only to safeguard children's rights in the present, but also to mitigate risk trajectories, yielding a significant long-term economic and social return.

Early childhood education and care (ECEC) is defined as non-parental care provided to children before they enter the formal education system and is also known as Early Learning and Care (ELC).<sup>14</sup> Ireland has the second lowest public spending on early childhood education and care in the Organisation on Economic Co-operation and Development (OECD), amounting to less than 0.5 per cent of Gross Domestic Product (GDP).<sup>15</sup> At present, the State provides subsidies directly to all providers of childcare services in an attempt to reduce the financial cost for parents and carers availing of services at market prices.<sup>16</sup> Public funding is only provided for programmes offered through providers registered with Tusla, the Child and Family Agency. Other forms of childcare such as that provided by relatives or unregistered childminders are not covered by publicly funded childcare subsidies or schemes.<sup>17</sup> The OECD is clear that if ECEC is not sufficiently subsidised, fewer children from disadvantaged backgrounds participate in it.<sup>18</sup> This echoes the concerns made by the UN Committee on the Rights of the Child in relation to discrimination in early childhood where the provision of services does not follow a universal model.<sup>19</sup>

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13 *ibid.*

14 Parliamentary Budget Office, *Childcare in Ireland: An Analysis of Market Dynamics, Public Programmes and Accessibility* (Houses of the Oireachtas 2019) 70.

15 OECD, 'OECD Family database PF3.1: Public spending on childcare and early education' <<https://bit.ly/3az4cRP>> accessed 14 February 2022.

16 See Government of Ireland, 'National Childcare Scheme', <<https://bit.ly/3LwNhAK>> accessed 14 February 2022.

17 Parliamentary Budget Office, *Childcare in Ireland: An Analysis of Market Dynamics, Public Programmes and Accessibility* (Houses of the Oireachtas 2019) 70.

18 OECD, *Education at a Glance 2019: OECD Indicators*. (OECD 2019) 165.

19 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 12.

In June 2021, the European Child Guarantee was adopted at EU level. It aims to prevent and combat child poverty and social exclusion by supporting the 27 EU Member States to make efforts to guarantee access to quality key services for children in need.<sup>20</sup> Member States are required to publish a national child poverty action plan outlining how they will progress the six commitments contained in the Guarantee. It requires Member States to provide free access to early childhood education and care. In Ireland, while access to the National Early Childhood Care and Education (ECCE) programme is free for all children, access to other forms of childcare is not. There is also clear support for moving towards a 'publicly funded, accessible and regulated model of quality, affordable early years and out of hours childcare' as in June 2021, the Citizens' Assembly on gender equality recommended that this happen over the next decade.<sup>21</sup>

The timeframe set out by the Citizens' Assembly aligns with the timeframe of the Child Guarantee so the implementation of the Guarantee provides an opportunity to explore how best to realise the provision of publicly funded ECEC for children in need.

In 2019, the Government pledged to continue increasing investment in order to bring Ireland in line with OECD averages.<sup>22</sup> As part of the overall system reform, including reform to School-Age Childcare (SAC), the Government appointed an Expert Group to develop a set of principles on which childcare in Ireland should be based and how additional funding should be structured, also drawing on international evidence.<sup>23</sup> Notably, the Group's Terms of Reference state that it was not asked to propose changes to the current model of delivery (i.e. privately operated provision) but that it should seek to further achieve

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20 European Commission, Proposal for a Council Recommendation establishing the European Child Guarantee, Brussels, 24.3.2021 COM(2021) 137 final, 1.

21 The Citizen's Assembly, *Report of the Citizens' Assembly on Gender Equality*, (The Citizens' Assembly 2021) 13. Membership of the Assembly consisted of 100 people, comprising a Chairperson and 99 citizens entitled to vote at a referendum who were broadly representative of Irish society.

22 Department of Children and Youth Affairs, 'Minister Zappone announces Expert Group to develop a new Funding Model for Early Learning and Care and School Age Childcare' (Press Release 18 September 2019) <<https://bit.ly/2YEo1Bk>> 14 February 2022.

23 *ibid.* The Group was asked to review the existing policy and approach against these principles and its effectiveness in delivering against objectives on quality, affordability, accessibility and contributing to addressing disadvantage; and finally drawing on international evidence, to consider how additional funding could be structured to deliver on the guiding principles and objectives.



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the policy objectives of quality, affordability, accessibility and contributing to addressing disadvantage in a privately-operated market through increased public funding and public management.<sup>24</sup>

As part of the Expert Group’s work, the DCEDIY appointed economic consultants to carry out a consultation exercise with stakeholders. The consultation took the format of a series of workshops which focused on the issues of; addressing disadvantage, staff pay and quality, parental affordability and partnership between the state and services to provide for sustainability and accountability. Stakeholders involved in the consultation included representative groups of providers, workers, employers and other organisations from the community and voluntary sector. The Expert Group’s final report, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* was published in December 2021.<sup>25</sup>

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24 Department of Children and Youth Affairs, ‘Funding Model for Early Learning and Care and School Age Childcare Expert Group: Terms of Reference’ <<https://bit.ly/3oKzwBV>> accessed 14 February 2022.

25 Expert Group on the Funding Model, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* (DCEDIY 2021).



The National Childcare Scheme (NCS), in operation since November 2019, provides a progressive universal model for early childhood education and care in Ireland.<sup>26</sup> The NCS represents a first step towards reform of the system by streamlining all existing subsidies, except the ECCE programme, into a more accessible and parent-friendly claim process. Under this new scheme, which sits alongside the ECCE programme, there are two types of childcare subsidy for children over six months of age:

- ▶ A universal subsidy for children under three years. Children over three who have not yet qualified for the ECCE are also eligible. This is not means-tested.
- ▶ An income-assessed subsidy for children up to fifteen years old. This is means-tested.<sup>27</sup>

Since its introduction, over 85,000 children have benefited from the NCS up to the end of November 2021.<sup>28</sup> However, the closure of services in March 2020 due to Covid-19 abruptly halted the momentum that had been building to increase the uptake of the NCS.

While the impact of the pandemic in 2020 saw a reduction in parental demand for full and part-time Early Childhood Education and Care, and School-Aged Childcare due to changes in work patterns, research undertaken by DCEDIY in mid-2021 indicated an anticipated return to pre-Covid levels of usage of centre-based service for September 2021.<sup>29</sup> This research also demonstrated demand for pre-Covid levels of hours in early learning and care and school-age childcare.<sup>30</sup> The Early Years Sector Profile in 2018/2019 (i.e. pre-pandemic levels) recorded capacity of 218,745 compared to 220,500 in 2020/2021.<sup>31</sup> While this demonstrates a slight increase in capacity, there has been a clear

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26 Department of Children and Youth Affairs, 'Minister Zappone launches communications campaign on the National Childcare Scheme' (Press Release 23 September 2019) <<https://bit.ly/2XZJeFH>> accessed 14 February 2022.

27 Government of Ireland, 'National Childcare Scheme: Types of Subsidy' <<https://bit.ly/3rM6E0U>> accessed 14 February 2022.

28 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

29 *ibid.*

30 *ibid.*

31 *ibid.*



reduction in places for children under the age of two.<sup>32</sup> For instance capacity for children under 12 months fell by almost a third from 3,751 to 2,608 and by 19 per cent for those between 13 and 24 months - from 13,127 to 10,630.<sup>33</sup> In contrast, the capacity for children between the age of four and five years increased by 15 per cent from 58,385 to 67,296.<sup>34</sup>

## ► **What has been achieved for children and young people so far?**

The Programme for Government commitment builds on work undertaken to date, outlining that it will bring together the best of private and community provision to deliver progress in five domains: children's rights; quality outcomes; inequalities; staff retention; and cost to parents. To facilitate auditing of progress against these indicators going forward, these five related areas are considered separately below.

### **Children's Rights**

The UN Committee on the Rights of the Child recognises that young children, from birth, throughout infancy and during the pre-school years, are holders of all rights enshrined in the UNCRC.<sup>35</sup> The principle of non-discrimination applies and the State has a duty to ensure that no child is inhibited from accessing all their convention rights, due to their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.<sup>36</sup> It is important to engage with young children in relation to any reforms as this has been done very successfully in 2016 with children aged five to 12 years old in relation to School-Age Childcare.<sup>37</sup> The Department should continue to build on, and update, the consultation work

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<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 1.

<sup>36</sup> *ibid* para 12.

<sup>37</sup> Department of Children and Youth Affairs, *Report of Consultations with Children on After-School Care* (Government Publications 2017).

undertaken to date with young children. The work of Start Strong in 2011 considered young children's visions and ideas for early care and education services.<sup>38</sup> As part of the development of *First 5* young children were consulted about their likes and dislikes about where they live and what they would like to change.<sup>39</sup> Both reports provide valuable insights from young children and highlight the importance of capturing their views to inform the development of services and policy.

A number of key developments took place in 2021 in terms of laying the foundations to support, sustain and improve the ECEC sector from a children's rights perspective. In addition to moving towards a graduate-led pedagogue workforce, the Government has also committed to streamline regulatory requirements for early childhood education and care settings whilst continuing to improve quality, and to ensure a transparent inspection reporting structure for parents and guardians.<sup>40</sup>

Young children must be able to avail of quality care and education no matter the setting they attend. Appropriate safeguards must also be put in place to ensure their safety and wellbeing so it is welcome that both the Workforce Development Plan and the National Action Plan on Childminding place an emphasis on the importance of regulation of staff and services who interact with young children.

## Quality Outcomes

Early childhood institutions, services and facilities must conform to quality standards as outlined by the UN Committee on the Rights of the Child.<sup>41</sup> This means that:

- ▶ Staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained;

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38 Start Strong, *If I Had a Magic Wand* (Start Strong 2011).

39 Imelda Coyne, Deirdre Mallon, Emma Chubb, *Report on the National Consultation with Young Children* (Government of Ireland 2018) <https://bit.ly/3qWmLsr> accessed 25 January 2022.

40 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

41 UNCRC 'General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 28.

- ▶ Services are appropriate to the circumstances, age and individuality of young children and all staff must be trained to work with this age group;
- ▶ Work with young children is socially valued and properly paid to attract a highly-qualified workforce and staff should have an up-to-date theoretical and practical understanding about children’s rights and development; and
- ▶ Staff use child-centred care practices, curricula and pedagogies, and have access to specialist professional resources and support, including a supervisory and monitoring system for public and private services.<sup>42</sup>

Global evidence reviewed by the OECD indicates that smaller group sizes and child-staff ratios are related to higher process quality across the zero to five age range in centre-based care.<sup>43</sup> Most studies across the whole age range, and across different types of provisions, support that higher pre-service qualifications and additional in-service training or professional development is positively associated with process quality.<sup>44</sup>

Given this clear framework in international law and the robust evidence-base linking training and professional development to quality outcomes, it is welcome to see the Government placing much needed focus on how best to develop a specialist early years workforce, accompanied by enhanced service delivery monitoring.

Almost two decades after the first ECEC model framework was introduced in 2002 starting the ongoing process of policy reform, a Workforce Development Plan has been published.<sup>45</sup> The report, *Nurturing Skills: The Workplace Plan for Early Learning and Care and School Age Childcare 2002-2028*, was published in December 2021. This Plan seeks to move to a graduate-led workforce by

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42 *ibid* para 23.

43 Pauline Slot, *Structural characteristics and process quality in early childhood education and care: A literature review*, OECD Education Working Papers No. 176 (OECD 2018) 50-51.

44 *ibid*.

45 Department of Children Equality, Disability, Integration and Youth ‘Minister O’Gorman launches Nurturing Skills: The Workplace Plan for Early Learning and Care and School-Age Childcare (2022 – 2028)’ (Press Release 7 December 2021) <<https://bit.ly/3fTJHCe>> accessed 25 January 2022.

2028, in line with the *First 5* target.<sup>46</sup> The actions and recommendations set out in the report seek to address quality through five pillars which will aim to:

- ▶ Establish a career framework for Early Years Educators and School-Aged Practitioners and developing career pathways with clearly defined roles and responsibilities;
- ▶ Raise qualification levels incrementally with a focus on supporting existing staff in early years settings and school-aged childcare to upskill to achieve the *First 5* objective of a graduate-led early years workforce by 2028;
- ▶ Develop a national Continuous Professional Development (CPD) system in which staff will be supported to participate through Core Funding;
- ▶ Support recruitment, retention and diversity within the workforce to ensure there are sufficient numbers of qualified staff for continuity and consistency which is key to quality of practice; and
- ▶ Moving towards regulation of the profession incrementally over the course of the Workforce Plan.

The recommendations contained in the report will be supported by the parallel process of the Joint Labour Committee (JLC) for early years services and the new funding stream announced in Budget 2022. The latter development was influenced by the work of the Expert Group on the Funding Model which has proposed a new Core Funding stream aimed at addressing supply-side issues including supporting improved staff pay and the employment of graduates.<sup>47</sup> The establishment of a Joint Labour Committee in June 2021 for the Early Years sector will aim to address pay and conditions by setting minimum rates of pay.<sup>48</sup>

Core Funding will also ensure improved management of fees and more sustainable funding and play a critical role in addressing the most challenging issues facing the sector. Budget 2022 saw an additional allocation of €78m funding for ECEC bringing the total allocation to a record €716m investment

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46 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018).

47 Expert Group on the Funding Model, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* (Department of Children, Equality, Disability, Integration and Youth 2021).

48 Department of Enterprise, Trade and Employment 'Minister English establishes Joint Labour Committee for the Early Years' Service Sector' <<https://bit.ly/3Bh2vW0>> accessed 14 February 2022.

for 2022. The vast majority of the increased resources - €69m – will go towards a new funding stream for early learning and childcare providers. This funding, which will benefit 4,700 providers from September 2022, will be linked to quality improvement and will require a freeze in parents' fees.<sup>49</sup>

Further improvements to quality outside of centre-based care have been outlined in the *National Action Plan for Childminding* published in April 2021.<sup>50</sup> The purpose of the plan is to 'improve access to high quality and affordable early learning and care and school-age childcare through childminding'.<sup>51</sup> This sector currently comprises an estimated 15,000 childminders, however, only 77 of these were registered with Tusla in 2021.<sup>52</sup> In line with *First 5* commitments and the Programme for Government, the *National Action Plan for Childminding 2021-2028* sets out how regulation and subsidies will be extended to non-relative childminders. The plan outlines three phases to implementation: a preparatory phase of two to three years; a transition phase lasting three to five years and full implementation in phase three. It is anticipated phase three will begin by 2028.<sup>53</sup>

A central aspect of the Plan will be the introduction of and support for childminders to achieve tailored minimum training requirements.<sup>54</sup> The Plan proposes the development of an initial Foundation Training Programme, in phase one, specific to childminders which must be completed as a pre-requisite for Tusla registration and to access the NCS.<sup>55</sup> Following this initial phase, a Quality Development Programme, resulting in a 'special purpose award at Level 5 on the NFQ, significantly smaller in scale than a major Level 5 award'.<sup>56</sup> The Plan states new entrants may still have access to 'phased training requirements' at the end of phase three. The Plan notes that the Workforce Development Steering Group also proposed that the training requirement for

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49 Department of Children, Equality, Disability, Integration and Youth, *Budget 2022 Overview and FAQ for Early Learning and Care (ELC) and School-Age Childcare (SAC) Providers*, (DCEDIY 2021).

50 Department of Children, Equality, Disability, Integration and Youth *National Action Plan for Childminding (2021-2028)* (DECDIY 2021).

51 *ibid* 9.

52 *ibid*.

53 *ibid* 14.

54 *ibid* 50.

55 *ibid*.

56 *ibid* 50.

childminders 'should be less onerous than the full Level 5 NFQ requirement for centre-based practitioners'.<sup>57</sup> Currently, Tusla-registered childminders are required to hold a minimum Level 5 major award in Early Childhood Education and Care if they are working with pre-school children or a Level 6 if they are offering the ECCE programme. These requirements are the same for practitioners working in centre-based settings. While it is welcome that the Department is taking steps to incentivise more childminders to register with Tusla and therefore be subject to regulation and inspection, it must be balanced with the rights of young children. While having different training programmes to adapt to the differences in home-based and centre-based care is a sensible approach, the difference in the level of qualification will mean that children being cared for at home may not have the same standard of care. It should be for a limited time and only for those who have already been working in the sector, not new entrants. Young children receiving care and education services in the homes of childminders have the same rights under the UN Convention on the Rights of the Child as children receiving centre-based services, including the right to services that conform to quality standards.<sup>58</sup> Any person accessing public funds and providing ECEC should be appropriately qualified to the same standard.

An Operations and Systems Alignment Group (OSAG) that brings together relevant bodies concerned with inspection, audit and mentoring has been meeting regularly since 2015 to support the coordination and effective delivery of these functions.<sup>59</sup> To date the primary function of the OSAG has been to support the alignment of the inspectorate process. A review of the OSAG will take place in 2022 in line with the recommendations contained in the OECD report *Strengthening Early Childhood Care and Education in Ireland*.<sup>60</sup>

In driving up quality standards for early years childcare, through professionalisation and improved regulation and inspection, the role of the proposed new agency, Childcare Ireland, will be key – see commitment in Section 2.

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57 *ibid* 38.

58 UNCRC 'General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 23.

59 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

60 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.





**The UN Committee on the Rights of the Child is clear that no child should experience discrimination in early childhood and all should be able to access the vital services that contribute to their survival and development.**

## Inequalities

The UN Committee on the Rights of the Child is clear that no child should experience discrimination in early childhood and all should be able to access the vital services that contribute to their survival and development.<sup>61</sup> However, it is well-documented that the high cost of formal early childhood education and care in Ireland is one factor which can preclude cohorts of children from accessing out of family support. European Commission research found that in Ireland, the participation rate of children from low-income families in formal childcare was less than a quarter of that of their high-income peers.<sup>62</sup>

*First 5* committed to develop a Delivering Equality of Opportunity in Schools (DEIS) type model for early childhood education and care.<sup>63</sup> The Report of the Expert Group on the Funding Model addresses this commitment by recommending the introduction of a new funding stream to tackle socio-economic disadvantage.<sup>64</sup> The report proposes two funding strands, universal and targeted, to tackle disadvantage. The universal strand will build on elements of the Access Inclusion Model (AIM) and the targeted strand will be informed by the (DEIS) programme. Enhancements to existing programmes are also recommended. Finally, the report calls for an expanded role for the State in managing core aspects of services including supply, quality and affordability.<sup>65</sup>

This is welcome as is the recognition that it will take time to put in place this funding stream as it will be based on developing a model based on additional data to identify early years settings with 'high concentrations of disadvantaged children'.<sup>66</sup> The changes made to NCS eligibility in Budget 2022 are one

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61 UNCRRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 12.

62 European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe (the "Barcelona objectives")* (EU Commission 2018) 19.

63 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018) strategic action 8.3.

64 Expert Group on the Funding Model, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* (DCEDIY 2021) 119.

65 *ibid.*

66 *ibid* 130.

way that the Expert Group thought the Department could bridge the gap 'to avoid a situation in which, by the time our recommended supports to address disadvantage are being introduced, a significant number of the most disadvantaged children would not be accessing services...'.<sup>67</sup>

Budget 2022 allocated an additional €9m to extend the NCS to children under 15 years of age. This additional funding and expansion of the scheme will benefit 40,000 children and a further 5,000 disadvantaged children will benefit from increased support under the NCS subsidised hours when the practice of deducting hours spent in education (including pre-school) is removed from Spring 2022.<sup>68</sup> Prior to the introduction of this change parents were entitled to a reduced number of subsidised hours during term time as their child was in education. For example, where parents were not engaged in work or study the entitlement for children participating in ECCE was five hours during term-time and 20 hours during school holidays. The introduction of this change means that parents will retain an entitlement to 20 hours subsidised childcare all year round.

For children with disabilities, access to developmentally appropriate and needs-based early childhood education and care can be challenging. While the Access and Inclusion Model (AIM) has helped support children with disabilities through a child-centred, progressive universal model, it is only available for pre-school children who are aged over two years and eight months.<sup>69</sup> Since eligibility for Government support under AIM is based on the needs of the child in the designated age range and the needs of the pre-school setting in which the child is participating, children with disabilities who attend formal childcare settings at a younger age may not receive sufficient support to enable them to develop in line with their peers. Under *First 5*, the Government committed to undertake an evaluation of AIM. Data collection and a first draft of the evaluation report is complete and is expected to be published in early 2022.<sup>70</sup>

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67 *ibid* 132.

68 Department of Children, Equality, Disability, Integration and Youth, *Budget 2022 Overview and FAQ for Early Learning and Care (ELC) and School-Age Childcare (SAC) Providers*, (DCEDIY 2021).

69 Department of Children and Youth Affairs, 'AIM FAQs' <<https://bit.ly/34Uhs4i>> accessed 21 January 2022.

70 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

## Costs to Parents

Childcare costs rose for the fourth consecutive year, with the average weekly fee for full day provision increasing to €186, an increase of €6 from the previous year.<sup>71</sup> Average fees are significantly higher in urban rather than rural areas, and in private rather than community services.<sup>72</sup>

The NCS aims to streamline and simplify the various existing subsidy schemes and help to address the relationship between material deprivation and unmet need; in 2016, 16 per cent of families in Ireland did not have all their childcare needs met.<sup>73</sup> Under this new Scheme parents with the least income will receive the highest subsidy rate in line with the principle of progressive universalism.<sup>74</sup> However, concerns have been raised that by tying eligibility for the new single targeted subsidy to participation in employment or training, some families, particularly one-parent households, may be disadvantaged.<sup>75</sup>

In December 2021, the Department published a 12-month review of the NCS.<sup>76</sup> Preceding the review's publication a number of changes to the NCS were introduced in Budget 2022. These changes were informed by the work of the review and included extending the universal subsidy to children up to 15 years. For those in receipt of the income-assessed subsidy, the hours spent in pre-school or school from the subsidised hours will no longer be deducted. These changes will be particularly beneficial to one parent families and those experiencing disadvantage.<sup>77</sup> The majority of families in disadvantaged areas stated that they had more money to spend however, 14 per cent of families in very disadvantaged areas indicated that they had less money to spend due

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71 Pobal, *Annual Early Years Sector Profile Report 2019/2020* (Pobal 2021) 59.

72 *ibid* 59-61.

73 Economic and Social Research Institute, *Access to Childcare and Home Care Services across Europe* (ESRI 2019) 22-21.

74 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

75 See Children's Rights Alliance, *Report Card 2020* (Children's Rights Alliance 2020) 111-112.

76 Frontier Economics, *12-Month Review of the National Childcare Scheme* (Department of Children, Equality, Disability, Integration and Youth 2021) <<https://bit.ly/33AwATy>> accessed 20 December 2021

77 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman announces "transformative" €183 million budget package' (Press Release 12 October 2021) <<https://bit.ly/3GWE8D>> accessed 19 December 2021.

to the scheme.<sup>78</sup> This was partly due to families receiving lower subsidy rates. The Review highlighted key issues relating to the uptake rate of the NCS; the administrative burden on providers; and the potential requirement to introduce fee limits for parents. Of particular concern are the challenges identified around sponsorship arrangements which facilitate access to childcare for children living in vulnerable situations.

The Department has developed a list of actions arising from the NCS review. These actions will address practical difficulties with the scheme and should improve the accessibility. Identified actions include conducting consultations with parents on NCS take-up; engagement with sponsor bodies on referral pathways and criteria; bi-annual reporting on sponsor body arrangements to support ongoing development; implementation of Budget 2022 measures to increase eligibility for children and young people who cannot access additional hours under the NCS and additional funding to support providers in recognition of the administration work connected with DCEDIY schemes and in return for a freeze on parental fees.<sup>79</sup>

The Expert Group on the Funding Model's final report, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare*, published in December 2021,<sup>80</sup> recommends a new approach to funding early learning and childcare services. A new Core Funding stream will ensure better staff pay and conditions, the improved management of fees and will ensure sustainable funding. It will play a critical role in addressing the most challenging issues facing the sector. It also recommends the development by DCEDIY of 'national indicators outlining the benefits which it expects to achieve from this additional funding (reduced staff turnover, better-qualified staff, more stable parental fees, increases in non-contact time, etc.)'

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78 Early Childhood Ireland, *Policy Brief: The 12-Month Review of The National Childcare Scheme* (ECI 2021) <<https://bit.ly/3dCvWqw>> accessed 9 December 2021.

79 Department of Children, Equality, Disability, Integration and Youth 'Minister O'Gorman publishes the findings of a 12-Month Review of the National Childcare Scheme (NCS)' (Press Release 1 December 2021) <<https://bit.ly/33AwATy>> accessed 20 December 2021. Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

80 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman launches major reform of funding for early learning and childcare following Report of Expert Group' (Press Release 7 December 2021) <<https://bit.ly/3H2Fkk1>> accessed 19 December 2021.

and recommends it publishes progress reports.<sup>81</sup> Finally, the report calls for an expanded role for the State in managing core aspects of services including supply, quality and affordability.

Implementation of the Expert Group's recommendations will be reported within the *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* reporting structures and Annual Implementation Report.<sup>82</sup> The next phase of the *First 5 Implementation Plan* (2023-2025) will be developed in 2022 and it is anticipated this will include detailed milestones on the roll out of these recommendations.<sup>83</sup> The report's recommendations will be implemented on a multi-annual basis with funding available incrementally.<sup>84</sup>

## Staff Retention

The retention of appropriately qualified staff in early years settings ensures consistency of care and is a central lever to achieving quality outcomes. The early years workforce is made up predominantly of women, with high staff turnover and considerable variation in wages depending on regional location.<sup>85</sup> Average annual turnover is approximately 18 per cent, with this rising to a high of 38 per cent in Dun Laoghaire Rathdown and a low of 11 per cent in Roscommon.<sup>86</sup> Staff retention rates were highest in private services, 66 per cent retained staff and in rural based services (67 per cent retention). Pillar Four of the new Workforce Development Plan focuses on the recruitment, retention and diversity of staff in the early learning and care and school aged childcare workforce.<sup>87</sup> Actions identified to support this include a 'one-stop shop' on training and career opportunities along with the active promotion of

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81 Department of Children, Equality, Disability, Integration and Youth, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* (DCEDIY 2021) 143.

82 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

83 *ibid.*

84 *ibid.*

85 Pobal, *Annual Early Years Sector Profile Report 2019/2020* (Pobal 2021).

86 *ibid* 89.

87 Department of Children, Equality, Disability, Integration and Youth, *Nurturing Skills: The Workforce Plan for Early Learning and Care and School-Age Childcare 2022-2028* <<https://bit.ly/3s8fTaX>> accessed 25 January 2022



careers in these sectors.<sup>88</sup> However, the Plan acknowledges that a key enabler of retaining staff is the improvement in pay and employment conditions.<sup>89</sup> A survey with early years professionals conducted in December 2020 shows that 76 per cent of educators and practitioners earn less than the living wage and 93 per cent of all respondents said they would leave the sector within five years if conditions did not improve.<sup>90</sup> Research with early years practitioners highlights that poor pay and conditions, coupled with perceived lack of respect for skills and expertise cause many to leave the profession.<sup>91</sup> Prior to embarking on the Workforce Development Plan in 2019, the Government also acknowledged that pay levels are likely contributing to the staff turnover rate but indicated that under the current privatised model the State is constrained in its capacity to introduce measures to improve terms and conditions of employment.<sup>92</sup>

The Covid-19 pandemic has rapidly changed this landscape given that the State effectively took over payment of the wages of early childhood education and care providers. The introduction of the Wage Subsidy Scheme and the subsequent Employment Wage Subsidy Scheme with special provision for childcare services in place until April 2022<sup>93</sup> are welcome developments. These measures have supported many childcare facilities to remain open despite the challenging circumstances. The government subsidy allowed employers, including childcare providers, to continue to pay their employees during the pandemic ensuring that workers received a stable and secure income.

This subsidy could form a first step towards a public system of early childhood education and care which recognises it as a public good that is reflected through a secure and stable wage for educators as part of a new social contract. The Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, commenced discussions with IBEC and SIPTU in

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88 *ibid.*

89 *ibid.*

90 SIPTU, *Early Years Professionals Survey* (SIPTU 2020) 7-10.

91 Joint Committee on Children and Youth Affairs, *Report on the Working Conditions of the Early Years Education and Care Sector 2017*, 27.

92 Department of Children, Equality, Disability, Integration and Youth, 'Workforce Development Plan for the ELC/ SAC Sector Background Note and Draft Terms of Reference for the Steering Group' <<https://bit.ly/3pQpH6O>> accessed 22 December 2020.

93 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

December 2020 to advance a Joint Labour Committee for childcare.<sup>94</sup> In June 2021, the Minister of State for Business, Employment and Retail, Damien English TD, accepted a recommendation from the Labour Court to establish a Joint Labour Committee (JLC) for the Early Years Services Sector.<sup>95</sup> The JLC process commenced on 1 July 2021.<sup>96</sup>

In response to the recommendations outlined in *Partnership for the Public Good*, the Early Learning and Care and School Age Childcare division of the DCEDIY is currently undergoing reconfiguration to support their implementation.<sup>97</sup> A new Sectoral Development Unit will oversee the development of the Core Funding stream while a new Access and Inclusion Unit will progress the tackling disadvantage funding stream.<sup>98</sup> The Department's business planning for 2022 will incorporate further development of these units.<sup>99</sup> ICT planning is also underway with Pobal to develop procedures, allocation calculations, funding disbursements and reporting as well as impact monitoring to capture data on key indicators such as workforce pay, qualifications, turnover rates and non-contact time.<sup>100</sup>

## ► **What children and young people need next**

The establishment of the Joint Labour Committee (JLC), together with the publication of the Workforce Plan and the future establishment of Childcare Ireland as the central body responsible for training and professional development, have the capacity to stem the professional exodus and enable consistent, early childhood education and care for all children that is consistent with a children's rights approach.

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94 SIPTU, 'SIPTU to discuss childcare professionals' pay with Minister for Children and IBEC' (Press Release 10 December 2020) <<https://bit.ly/3pP5vU>> accessed 22 December 2020.

95 Department of Enterprise, Trade and Employment 'Minister English establishes Joint Labour Committee for the Early Years' Service Sector' (Press Release 21 June 2021) <<https://bit.ly/3e9tEzh>> accessed 20 December 2021.

96 *ibid.*

97 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

98 *ibid.*

99 *ibid.*

100 *ibid.*

The recommendations in the Workforce Plan go some way towards meeting the standards outlined by the UN Committee on the Rights of the Child in relation to children in their early years. The Plan's aim to raise the level of qualifications of those working in centre-based settings is welcome. However, this will take place on an incremental basis and therefore may not be realised until 2028 at the earliest meaning that there may not be a consistent standard in all settings until then.

The UN Committee is clear that to ensure quality in ECEC, the workforce must be socially valued and properly paid. The commencement of the JLC process will be an important step-change in terms of improving the terms and conditions for those working in the sector, to attract a highly qualified workforce and improve retention. This will help to ensure that there is a sufficient number of well-trained workers in early years settings. The supports outlined in the Plan to encourage staff to participate in ongoing Continuous Professional Development (CPD) will ensure they will be equipped with the up-to-date training necessary to work with this age group. It should include training specifically on children's rights and development as outlined by the Committee.

The commitment to move towards regulation of the profession is welcome but again this will be done over a number of years. While the Plan outlines key commitments and a sensible approach that will bring the sector and profession closer to ensuring a high level of compliance with children's rights, momentum must be maintained.

Recent data shows that 99 per cent of children attending pre-primary education (aged three to five years) in Ireland were enrolled in private childcare, compared to the OECD average of 31 per cent.<sup>101</sup> The proposed Funding Model will not result in the State establishing ECEC as a wholly public service, akin to primary education. The scope of the work of the Expert Group was restricted in terms of recommending a public model of provision, however the final report calls on the Minister to 'ensure that the Department and the operating model have the expertise and resources required to take on an enhanced public management and support role.'<sup>102</sup> This includes

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101 OECD, *Education at a Glance 2021* (OECD 2021) 171.

102 Expert Group on the Funding Model, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare* (DCEDIY 2021) 20.

having responsibility for capacity planning in relation to supply and demand, information on fees and other operational aspects of the sector. Furthermore, recommendation 25 calls on the Minister to mandate the Department to examine whether some element of public provision should be introduced alongside private provision.<sup>103</sup>

The process to implement the Citizens' Assembly recommendations on gender equality may provide an opportunity to revisit this important issue and consider whether a publicly funded model could be introduced in Ireland.

While many of the initial processes required to implement commitments in *First 5* to strengthen quality ECEC and SAC for children and young people, were completed in 2021, it will be important to consider how these will work together and align to ensure further progress is made in 2022.

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103 *ibid.*

## ➔ Recommendations:

- ▶ Continue to increase public investment in Early Childhood Education and Care and implement the recommendations of the Expert Group on the Funding Model including the continued investment in Core Funding for services and the development of national indicators to track progress linked to this investment. Budget 2023 should ensure that in the short-term Ireland is brought in line with the OECD average of 0.7 per cent of GDP, with a longer-term objective of moving closer to world leader, Iceland, which invests 1.8 per cent of GDP.
- ▶ Complete the reconfiguration of the Early Learning and Care and School Age Childcare division of the DCEDIY in 2022 to begin and progress the necessary preparatory work for the introduction of the Tackling Disadvantage funding stream for services with children in areas of concentrated disadvantage. This is in line with the *First 5* commitments to introduce a DEIS-type model.
- ▶ When developing the next phase of the *First 5 implementation plan for 2023-2025*, clearly set out how the different reforms in terms of Workforce Development, Childminding, and the Funding Model will interact to drive and improve quality for children in early years and school-aged childcare.
- ▶ In the context of the EU Child Guarantee and the recommendation by the Citizens' Assembly on Gender Equality and building on the findings of the Expert Group on the Funding Model, commission a review to explore the further steps needed to define what a public funding model means and what steps in addition to recommendations from the Funding Model group would be needed to enhance provision.

**2**

# **Childcare Ireland Agency**

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**Section Grade:**

**D**





## The Programme for Government commits to:

Establish an agency, Childcare Ireland, to assist in the expansion of high-quality childcare, spearheading leadership, best practice and innovation and professional development in community and private settings. It will also be tasked with developing career paths for childcare staff. Childcare Ireland will be responsible for expanding Síolta.

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▶ Progress: **Slow**

The establishment of a Childcare Ireland Agency receives a 'D' grade which is the same grade as last year. While progress in establishing the agency has been slow, there has been significant progress on key areas of reform which will underpin its scope and development. Work is ongoing on a review of operating systems to support future policy implementation. While the group overseeing this task has continued to meet, the commissioned analysis of the current landscape which will provide recommendations for reform has not yet been published. The finalisation of this work is critical in terms of setting out the potential scope and functions of a dedicated agency which would provide oversight and bring cohesiveness to the various operational strands of the Early Childhood Education and Care sector.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) highlights that early childhood is not merely preparation for adulthood and requires that children, including the very youngest children, be respected as persons in their own right.<sup>1</sup> While Article 5 recognises parents and carers as primary caregivers, States have a duty to provide assistance, including quality childcare services under Article 18.<sup>2</sup> Article 2 provides that no child should experience discrimination in early childhood and all should be able to access the vital services that contribute to their survival and development, in line with Article 6.<sup>3</sup> Children's best interests are always the starting point for service planning and provision,<sup>4</sup> and it is essential that the 'institutions, services and facilities responsible for early childhood conform to quality standards ... and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well trained.<sup>5</sup> Work in early years education and care should be socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women.<sup>6</sup>

Ireland ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of its commitments, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. The State was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee did not make any general recommendations about early childhood care and education in Ireland but did express concern that children with disabilities do not have adequate access to early childhood education services. With regard to this group specifically, the Committee

1 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 15.

2 *ibid.*

3 *ibid* para 12.

4 *ibid* para 22.

5 *ibid* para 23.

6 *ibid.*

recommended that Ireland train and employ a sufficient number of specialised teachers to rectify this.<sup>7</sup>

## ► What is the context for this commitment?

### Policy Overview

The Programme for Government pledges significant reform of early childhood education and care (ECEC) – see Section 1 on reform of the early childhood education and care system – and a central aspect of this is the establishment of Childcare Ireland.<sup>8</sup> While both ECEC, and School-Age Childcare (SAC) will likely fall under the remit of the proposed Agency,<sup>9</sup> Report Card 2022 focuses specifically on the impact that a central agency could have for ECEC in line with the strategic objectives of the Children's Rights Alliance.

At present, oversight and governance of early childhood education and care is spread across several different bodies operating at city, county and national level.<sup>10</sup> As an overarching body, Childcare Ireland (the Agency) is expected to streamline the system by coordinating all existing early years functions, including inspection, funding, quality and planning. It will also support staff training and development, ensuring consistent quality of care for children at this key developmental stage, irrespective of setting type or geographical location. The review of the operating model of both Early Learning Care and School-Age Childcare is a precursor to establishment of a stand-alone agency.<sup>11</sup> This review includes an analysis of the evidence base to inform the establishment of the agency. Any details as to the function or structure of the agency is yet to be established.<sup>12</sup>

7 UNCRRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 47c and 48c.

8 Government of Ireland, *Programme for Government, Our Shared Future* (Government of Ireland 2020) 80.

9 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

10 Jack Horgan Jones, 'New childcare agency will bring 'fragmented' sector together' *The Irish Times*, 27 July 2020.

11 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

12 *ibid.*

## Monitoring and oversight

The commitment to establish Childcare Ireland is welcome as there is an urgent need to align policy, practice and inspection in the ECEC sector. Ireland currently deploys a market-based model of early childhood education and care using state subsidies, capitation and regulation, rather than a public model of funding and provision. In market systems, market forces and consumerist approaches often shape the provision of formal early childhood education and care<sup>13</sup> meaning that there may not be a consistent approach to ECEC employed in all settings. One of the key aspects of the Irish system is the 'current disparity in approaches between provision for 0-3 and 3-6 year olds';<sup>14</sup> services for the older cohort are considered 'early education' and are subject to both inspections by Tusla, the Child and Family Agency and the Department of Education and Skills, while services for children under three are considered 'childcare' and are subject only to Tusla inspections.<sup>15</sup> The process of extending education-focused inspections to services for children under-3 is under way, with a consultation and trials taking place in Q1 2022.<sup>16</sup>

Exacerbating this, the current fragmentation of monitoring and evaluation generates multiple 'inspection' visits that can result in duplication and inefficiencies as well as systems that are confusing for providers, parents and stakeholders.<sup>17</sup>

*First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* aims to 'integrate and coordinate inspection and quality supports, building on the existing practice between the Inspectorates and Better Start's National Quality Development Service',<sup>18</sup> and while recent years have seen advances in coordination between the Department of Children and

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13 Martha Friendly, *A bad bargain for us all: Why the market doesn't deliver child care that works for Canadian children and families* (Childcare Resource and Research Unit, May 2019) 5.

14 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (DCYA 2018) 107.

15 T Wolfe et al, 'Rapid Change without Transformation: The Dominance of a National Policy Paradigm over International Influences on ECEC Development in Ireland 1995–2012' (2013) *International Journal of Early Childhood* 45(2).

16 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth 18 February 2022.

17 *Early Childhood Ireland, Rising to the Challenge: Budget 2020 Submission* (ECI 2019).

18 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018) 108.

Youth Affairs and the Department of Education and Skills,<sup>19</sup> overall, the sector remains fragmented.

Establishing Childcare Ireland would help to provide a more cohesive approach to provision of services and could enable coordinated joint inspections. The Agency should be designed in line with Ireland's duties under the UNCRC which specifies that 'a comprehensive framework for early childhood services, provisions and facilities is required, backed up by information and monitoring systems'.<sup>20</sup> In this regard, Childcare Ireland should oversee a coordinated and integrated inspectorate which enables safeguarding inspections undertaken by Tusla and pedagogical inspections undertaken by the Department of Education to be aligned.

In addition to streamlining and coordinating inspections, establishing an agency of this type could help the State to fulfil its UNCRC commitments to 'collect up-to-date quantitative and qualitative data on all aspects of early childhood for the formulation, monitoring and evaluation of progress achieved, and for assessment of the impact of policies'.<sup>21</sup>

## Staff development and training

Just as the Agency will be crucial for enabling a cohesive and coordinated approach to delivery of services and their inspection, so too will it play a vital role in raising the quality of existing ECEC. A key tenet of a rights-based early years system is that staff possess the appropriate psychosocial qualities and that they are suitable, sufficiently numerous and well-trained.<sup>22</sup>

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19 An Operations and Systems Alignment Group (OSAG) established by the former Department of Children and Youth Affairs comprises representatives from the Department of Education and Skills Inspectorate, Tusla's Early Years Inspectorate, Pobal, and the Better Start National Quality Development Service, managed by Pobal on behalf of the Department of Children and Youth Affairs. Memoranda of Understanding (MoU) were signed in 2018 to support coordination between the DES Inspectorate and Tusla's Early Years Inspectorate, as well as between Tusla's Inspectorate and Better Start Quality Development Service. See Children's Rights Alliance, *Report Card 2020* (CRA 2020) 106.

20 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 22.

21 *ibid* para 39.

22 *ibid* para 23.

Under international law, all States that ratify the UNCRC have a duty to ensure that work during early childhood is 'socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women'.<sup>23</sup> This means that all staff working in this field in Ireland must:

- ▶ Have a sound, up-to-date theoretical and practical understanding of children's rights and development;
- ▶ Adopt appropriate childcentred care practices, curricula and pedagogies; and
- ▶ Provide access to specialist professional resources and support, including a supervisory and monitoring system for public and private programmes, institutions and services.<sup>24</sup>

Establishing a central body provides the State with the opportunity to ensure that the training and professional development of early years educators is underpinned by children's rights as set out by the Committee on the Rights of the Child. In December 2021, the Department of Children, Equality, Disability, Integration and Youth published a workforce plan for the ECEC sector, *Nurturing Skills: The Workforce Plan for Early Learning and Care and School-Age Childcare, 2022-2028*.<sup>25</sup> The report identifies five pillars of actions, one of which focuses on Continuous Professional Development (CPD). The report recommends that one central agency would coordinate the development and alignment of CPD.<sup>26</sup>

## ▶ **What has been achieved for children and young people so far?**

As a precursor to the establishment of Childcare Ireland, the Department of Children, Equality, Disability, Integration and Youth is embarking on a comprehensive review of the operating model that administers all Early

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23 *ibid.*

24 *ibid.*

25 Department of Children, Equality, Disability, Integration and Youth, *Nurturing Skills: The Workforce Plan for Early Learning and Care and School-Age Childcare, 2022-2028* (DCEDIY 2021).

26 *ibid.*



Learning and Care and School-Age Childcare (SAC) schemes and initiatives.<sup>27</sup> The commitment to undertake this review was outlined in *First 5*.<sup>28</sup>

The review of systems and structures is supported by an oversight group that is made up of internal senior Department officials and interdepartmental representatives along with two independent experts in change management and agency establishment.<sup>29</sup> The review's objective is to ensure that the operating model is fit for purpose to implement departmental policy relating to quality, affordability and access of Early Learning and Care and SAC, to the scale and standards required in an evolving and expanding sector.<sup>30</sup>

As part of this work, an analysis of the current landscape and consideration of options for change is being undertaken by an external contractor, Indecon, and work has been underway since December 2020.<sup>31</sup> The report on this work is expected to be finalised shortly and a memo on the outcome of the review will be sent to the Minister for Children, Equality, Disability, Integration and Youth for Cabinet.<sup>32</sup> The report is due to be published in early 2022.<sup>33</sup> Notably, the scope of the review project does not include Tusla or the Department of Education and their inspectorates despite the clear need for Childcare Ireland to develop a cohesive approach to inspection coordination. A parallel Country Policy Review undertaken by the OECD included the two inspectorates in its scope.<sup>34</sup>

To enable an integrated and systemic approach to reform the childcare system, some Department officials involved in the systems review have also

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27 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

28 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

29 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

30 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

31 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

32 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

33 *ibid.*

34 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth 18 February 2022.

been a part of the work of the Expert Group on a new Funding Model and the Workforce Development Plan.<sup>35</sup>

## ► **What children and young people need next**

While it is clear that work is ongoing, it is vital that decisions surrounding the establishment of the Agency are not delayed. To ensure that the work of the Agency is child-centred and progresses quality, its establishment, design and remit should be informed by the standards set out under the UNCRC on rights in early childhood.

Aligned to this, as well as overseeing the expansion of *Síolta: the National Quality Framework for Early Childhood Education*, the Agency must also give due consideration to *Aistear: the Early Childhood Curriculum Framework*. As the National Council for Curriculum and Assessment (NCCA) acknowledges, these two frameworks cover separate but complementary grounds.<sup>36</sup> *Síolta* focuses on all facets of quality within ECEC settings including learning and development while *Aistear* helps adults provide developmentally appropriate learning experiences for children from birth to six years.<sup>37</sup> Given a core aspect of Childcare Ireland's proposed function is to provide oversight of staff training and development, it is critical that its remit is clarified to ensure it is inclusive of *Aistear* too, which at present falls under the NCCA. The Agency should also hold responsibility for applying, and updating when necessary, the Diversity, Equality and Inclusion Charter and Guidelines for ECEC.<sup>38</sup>

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35 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

36 National Council for Curriculum and Assessment, *Aistear: the Early Childhood Curriculum Framework and Síolta, The National Quality Framework for Early Childhood Education Audit: Similarities and differences* (NCCA 2009).

37 *ibid.*

38 Department of Children and Youth Affairs, *Diversity, Equality and Inclusion Charter and guidelines for Early Childhood Education and Care* (DCYA 2016).

## ➔ **Recommendations:**

- ▶ Continue to engage in the preparatory work to establish Childcare Ireland in 2022 by establishing a steering group with clear terms of reference and set timelines of tasks for completion.
- ▶ Ensure that inspections and oversight fall into the remit of Childcare Ireland and work towards developing a coordinated and integrated inspectorate to ensure quality and consistency across the Early Childhood Education and Care sector.

**3**

# Free School Books

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Section Grade:

**D-**



## The Programme for Government commits to:

Commence a free school books scheme pilot in September 2020 and, pending a successful review of that pilot, expand the scheme to schools nationwide, as resources allow.

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▶ Progress: **None**

**'Free school books' receives a 'D-' grade, down from a 'C-' in Report Card 2021. This is due to the limited nature of the pilot scheme and a failure to allocate further funding in Budgets 2021 and 2022 to continue the scheme. Further, there are no clear timelines in place for the review of the pilot or the further roll out of the scheme.**

## Ireland's duties and responsibilities in international law



Under the UN Convention on the Rights of the Child (UNCRC), every child has a right to education and should have an equal opportunity to participate in education.<sup>1</sup> States should 'take appropriate measures such as the introduction of free education and offering financial assistance in case of need'.<sup>2</sup>

The UN Committee on the Rights of the Child has stated that the goal of education is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence'.<sup>3</sup> The Committee has recommended that education should go beyond formal schooling to 'embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society'.<sup>4</sup>

### ► What is the context for this commitment?

Every child in Ireland has the right to access and receive an education. The Irish Constitution requires the State to 'provide for free primary education'.<sup>5</sup> The Courts have interpreted this as placing no obligation on the State to educate children directly, but it discharges its obligation by providing financial assistance including paying teachers, providing buildings, providing school transport and prescription of minimum standards.<sup>6</sup> In the case of *Sinnott v. Minister for Education* the Supreme Court held that this right is confined to children under the age of 18.<sup>7</sup> The Education Act 1998 sets out that children should receive 'a level and quality of education appropriate to meeting the

1 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28.

2 *ibid* Art 28(b).

3 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 2.

4 *ibid*.

5 Irish Constitution, Article 42.4.

6 *Crowley v Ireland* [1980] IR 102, Kenny J at 126.

7 [2001] 4 I.R. 545.



needs and abilities of that person<sup>8</sup> and guarantees 'to promote equality of access to and participation in education and to promote the means whereby students may benefit from education'.<sup>9</sup> The UNCRC goes further in its wording, calling on States to take steps to achieve the right to education on the 'basis of equal opportunity' and to 'take appropriate measures such as the introduction of free education and offering financial assistance in case of need'.<sup>10</sup>

Education has the power to transform lives, lift people out of poverty and break down cycles of disadvantage.<sup>11</sup> In Ireland, a person's socio-economic background remains a strong determining factor of their level of educational attainment. A person is almost three times more likely to go on to higher education if their parents have a higher education than someone whose parents have not completed primary-level education.<sup>12</sup> Living on a low income can also prevent children and young people from participating fully in education.<sup>13</sup> The *EU Recommendation on Investing in Children* recommends that the State 'provide for the inclusion of all learners, where necessary by targeting resources and opportunities towards the more disadvantaged'.<sup>14</sup> It further recommends that the State take measures to address barriers which hinder children attending school, including financial barriers, by providing targeted educational aid.<sup>15</sup>

In June 2021, building on the *Investing in Children Recommendation*,<sup>16</sup> the European Child Guarantee was adopted by the European Union (EU). It aims to prevent and combat child poverty and social exclusion by supporting the 27 EU Member States to make efforts to guarantee access to quality key services

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8 Education Act 1998, s6(b).

9 *ibid* s6(c).

10 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28(1).

11 Department of Employment Affairs and Social Protection *Roadmap for Social Inclusion 2020-2025* (DEASP 2020) 48.

12 Central Statistics Office, 'Census of Population 2016 – Profile 10 Education, Skills and the Irish Language' (CSO 2016) <<https://bit.ly/2FJtGyG>> accessed 12 January 2021.

13 Joint Committee on Education and Skills *Report on education inequality and disadvantage and barriers to education* (Houses of the Oireachtas 2019).

14 European Commission, *Commission Recommendation: Investing in children: breaking the cycle of disadvantage* (Brussels 20.2.2013 C(2013) 778 final).

15 *ibid*.

16 *ibid*. European Commission issued its recommendation "Investing in children: Breaking the cycle of disadvantage" in 2013. This Recommendation outlined a three pillar approach to tackling child poverty: access to adequate resources; access to affordable, quality services and children's right to participate.

for children in need.<sup>17</sup> Member States are required to develop a national child poverty action plan by March 2022 outlining how they will progress the six commitments including the provision of free access to education. To achieve this commitment, each State is required to identify and address financial barriers to participation along with ensuring provision of educational materials.<sup>18</sup>

### Cost of Education:

Half of the parents surveyed were concerned about the cost of returning to school while a third believed it would be more difficult to meet costs because of the pandemic.<sup>19</sup> In 2021, the Irish League of Credit Unions reported that one in four parents say they have borrowed money to pay for school costs, incurring a debt of €336 on average.<sup>20</sup>

The Barnardos Back to School Costs survey 2021 highlights the basic back to school costs parents face.<sup>21</sup> In 2021, parents with primary school going children spent an average of €336 with books costing €101 making up almost a third of the total cost.<sup>22</sup> At secondary school level, school books represent the biggest outlay for parents costing €201 out of an average total of €573.<sup>23</sup>



## European Child Guarantee

**Under the EU Child Guarantee, Member States are required to develop a national child poverty action plan outlining how they will progress the six commitments including the provision of free access to education.**

17 European Commission, *Proposal for a Council Recommendation establishing the European Child Guarantee* (Brussels 24.3.2021 COM(2021) 137 final) 1.

18 *ibid* 26.

19 Barnardos *The real cost of school 2021 Back to School Briefing Paper* (Barnardos 2021) 15.

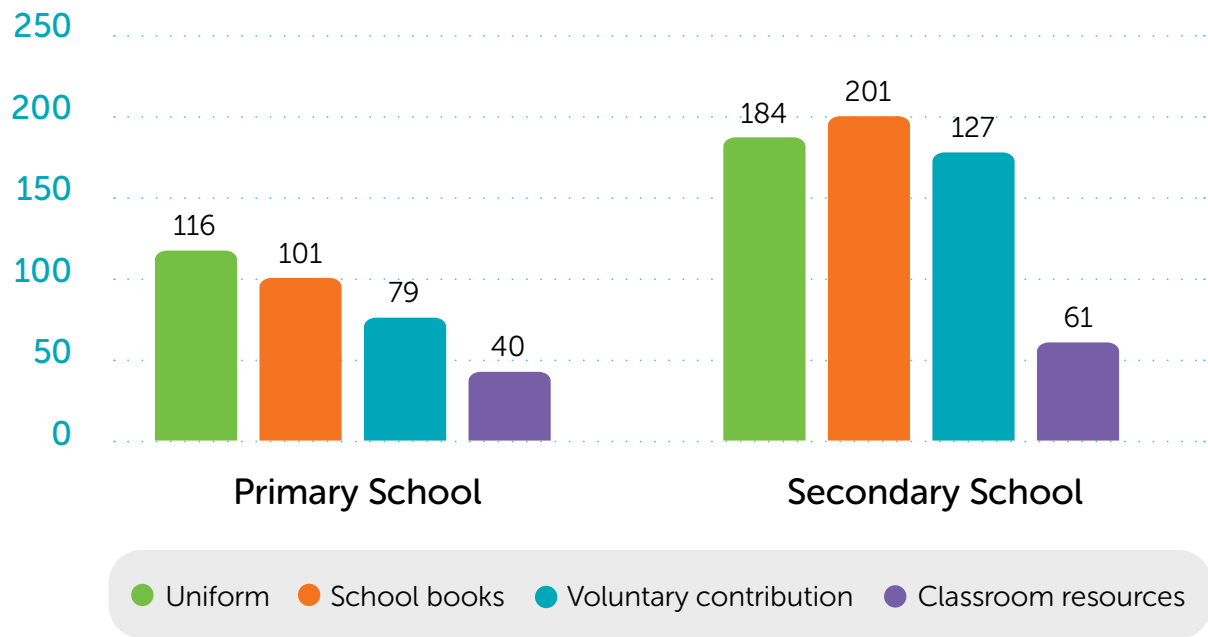
20 Irish League of Credit Unions, 'ILCU back to school survey shows cost of sending child to secondary school now averaging €1,500'; (Press Release 15 July 2021) <<https://bit.ly/3lGoN5Q>> accessed 26 January 2022.

21 Barnardos *The real cost of school 2021 Back to School Briefing Paper* (Barnardos 2021) 15.

22 *ibid*.

23 *ibid*, 15.

## Barnardos School Cost Survey 2021



It is estimated that it would cost an additional €103 million annually to deliver free primary education and €127 million to deliver free second level education to every child and young person in Ireland.<sup>24</sup> The costs are broken down in the following table:

## Estimated Cost to Make Primary and Secondary Education Free

|                                                         | Free School Books | Removing Voluntary Contribution | Free Classroom Resources | Free School Transport | Restoring Capitation Grant Level | Total    |
|---------------------------------------------------------|-------------------|---------------------------------|--------------------------|-----------------------|----------------------------------|----------|
| <b>Additional cost to make Primary Education free</b>   | €20 m             | €42 m                           | €19.5 m                  | €5 m                  | €16.7 m                          | €103.2 m |
| <b>Additional cost to make Secondary Education free</b> | €20 m             | €47 m                           | €19 m                    | €22.4 m               | €18.5 m                          | €126.9 m |
| <b>Additional cost to make Education free for all</b>   | €40 m             | €89 m                           | €38.5 m                  | €27.4 m               | €35.2 m                          | €230.1 m |

Source: Barnardos School Costs Survey 2020

<sup>24</sup> *ibid*, 31.

This investment would cover all textbooks and workbooks, remove the need for voluntary contributions, classroom resources fees, transport fees (for those availing of the School Transport Scheme) and restore the capitation rates back to 2010 levels. Measures have been taken to restore approximately 40 per cent of the capitation grant to the 2010 levels with budget increases provided for in two of the last four budgets.<sup>25</sup> However, those increases while welcome don't factor in rising inflation.

As far back as 2013, the then Joint Oireachtas Committee on Education and Social Protection called for a 'five-year template for the delivery of an entirely free schoolbook system, based on the UK model' and to discontinue the use of workbooks in all schools.<sup>26</sup> The UK model has been in place since the 1940s.<sup>27</sup> Unfortunately, the Committee's recommendation has still not been implemented.

The Department of Education provides a grant to schools to provide assistance for books which includes schoolbook rental schemes. In 2017, it issued a circular to management boards to take measures to reduce school costs including the setting up of book rental schemes.<sup>28</sup> It views the schemes as being cost effective and estimates that parents can save up to 80 per cent of book costs.<sup>29</sup> However, there is conflicting data on the availability of these schemes. The Department's data states that 96 per cent of primary schools and 69 per cent of post primary schools operate a book rental scheme.<sup>30</sup> According to the Barnardos School Costs Survey 2021, 73 per cent of primary school parents had access to a school book rental scheme, while only 47 per cent of secondary school parents had access to a school book rental scheme.<sup>31</sup> One key issue is that funding is allocated towards the purchase

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25 Budget 2019 provided for a five per cent increase in capitation funding and Budget 2020 provided for a further two and a half per cent increase. Communication received by the Children's Rights Alliance from the Department of Education on 12 January 2021.

26 Joint Committee on Education and Social Protection, *Report on Tackling Back to School Costs* (Houses of the Oireachtas 2013) 20.

27 Butler Act 1945.

28 Department of Education and Skills, 'Circular 0032/2017: Measures to be adopted by schools to reduce the cost of school uniforms and other costs' (DES 2017).

29 Department of Education and Skills, *Guidelines for Developing Textbook Rental Schemes in Schools* (DES 2012) 5.

30 Communication received by the Children's Rights Alliance from the Department of Education 12 January 2021.

31 Communications received by the Children's Rights Alliance from Barnardos 6 December 2021; Barnardos *The real cost of school 2021 Back to School Briefing Paper* (Barnardos 2021) 15.

of books but this does not take into account the necessary staff time to administer the scheme.<sup>32</sup> Moreover, parents still have to pay a contribution to the scheme which does not completely remove the financial pressure that many low income families experience at back-to-school time.

## ► **What has been achieved for children and young people so far?**

Budget 2020 provided €1 million for the development of a new pilot to provide free school books to 102 Delivering Equality of Opportunity In Schools (DEIS) primary schools for the school year 2020/21,<sup>33</sup> amounting to just over three per cent of all primary schools. The aim of this pilot was to provide free school books for students in the schools involved, and to support these schools in eliminating the cost of school books for parents.<sup>34</sup> The scheme was made available for DEIS designated schools and was anticipated to benefit 15,500 children.<sup>35</sup> The additional funding was issued to the participating schools in May 2020 and it provided an additional €64 per student to increase the overall book grant given to DEIS schools to €85 per student.<sup>36</sup>

## ► **What children and young people need next**

The Programme for Government committed to 'Commence a free school books scheme pilot in September 2020 and, pending a successful review of that pilot, expand the scheme to schools nationwide as resources allow'.<sup>37</sup> The pilot, which commenced in September 2020 was to run for one academic

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32 Teachers Union of Ireland, 'Textbook Grants and Book Rental Schemes – Department of Education and Skills Draft Guidelines and Report for Consultation: Teachers' Union of Ireland (TUI) Observations - June 2012' <<https://bit.ly/2GH84T3>> accessed 31 January 2022.

33 Department of Education 'Minister McHugh announces additional funding of €1 million to reduce the cost of school books in DEIS schools' (Press Release January 2020) <<https://bit.ly/3J7uQAX>> accessed 31 January 2022.

34 Communication received by the Children's Rights Alliance from the Department of Education, 11 November 2020.

35 *ibid.* For full list of schools see: Department of Education 'School Book Pilot Scheme 2020' <<https://bit.ly/2Y1CtDo>> accessed 31 January 2022.

36 Department of Education 'Minister McHugh announces additional funding of €1 million to reduce the cost of school books in DEIS schools' (Press Release January 2020) <<https://bit.ly/3J7uQAX>> accessed 31 January 2022.

37 Government of Ireland, Programme for Government, Our Shared Future (Government Publications 2020) 96.

year following which the Department of Education was due to review the effectiveness of the scheme and monitor and evaluate the impact before making a decision on its extension and continuation.<sup>38</sup> The size of the pilot was quite limited and there was no provision made in Budget 2021 or Budget 2022 for the possible continuation of the scheme. There is currently no timeline for the review of the scheme and it is not clear if a decision will be made on further roll-out. The Department of Education issued a template to schools in May 2020 to record and gather information on how the additional book grant funding has been used in each school. This information was to be used to evaluate the effectiveness of the pilot.<sup>39</sup>

In the 2021/22 school year there are 3,106 Primary Schools and 730 Post Primary schools in the State, of these 687 Primary and 197 Post-Primary are categorised as DEIS.<sup>40</sup> Budget 2022 provided an additional €18 million in funding to support the expansion of the DEIS scheme meaning that more children in disadvantaged areas will benefit from the increased supports and programmes provided by these schools. Research indicates that a large proportion (up to 50 per cent) of disadvantaged students attend non-DEIS schools.<sup>41</sup> The UNCRC is clear that children have a right to education on a basis of equal opportunity and that the State has an obligation to offer financial assistance in the case of need.<sup>42</sup>

The review of the pilot scheme should take into account that a large proportion of disadvantaged students attend non-DEIS schools. It is important that the learnings from the pilot are used as a tool to inform wider systemic change. The review should consider how the future expansion of the scheme can target children experiencing disadvantage attending non-DEIS schools in order to have a greater impact on child poverty. As we move towards planning for the 2022/23 academic year, it is critical that the Department completes the review of the scheme as a matter of urgency.

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38 Communication received by the Children's Rights Alliance from the Department of Education 11 November 2020.

39 Communication received by the Children's Rights Alliance from the Department of Education, 11 January 2021.

40 Communication received by the Children's Rights Alliance from the Department of Education, 27 January 2022.

41 Emer Smyth, Selina McCoy and Gillian Kingston, *Learning from the evaluation of DEIS* (ESRI 2015).

42 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28(1).

## ➔ **Recommendations**

- ▶ Complete and publish the findings of the review of the pilot scheme as a matter of priority.
- ▶ Implement the commitment in the European Child Guarantee by ensuring that all children in primary school can access free school books. As a first step, set clear numeric targets to scale-up the pilot so this is transparent and to allow progress to be measured year-on-year with specific targets for DEIS and non-DEIS schools.



4

# Reduced Timetables

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Section Grade:

**B-**



## The Programme for Government commits to:

Ensure robust data collection on the use of reduced timetables. Ensure that reduced timetables are only used in a manner that is limited, appropriate and absolutely necessary in line with the Department of Education's rules.

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▶ Progress: **Good**

'Reduced Timetables' receives a 'B-' grade, an increase on the 'D-' grade received last year. In September 2021, the Government published the long-awaited reduced timetables Guidelines which specifically provide that they should only be used in the best interests of the child and never as a punishment. The Guidelines came into force on 1 January 2022. Schools will be required to notify Tusla Education Support Service when a child is placed on a reduced timetable and will be required to capture certain data outlined by the Department of Education. However, it remains to be seen how the monitoring will work in practice and if the data will inform a needs-based response to individual children or the potential groups of children who are at greater risk of being placed on reduced hours inappropriately.

## Ireland's duties and responsibilities in international law



Under the UN Convention on the Rights of the Child (UNCRC) which Ireland ratified in 1992, every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximise the child's ability and opportunity to participate fully in their society.<sup>1</sup>

Under Article 2 of the UNCRC, States are obliged to ensure that all children can access all their Convention rights in full, without discrimination. In an education context, the Committee on the Rights of the Child is clear that discrimination 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.'<sup>2</sup>

The right to education also forms part of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which Ireland ratified in 2018. This Convention, in Article 24, is clear that children with special educational needs have a right to individualised support and reasonable accommodations to enable their effective participation in the general education system.<sup>3</sup>

In considering the features of inclusive education, the UN Committee on the Rights of Persons with Disabilities has noted that persons with disabilities and their families (when appropriate) must be recognised as partners and not merely as recipients of education.<sup>4</sup>

Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation,

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 *ibid* para 10.

3 UN Convention on the Rights of Persons with Disabilities A/RES/61/106 Art 24.

4 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4. Para 32.

curriculum and teaching and learning strategies, does not constitute inclusion.<sup>5</sup>

Ireland will be examined on its progress against the UNCRPD in 2022 and was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee on the Rights of the Child expressed several concerns relating to education rights, including the lack of a comprehensive strategy for the inclusion of children with disabilities in mainstream education<sup>6</sup> and the structural discrimination against Traveller and Roma children.<sup>7</sup>

The Committee advocated a human rights-based approach to disability and children belonging to minority groups, and specifically recommended that Ireland:<sup>8</sup>

- ▶ Train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support and early childhood education for children with disabilities.
- ▶ Establish a clear and objective framework to ensure that children with disabilities are provided with reasonable accommodation for their education needs, including in the context of state examinations.
- ▶ Undertake concrete and comprehensive measures to address the structural discrimination against Traveller and Roma children, in particular with regard to access to education.

Article 29 of the UNCRC clarifies that the right to education encompasses more than academic achievement and sets out a number of aims including the 'development of the child's personality, talents and mental and physical abilities to their fullest potential' capitalise on their capacity for learning, motivation to work with peers, and focus on experiential

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5 *ibid* Para 11.

6 *ibid.* Para 47a.

7 UNCRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4. Para 69.

8 *ibid* para 48 and 70.

learning, exploration and limit testing'.<sup>9</sup> Article 28 of the UNCRC provides that States should "encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need."<sup>10</sup>

## ▶ **What is the context for this commitment?**

The Department of Education defines reduced timetables as:

- ▶ a reduced day in school where, by arrangement with the school authorities, a student arrives to school after the usual starting time or leaves before the end of the school day, and/or
- ▶ a reduced week where, by arrangement with the school authorities, a student may not attend the full five days each week.<sup>11</sup>

Critically, the practice has been distinguished from a formal suspension and has not been subject to any of the safeguards under the Education Welfare Act 2000 whereby an appeal can be made to the Department of Education when a school has expelled, suspended or refused to enrol a child.<sup>12</sup>

A 2020 study revealed that approximately a quarter of national schools reported children being placed on reduced hours.<sup>13</sup> In recent years, there has been growing unease that schools' use of reduced timetables is infringing the education rights of children, with this practice disproportionately affecting children with special educational needs and disabilities; children of Traveller and Roma heritage; and children who are experiencing trauma or

9 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 29(1)(a).

10 *ibid* Art 28.

11 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.

12 Ombudsman for Children's Office, 'Guidelines for reduced timetables should prevent practice being used as informal suspension' (Press Release 24 September 2019) <<https://bit.ly/3iPAA6l>> accessed 28 January 2021.

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

adversity.<sup>14</sup> Research conducted with almost 400 parents found that one in four children with a disability have been put on short school days.<sup>15</sup>

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>16</sup> to support students in almost 4,000 primary and secondary schools.<sup>17</sup> Similarly, while the Department of Education has issued guidance to all schools on the provision of a continuum of support ranging from prevention and early intervention to targeted and individual level supports to meet the needs of all children in schools,<sup>18</sup> existing evidence suggests that schools are using reduced timetables as a behaviour management mechanism<sup>19</sup> with little recognition that challenging behaviour or poor emotional regulation can be an indicator that a child is experiencing toxic stress and has unmet needs.<sup>20</sup> This is of particular concern given that mental and emotional health



An evaluation of Rethink Ireland's Education Fund noted that those who leave school early are

**three times more likely**

to be unemployed than others aged 18-24 who are not early school leavers

14 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).

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

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

17 Oireachtas Library and Research Services, 'Education in Ireland Statistical snapshot' <<https://bit.ly/2LZzlWh>> accessed 26 January 2021.

18 Communication received by the Children's Rights Alliance from the Department of Education, 19 January 2021.

19 Deborah Brennan and Harry Browne, *Education, Behaviour and Exclusion The experience and impact of short school days' on children with disabilities and their families in the Republic of Ireland*, (Inclusion Ireland and Technological University Dublin 2019); AsIAM, *Invisible Children: A Survey on School Absence and Withdrawal in Ireland's Autism Community*, (AsIAM 2019); The Irish National Teachers Organisation (INTO), *The use of reduced timetable/reduced day in schools: INTO comment on draft guidelines*, (INTO 2019).

20 Harvard Centre on the Developing Child, 'Stress and Resilience: How Toxic Stress Affects Us, and What We Can Do About It' <<https://bit.ly/35x8QRm>> accessed 7 October 2020.

problems can be compounded by the experience of exclusion from formal schooling.<sup>21</sup> However, if used appropriately, in a narrow set of particular circumstances, reduced timetables may be helpful to enable the integration or reintegration of children into school life depending on their needs, for example, in certain medical situations.<sup>22</sup>

The inappropriate use of reduced timetables infringes on the child's right to education by inhibiting their access to school. It is of particular concern that children who are already marginalised or vulnerable are at greater risk of discrimination. Under the UNCRC, schools have a duty to be inclusive, enabling all children to fully participate in society.<sup>23</sup> The UNCRPD requires States to ensure that children with additional needs receive individualised support and accommodation to enable full participation - the opposite to informal exclusions. For children facing adversity either in their homes or communities, it is particularly vital that school is an accessible and enabling environment where consistent, safe, stable and nurturing relationships can be cultivated. Schools should be child-friendly spaces that foster a humane atmosphere and allow children to develop according to their evolving capacities, without discrimination.<sup>24</sup>

It is clear that mainstream education does not suit the needs of all children. The UNCRC also requires States to develop alternative forms of education for children who may find it difficult to learn in a mainstream education setting.<sup>25</sup> Alternative education settings can provide young people, who may feel excluded within the mainstream system, with a different method of learning and developing as individuals.

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21 T Ford et al, 'The relationship between exclusion from school and mental health: A secondary analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007', 2018 *Psychological Medicine*, 48(4), 629-641.

22 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) 10.

23 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12. Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4.

24 *ibid* para 12 and 10.

25 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28



## Guidelines on Appropriate Use of Reduced Timetables

### ► What has been achieved for children and young people so far?

In September 2021, the Government published guidelines for schools on the use of reduced school days. The purpose of these Guidelines is to provide clarity to school authorities and 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.<sup>26</sup> Where reduced timetables are used, schools must put the best interests of the child first.<sup>27</sup> The Guidelines are effective from 1 January 2022.

The Guidelines emphasise that reduced school days should not be used as a punishment, offered as an alternative to a punishment, or used as a behavioural management tool.<sup>28</sup> They state that reduced days should only ever be considered in very limited and time-bound circumstances such as, for example, supporting a student to return to school after a period of absence, or due to a medical or mental health-related condition or due to other exceptional circumstances.<sup>29</sup>

The Guidelines put in place a list of requirements which must be met by schools before the decision to put a student on a reduced school day can be implemented. School authorities must:

- Engage with and notify relevant support services and professionals, including the special educational needs organiser (SENO) where appropriate, and develop, implement and provide to parents/guardians a support plan for the student for an appropriate period of time.
- Provide clear evidence-based reasons for considering a reduced school day as an appropriate intervention with the best interests of the student at the core of the decision.

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26 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.

27 *ibid* 3.

28 *ibid* 2.

29 *ibid* 3.

- ▶ Obtain the consent of the student's parent/guardian.
- ▶ Notify Tusla Education Support Service (TESS) of the decision to place a student on a reduced school day before or on the first day the reduced timetables starts.<sup>30</sup>
- ▶ Consider a graduated regime of school attendance which increases steadily and incrementally towards full attendance.<sup>31</sup>
- ▶ Arrange for a review with the student and their parent/guardians (or just the student where they are 18 years of age) if a student is still on a reduced school day as the time limit of the plan approaches.<sup>32</sup>
- ▶ Only consider an extension of reduced school days in exceptional circumstances and only with the further written consent of parents/guardians.<sup>33</sup>
- ▶ Keep a record of all instances of students being placed on a reduced school day. Access to this list should be made available to TESS educational welfare officers and the Department of Education Inspectorate if requested.<sup>34</sup>

School authorities must obtain the written consent of the student's parents/guardians or if the student is 18 then their consent is required rather than that of their parents/guardians. Consent to a reduced school day can be withdrawn at any time and must be documented by school authorities.<sup>35</sup> Where consent is not given or subsequently withdrawn and the school proceeds or continues with a reduced school day, this is effectively a suspension and the Guidelines set out that an appeal can be made under the Education Act 1998.<sup>36</sup>

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30 *ibid* 3.

31 *ibid* 3.

32 *ibid* 3.

33 *ibid* 4.

34 *ibid* 4.

35 *ibid* 7.

36 Education Act 1998 S 29

Importantly, the Guidelines also provide that a student should not be on a reduced school day for more than six school weeks without review and further notification to Tusla and that a reduced school day cannot be carried forward from one academic year to the next.<sup>37</sup>

It is intended that reports on data collected will be submitted from Tusla Education Support Service to the Department of Education, which will inform policy.<sup>38</sup> The Department of Education has signalled that it intends to publish the data following review.<sup>39</sup> Throughout the decision-making process, the views of the student should also be sought and given due consideration.<sup>40</sup>

To implement the Guidelines, the Department of Education has published two circulars which provide that the School Inspectorate will engage with management during incidental Inspections conducted during the 2021/22 school year to ascertain the extent to which, if any, of the schools visited have placed some pupils on reduced timetables and if the practice followed by a school is in line with the guidelines issued by the Department.<sup>41</sup> This is the first time that reduced timetables have featured in a circular and will form part of School Inspections.<sup>42</sup>

### ► **What children and young people need next**

Schools must be inclusive spaces and children with additional special educational needs should receive the support necessary to enable full participation. All children have the right to be free from discrimination<sup>43</sup> but inappropriate use of a reduced timetable potentially breaches this right, and the evidence presented in 2019 to the Joint Oireachtas Committee on

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37 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) 4.

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

39 *ibid.*

40 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.

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

42 Department of Education, 'Guidelines on the use of reduced school days' Circular: 0047/2021.

43 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2.

Education and Skills suggests this practice is being used on the children who are most in need of consistent and tailored support in the school setting.<sup>44</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. It must also be ensured that there are enough staff in place to enforce these Guidelines and schools should be given adequate resources and support services to assist them in implementation and avoid an additional administrative burden on staff. Clarification is needed as to what form of assistance will be given to schools to ensure that the Guidelines are properly implemented.

It is welcome that the Government has issued an information note for parents and guardians on reduced timetables in early 2022.<sup>45</sup> It is also important for children and young people to be educated about their rights when they are placed on a reduced school day. Publishing a child-friendly version of the Guidelines would be a welcome step to ensure that children and young people are aware of their rights.

It should also be acknowledged that the mainstream education system does not suit the needs of all children. In an evaluation of Rethink Ireland's Education Fund it was noted that those who leave school early are experiencing 'a high complexity of challenges and needs' in the area of mental health, wellbeing, engagement with work or education, and possible involvement with the judicial system, while also being three times more likely to be unemployed than others aged 18-24 who are not early school leavers.<sup>46</sup>

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44 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).

45 Communication received by the Children's Rights Alliance from the Department of Education on 15 February 2022, see <https://bit.ly/3HWqJqW>.

46 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* (UNESCO NUIG 2021) 4.

Two of the organisations who were part of the evaluation, Cork Life Centre<sup>47</sup> and iScoil<sup>48</sup> provide Alternative Education for children and young people who are not in mainstream education. In the evaluation it was reported that:

- ▶ 32 per cent of students in Cork Life Centre were continuously suspended from mainstream schools.
- ▶ 73 per cent of students in Cork Life Centre were identified with one or more diagnosis of a special educational need (e.g., behavioural, social, emotional or learning need).
- ▶ Of the 220 students in iScoil many had mental health issues, general health issues, behavioural issues, learning disabilities, and complex family situations.<sup>49</sup>

Young people who leave school before the age of 16 have limited state-funded opportunities for continuing their education.<sup>50</sup> Article 29 of the UNCRC clarifies that the right to education encompasses more than academic achievement and sets out a number of aims including the 'development of the child's personality, talents and mental and physical abilities to their fullest potential'.<sup>51</sup> The UN Committee on the Rights of the Child guidance in relation to addressing early school leaving states that 'to develop the fullest potential of adolescents, consideration must be given to the design of learning environments which

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47 The Cork Life Centre provides alternative education for young people between the ages of 12 and 18 years who for various reasons have not thrived or coped in mainstream education. The Centre provides individual tuition to students in Junior and Leaving Certificate subjects and prepares them for the State Examinations.

48 iScoil is an alternative online community which provides accredited education to young people between 13 and 16 years of age who have been out of mainstream education for six months or more. It is a last-chance resort for learners of this age. Students who face several vulnerabilities and who for various reasons cannot attend mainstream schools are referred to iScoil by Tusla.

49 T Kovačić, 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* (UNESCO NUIG 2021) 84.

50 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' <<https://bit.ly/3AHeZWp>> accessed 12 November 2021.

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' <<https://bit.ly/3rXsZrp>> accessed 28 January 2021.

51 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 29(1)(a).





capitalise on their capacity for learning, motivation to work with peers, and focus on experiential learning, exploration and limit testing'.<sup>52</sup>

In March 2018, the Department of Education launched a welcome review of current and future provision of Out of School Education. The review is intended to 'identify the needs of the cohort of children who have disengaged with the mainstream education system or are at risk of doing so'.<sup>53</sup> It provides an opportunity to consider the availability of alternative forms of education provision for young people who leave school without a qualification and to provide financial support to them and ensure they are seen as a vital pathway of second level education. However, the results of this review have not been published.

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52 UNCRRC 'General Comment No. 20 on the Rights of the Child During Adolescence' (2016) UN Doc CRC/C/GC/20 para 77.

53 Department of Education and Skills, 'Minister Bruton announces consultation on Out of School Education Provision' (Press Release 15 March 2018) <<https://bit.ly/2pwDnGd>> accessed 28 January 2022.

## Robust Data Collection

### ► What has been achieved for children and young people so far?

The newly published Guidelines on the use of reduced school days state school authorities must inform Tusla Education Support Service (TESS) of the decision to place a student on a reduced school day no later than the first day of the commencement of each episode of a reduced school day.<sup>54</sup> School authorities must keep a record of all instances of students being placed on a reduced school day and access to this list should be made available to TESS educational welfare officers and the Department of Education Inspectorate if requested.<sup>55</sup>

This notification system will allow data on the use of a reduced school day to be collected and monitored and appropriate intervention by the Educational Welfare service in conjunction with relevant agencies including NCSE to occur where necessary.<sup>56</sup> The Educational Welfare Service will follow up with both schools and families to provide advice and support in relation to each notification of a reduced school day and will engage with and refer to other relevant agencies including NCSE where necessary.<sup>57</sup>

The notification form, published in December 2021 sets out the specific information and data that school authorities are required to pass on to TESS.<sup>58</sup> It is welcome that this includes the rationale for use of reduced timetables; the proposed length of time they will be used for; special educational needs or disability; ethnicity, including Traveller or Roma heritage; and what plan is in place for return to school and supports that will be provided. In the case of children with disabilities the school is required to record if the local SENO has been notified of the reduced school day.<sup>59</sup>

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54 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.

55 *ibid* 4.

56 *ibid* 5.

57 Communication received by the Children's Rights Alliance from the Department of Education on 1 February 2022.

58 Department of Education, 'Reduced School Day Notification Form' <<https://bit.ly/3G8Uzqs>> accessed 11 January 2021.

59 *ibid*.



## ► What children and young people need next

While it is welcome that the notification form has been published, and that schools will be required to adhere to the guidance from January 2022, it remains unclear whether the data will be analysed and disaggregated centrally to ensure early identification and a needs-based response to the potential groups of children who are at greater risk of being placed on reduced hours inappropriately.

The recognition of the need to address inappropriate use of reduced timetables through greater monitoring also provides a welcome opportunity to consider teacher training and resourcing support for inclusive special educational needs education and trauma-informed practice. Teachers should be provided with access to the requisite resources to enable them to properly support pupils in school to mitigate against an increased risk of reduced timetable usage. While 'Inclusive Education' – defined as relating to additional learning needs (for example, autism, dyslexia, dyspraxia) and learning needs associated with diverse linguistic, socioeconomic, cultural and ethnic (including Traveller community and Roma) backgrounds – must form a mandatory and equitable part of initial teacher training in Ireland, current guidance to third-level programme providers does not specify how this should be addressed and what information should at minimum be included.<sup>60</sup> In line with advances in child development science, and our greater awareness of the prevalence of toxic stress and its impact on child behaviour and emotional regulation, it is vital that there is sufficient staff training to ensure that a safe, supportive environment, premised on stable, caring relationships can be created.<sup>61</sup> In relation to special educational needs, the new national training model for Special Needs Assistants provided online from January 2021 represents an important step towards ensuring consistent care for all pupils with special educational needs.<sup>62</sup>

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60 The Teaching Council, *Céim: Standards for Initial Teacher Education* (The Teaching Council 2020).

61 Harvard Centre on the Developing Child, 'Stress and Resilience: How Toxic Stress Affects Us, and What We Can Do About It' <<https://bit.ly/3qX3Pa9>> accessed 28 January 2022.

62 Department of Education and Skills, 'Minister Madigan launches new National Training Programme for Special Needs Assistants' (Press Release, 28 September) <<https://bit.ly/2LZQKOB>> 2020 accessed 26 January 2021.

## ➔ Recommendations

- ▶ Publish a child friendly version of the Guidelines on Reduced School Days.
- ▶ Ensure that schools have the necessary resources to avoid any extra administration burden on staff members due to the new notification process.
- ▶ Ensure that there are enough staff in place in TESS to enforce these Guidelines.
- ▶ Publish annual analytical reports which provide publicly accessible information on the use of reduced timetables.
- ▶ Provide adequate and comprehensive national training for all teachers on child development science and the impact that trauma can have on the developing brain, behavioural patterns and emotional regulation, as well as training on culturally inclusive and anti-racist whole-school approaches.
- ▶ The Government should consider growing and expanding funding for out-of-school education provision to ensure a child-centred approach to education by providing alternatives best suited to the individual child.
- ▶ Publish the review on current and future provision of Out of School Education.

**5**

# **Constitutional Right to Education for Children with Special Educational Needs**

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**Section Grade:**

**C-**



## The Programme for Government commits to:

Ensure each child with a special educational need has an appropriate school place in line with their constitutional right.

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▶ Progress: **Some**

**'Constitutional Right to Education for Children with Special Educational Needs' has received a 'C-' grade, an increase on the 'D' grade awarded last year. The Government has provided continued upward investment in special educational needs support, however there has been a significant increase in the number of children with special educational needs being educated at home and 3,609 children are overdue an assessment of need.**

## Ireland's duties and responsibilities in international law



Every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximize the child's ability and opportunity to participate fully in their society.<sup>1</sup>

The Committee is clear that discrimination offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.<sup>2</sup>

Ireland was last examined on progress against the UN Convention on the Rights of the Child (UNCRC) in 2016. At that time, the Committee expressed concerns relating to education rights, including the lack of a comprehensive strategy for the inclusion of children with disabilities in mainstream education.<sup>3</sup>

The Committee advocated for a human rights-based approach to disability, and specifically recommended that Ireland:

- ▶ Train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support and early childhood education for children with disabilities; and
- ▶ Establish a clear and objective framework to ensure that children with disabilities are provided with reasonable accommodation for their education needs, including in the context of State examinations.

Ireland also committed to making greater efforts towards equality and inclusion when it ratified the Convention on the Rights of Persons with Disabilities (UNCRPD). Article 24 is clear that children with special educational needs have a right to individualised support and reasonable accommodations to enable their effective participation in the general

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 Ibid para 10.

3 UNCRC, Concluding Observations: Ireland (2016) UN Doc CRC/C/IRL/CO/3-4.

education system. In considering the features of inclusive education,<sup>4</sup> the UN Committee on the Rights of Persons with Disabilities has commented:

- ▶ Persons with disabilities and, when appropriate, their families, must be recognised as partners and not merely recipients of education.
- ▶ Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum, teaching and learning strategies, does not constitute inclusion.
- ▶ The education of persons with disabilities too often focuses on a deficit approach, on their actual or perceived impairment and limiting opportunities to pre-defined and negative assumptions of their potential.

Ireland is due to be examined on its progress in implementing the UNCRPD in 2022.

## ▶ What is the context for this commitment?

Based on the 2016 census, approximately seven per cent of children in Ireland have a disability and three per cent<sup>5</sup> of students are considered to have a 'special need'.<sup>6</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>7</sup> The remainder attend mainstream schools with additional teaching and care supports.<sup>8</sup>

4 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4, para 11, 32 and 16.

5 National Disability Authority, *Transforming Lives Programme to Implement the Recommendations of the 'Value for Monday and Policy Review of Disability Services in Ireland' Report on Future Needs for Disability Services* (NDA 2018) 20.

6 *ibid* 38.

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

8 *ibid*.

Under Article 42, the Irish Constitution requires the State to 'provide for free primary education'.<sup>9</sup> The Courts have interpreted this to mean that there is no obligation on the State to educate children directly but they can discharge their obligation by providing financial assistance including paying teachers, providing buildings and school transport, and setting minimum standards.<sup>10</sup> The Education Act 1998 provides for 'a level and quality of education appropriate to meeting the needs and abilities of that person'<sup>11</sup> and 'to promote equality of access to, and participation in, education and to promote the means whereby students may benefit from education'.<sup>12</sup>

A series of legal challenges brought by families against the State has delivered some clarity on the entitlement of children with special educational needs. Through these cases, the Courts have explicitly recognised the constitutional right to education of children with severe disabilities and the State's responsibility to provide free primary school education accordingly, although the scope of this right is limited to those under the age of 18 – rather than the developmental stage of the child.<sup>13</sup> In keeping with this narrower understanding, in subsequent cases the Courts have maintained that variations in educational provision, such as class sizes, quality of lessons, or differing approaches to support for children with special needs, do not amount to a failure on the part of the State to provide an appropriate education under the Constitution<sup>14</sup> and that parents are not entitled to choose the exact type of care their child receives in the school setting.<sup>15</sup>

Crucially, a key piece of legislation, the Education for Persons with Special Educational Needs (EPSEN) Act 2004 remains only partially commenced.<sup>16</sup> Almost 20 years on, not all parts of this Act are in full effect.<sup>17</sup> The EPSEN Act

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9 Irish Constitution, Article 42.4.

10 *Crowley v Ireland* [1980] IR 102, 126.

11 Education Act 1998 s6(b).

12 *ibid* s6(c).

13 *Sinnott v. Minister for Education* [2001] IESC 63.

14 *O'C v Minister for Education and Science* [2007] IEHC 170.

15 *O'Carolan v Minister for Education and Science* [2005] IEHC 296.

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

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



provides that children with special educational needs should be educated in an inclusive mainstream environment, unless to do so would not be in the best interests of the child.<sup>18</sup> However, the provision to prepare a tailored, annually-reviewed, individual Education Plan for a pupil following assessment of need is not yet operational,<sup>19</sup> nor has the Special Education Appeals Board – the independent mechanism for review and redress – been established.<sup>20</sup>

Education Plans are vital as they clearly delineate what support is required based on an individual child's level of need and would place a duty on the Minister for Education to make education resources available in line with this. 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. In short, the failure to commence the EPSEN Act in full has a significant and ongoing impact on the ability of children with special educational needs to access their constitutional right to education in full. It is unacceptable that despite the significant need for the implementation of the EPSEN Act, these key sections have not yet been commenced. Furthermore, given the EPSEN Act pre-dates Ireland's ratification of the UNCRPD in 2018, consideration should be given to reviewing and updating it to ensure it is in line with international human rights standards. This process must be prioritised and all sections commenced as a matter of urgency.

Since ratification of the UNCRPD, there has been significant and ongoing debate about what inclusive education means in the Irish context. The UN Committee on the Rights of Persons with Disabilities has advised that having a mainstream educational system and a separate special education system is not compatible with its view of inclusion, but recognises that significant change takes time to implement.<sup>21</sup> Considering this, the National Council for Special Education (NCSE) has been undertaking an extensive policy consultation on the educational provision that should be in place for students with special educational needs, with a view to making recommendations around the

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18 Education for Persons with Special Educational Needs Act 2004, s2.

19 *ibid* s9-13.

20 *ibid* s36 and s37.

21 National Council for Special Education, *Policy Advice on Special Schools and Classes An Inclusive Education for an Inclusive Society?* Progress Report (NCSE 2019).

continued use of special schools and classes.<sup>22</sup> While numbers of children attending mainstream schools in special classes has increased significantly at primary level, more children with additional needs continue to attend special schools than are co-educated with their peers.<sup>23</sup> The NCSE is expected to finalise its policy advice in early 2022.<sup>24</sup>

## ► **What has been achieved for children and young people so far?**

In the Programme for *Government Our Shared Future*, the Government committed to 'ensure each child with a special educational need has an appropriate school place in line with their constitutional right'.<sup>25</sup>

To meet its obligation, as interpreted by the Courts, the Government has increased investment in special educational needs support over the last decade. The 2021 allocation for additional special educational needs provisions amounted to over one-quarter of the overall education and training budget, representing an increase of more than 60 per cent since 2011.<sup>26</sup> In Budget 2022, €16 million was allocated for 980 special education teachers. This will comprise 620 posts for children in mainstream classes and 360 posts which will allow 287 new special classes to open. A further €12 million has been allocated for 1,165 additional Special Needs Assistants (SNA) bringing the total number to 19,200.<sup>27</sup> This is an increase of 81 per cent on the 2011 number of SNAs.<sup>28</sup>

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22 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

23 Department of Education, *Education Indicators for Ireland* (DES 2020).

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

25 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 96.

26 Communication received by the Children's Rights Alliance from the Department for Education and Skills, 17 December 2021.

27 Department of Public Expenditure and Reform, *Budget 2022, Expenditure Report* (DEPR 2021) 71.

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



The new resource allocation model for special education, introduced in 2017, gives schools greater autonomy to determine how best to use their special education teacher allocation based on the needs of their student community identified through school profile data.<sup>29</sup> Allocations are reviewed at regular intervals to ensure schools are receiving the appropriate amount.<sup>30</sup> This marks a welcome shift away from a medicalised assessment-based system of resource allocation where a diagnosis is a requirement to access supports, however there is limited accountability measures for monitoring decision-making, which has led to some criticism.<sup>31</sup> The current mechanism for monitoring how schools use their allocations is the School Inspections Process,<sup>32</sup> however, this happens on a cyclical basis with whole school inspections usually taking place every five years.<sup>33</sup>

In response to the impact of the pandemic on children with special educational needs, a number of initiatives have provided increased resources to support these pupils. In May 2021, the Department of Education announced an expansion of the summer education programme for pupils with special education needs and those at risk of educational disadvantage.<sup>34</sup> In 2020,

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

30 Communication received by the Children's Rights Alliance from the Department for Education, 12 January 2021.

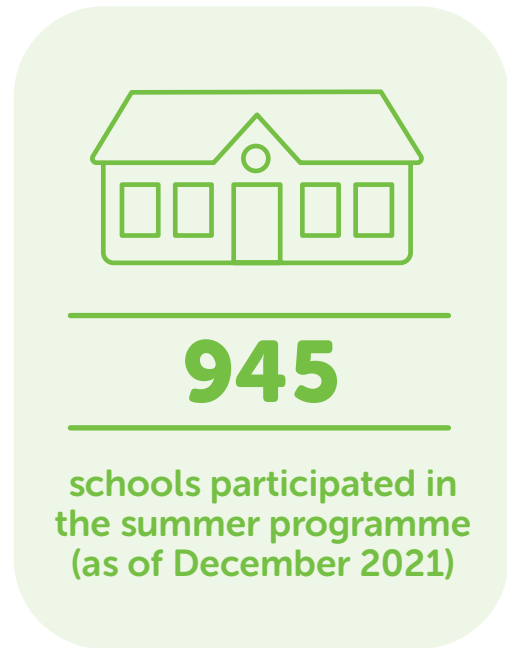
31 N Kenny et al., 'Special education reforms in Ireland: changing systems, changing schools' (2020) *International Journal of Inclusive Education*.

32 Communication received by the Children's Rights Alliance from the Department of Education, 12 January 2021.

33 Prof. Gerry McNamara, 'School inspections in Ireland' <<https://bit.ly/3Ga6yV1>> accessed 12 January 2022.

34 Department of Education, Ministers Foley and Madigan announce expanded summer provision for pupils with complex special educational needs and those at greatest risk of educational disadvantage (Press Release 11 May 2021) <<https://bit.ly/3rXJ8wW>> accessed 28 January 2022.

22,851 pupils participated in the summer programme (in school and home provision). For summer 2021, funding of €40 million, a 100 per cent increase on 2020, was provided for this programme. The increased allocation allowed for an expansion of the programme to all schools as well as including students 'at the greatest risk of educational disadvantage'.<sup>35</sup> As of December 2021, 945 schools participated in the summer programme and 37,359 students availed of the home and school initiatives.<sup>36</sup>



Further increased support from the Department to tackle the impact of the pandemic on learning was announced in September.<sup>37</sup> The Covid Learning and Supports Scheme (CLASS) includes measures to mitigate learning loss and provide targeted additional teaching supports for students following Covid-19 school closures. The scheme includes an enhanced allocation for special schools, with allocation in mainstream schools based upon pupil numbers.

The State has also committed to invest in research and practice innovation through the roll-out of the School Inclusion Model pilot across 75 schools nationwide which continued in 2020/21.<sup>38</sup> The pilot was interrupted in 2020/21 due to Covid. However, the Pilot has now recommenced and planning for an expansion is underway at present.<sup>39</sup> This model trials enhanced support in the form of standardised training and support for SNAs,

35 Department of Education, Ministers Foley and Madigan announce expanded summer provision for pupils with complex special educational needs and those at greatest risk of educational disadvantage (Press Release 11 May 2021) <<https://bit.ly/3rXJ8wW>> accessed 28 January 2022.

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

37 Department of Education, 'Ministers Foley and Madigan launch Covid Learning and Supports Scheme for measures to mitigate learning loss and provide targeted additional teaching supports for students following Covid-19 school closures' (Press Release 8 September 2021) <<https://bit.ly/34iTKhx>> accessed 28 January 2022.

38 Department of Education, 'Ministers Foley and Madigan confirm continuation of the pilot School Inclusion Model for the forthcoming school year' (Press release 5 August 2020) <<https://bit.ly/2KOGY16>> accessed 12 January 2022.

39 Communication received by the Children's Rights Alliance from the Department of Education 15 February 2022.

increased access to National Educational Psychological Service (NEPS), and the establishment on a pilot basis of a NCSE Regional Support Team, which includes specialists in relevant disciplines. A memorandum outlining proposals for the further development of the Model and its evaluation is due to be brought to Government in early 2022. The latter will help to inform further expansion to other schools.<sup>40</sup>

Similarly, the announcement of a dedicated online national training programme for SNAs beginning in 2021 was a positive step forward.<sup>41</sup> The training programme was launched in September 2020, and consists of five models of training delivered over a ten-month period covering inclusion, communications and language, a range of special needs and information on caring for students with additional care needs.<sup>42</sup> The first group of 500 trainees began the programme in January 2021 and the second cohort of approximately 1,000 commenced the programme in September 2021.<sup>43</sup>

The Minister of State for Special Education and Inclusion, Josepha Madigan TD had indicated that one of her key priorities is 'reviewing and updating EPSEN',<sup>44</sup> and in December 2021 announced that a full review of the Act would commence in January 2022.<sup>45</sup> A steering group and advisory group will be established, and a formal consultation will be undertaken. The advisory group will include parent and advocacy representatives.<sup>46</sup> The review will consider recent reforms and the provision of increased investment in supports and the development of new allocation models.<sup>47</sup>

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

41 Department of Education, 'Minister Madigan launches new National Training Programme for Special Needs Assistants' (Press Release 28 September 2020) <<https://bit.ly/3c884LV>> accessed 28 January 2022.

42 Department of Education, 'National Training Programme for Special Needs Assistants' <<https://bit.ly/3g5CvmF>> accessed 28 January 2022.

43 Communication received by the Children's Rights Alliance from the Department for Education, 17 December 2021 and 15 February 2022.

44 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

45 Department of Education, *Minister Josepha Madigan launches review of the Education for Persons with Special Educational Needs (EPSEN) Act 2004*, (Press Release 20 December 2021) <<https://bit.ly/3tb5QDV>> accessed 7 January 2022.

46 *ibid.*

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

## What children and young people need next

### School Places

The Education Act 1998 provides the regulatory framework for primary and secondary education, and explicitly refers to the provision of appropriate educational supports for children with special educational needs, while the Equal Status Acts 2000-2018 require that primary and post-primary schools do not discriminate in student admissions, including on disability grounds.<sup>48</sup> More recently, 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 NCSE identifies a need in a given area.<sup>49</sup>

The 2018 Act was used for the first time in the Dublin 15 area in 2019 to combat the inadequacy of local educational provision for children with special educational needs. This action led to the establishment of a special school and six local schools have agreed to open special classes, thereby meeting the need for additional places in the area.<sup>50</sup> The NCSE submitted a report in April 2020 to the former Minister for Education and Skills confirming the need for additional special education places in South Dublin.<sup>51</sup> As a result of this, statutory notices under the Act were issued in June 2020 to 39 schools identified by the NCSE, to establish if the schools have capacity to provide new places. For the school year 2020/21 there were 145 special classes in mainstream schools in South Dublin, this increased by 32 to 293 for the 2021/2022 school year.<sup>52</sup> Nationally in June 2021 there were 2,132 special classes in mainstream schools, an increase of 293 on the previous school year.<sup>53</sup>

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48 Conor O'Mahony in C L Glenn and J De Groof (Eds.) *Balancing freedom, autonomy and accountability in education: Volume 2* (Wolf Legal Publishers 2012) 245-259.

49 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.

50 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

51 National Council for Special Education, Report Pursuant to section 37A(2) of the Education Act 1998 (as inserted by section 8 of the Education (Admissions to Schools) Act 2018) in respect of South Dublin (NCSE 2020).

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

53 *ibid.*

While it is positive that the Act is being used, the process, which can culminate in a Ministerial direction is multi-step and so pupils may be without a place for many months. At the end of November 2021, nationwide, there were 368 pupils of school-going age with special educational needs that are currently being educated at home.<sup>54</sup> In December 2020 the number was 156.<sup>55</sup> While a small minority of parents may choose to educate their children at home, for other families, education at home may be the only option due to the lack of appropriate provision for their child in the school catchment area. Some of these parents may feel ill-equipped to support their child at home and would rather their child receive an appropriate school-place. Research with parents in receipt of the home tuition grant to support their pre-school children with autism has highlighted that no curriculum guidelines were used, the curriculum was not informed by Aistear (the Early Childhood Curriculum Framework for children up to the age of six), and teaching strategies in homes were based on personal experiences, advice from friends and other sources.<sup>56</sup>

## Obligations under International Law

As already set out, the Irish Courts' interpretation of the constitutional right to education is much more limited than the right to education as delineated by the UN Committee on the Rights of the Child. While variations in educational provision, such as class sizes, quality of lessons, or differing approaches to support for children with special needs, do not amount to a failure to provide an appropriate education under the Constitution,<sup>57</sup> under the UNCRC, the right to education is considered expansively, and both the Committee on the Rights of the Child and the Committee on Rights of Persons with Disabilities recognise the need for individualised support and reasonable accommodations.<sup>58</sup> Ireland is due to be examined under the UNCRPD and the UNCRC in 2022 and it is likely that both Committees will examine the progress

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54 Ibid.

55 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

56 Patricia Daly; Emer Ring et al, *An Evaluation of Education Provision for Students with Autism Spectrum Disorder in Ireland*, National Council for Special Education (NCSE 2016) 181.

57 Ó C v Minister for Education and Science [2007] IEHC 170.

58 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4; UNCRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4.

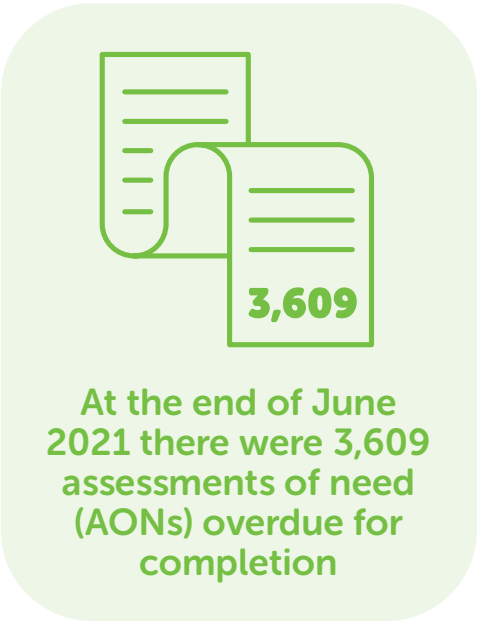


on the right to education for children with special educational needs. To meet its obligations under international law, the Government must address several issues relating to Assessments of Need; In-School Supports; Teacher Training and Professional Development; and the impact of Covid-19 on the education of this cohort.

### Assessments of Need

Under the Disability Act 2005, all persons with a disability are entitled to an Assessment of Need (AON) to determine the health or educational services required. The EPSEN Act 2004 also provides for an assessment of special educational needs for children to enable specific provisions to be made in the education setting.<sup>59</sup> However, as the relevant sections of the EPSEN Act have not been brought into effect, children who require AONs are using the mechanisms under the Disability Act 2005 for this.<sup>60</sup> Crucially, the assessment under the Disability Act is of the need for services for that child or young person, not an assessment of the need itself.<sup>61</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>62</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>63</sup> At the end of June 2021 there were 3,609 AONs overdue for completion.<sup>64</sup> The failure of the State



59 Ombudsman for Children’s Office, *Unmet Needs: A report by the OCO on the challenges faced by children of Ireland who require an assessment of their need* (OCO 2020).

60 *ibid.*

61 *ibid.*

62 *ibid.*

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

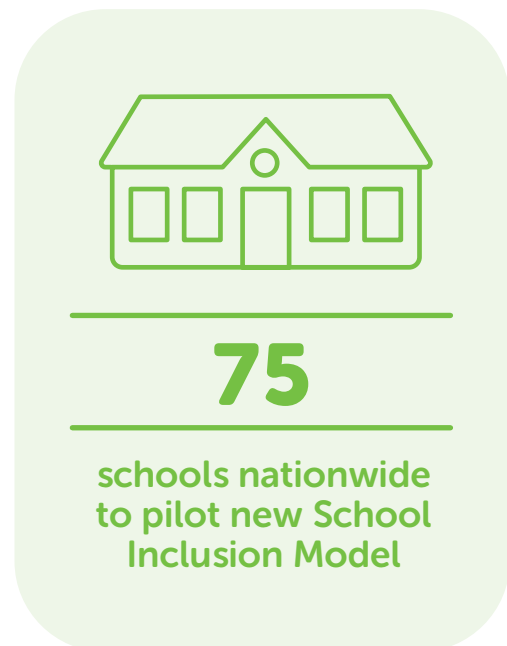
64 Health Service Executive, ‘Letter from the HSE to Deputy Sean Sherlock, 21 September 2021’ <<https://bit.ly/3rb2iQS>> accessed 28 January 2021.

to commence parts of the EPSEN Act has meant that numerous families have no recourse but to go through the Courts to try to ensure their child receives their AON and the appropriate follow-up support.<sup>65</sup> The Ombudsman for Children has expressed concern that staff skilled in assessment of need have been redeployed to aid the Covid-19 effort, meaning there has been an insufficient number of trained staff to assess children during the pandemic, and this has exacerbated delays.<sup>66</sup>

The assessment of need is the crucial first step for enabling the child to receive reasonable accommodations and additional in-school supports necessary for them to achieve their full potential, and so, State failure to deliver AONs in the statutory timeframes is an interference with the rights under Irish law and could also be seen as an interference with the right to education as per the UNCRC.

## In-School Support

Challenges can continue to persist even when a child has gained access to school due to significant variations in the capacities of different education settings to meet needs. The partial enactment of the EPSEN Act 2004, and its need for review in light of Ireland's ratification of the UNCRPD, combined with insufficient teacher training and professional development on special needs support, and comparatively high pupil to teacher ratios, have resulted in children with disabilities and additional needs in school being disadvantaged.<sup>67</sup> Compounding this



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

66 Colm Keena, 'Disabled children 'being left behind again' by Covid-19 measures' *The Irish Times*, 1 December 2020.

67 AsIAM, *Inclusion in Our Special Classes and Special Schools: A submission to the National Council on Special Education* (AsIAM 2020).

is the absence of an independent appeals mechanism for parents via the NCSE for instances where there is a perceived lack of in-school support for their child.<sup>68 69</sup>

Furthermore, research suggests that 'withdrawal' remains the dominant approach to special needs education in Irish mainstream primary schools, rather than mainstream differentiation and inclusion.<sup>70</sup> While it is important to recognise that special educational needs occur on a spectrum, and it may be in the best interests of a child with particularly complex needs to receive tailored support through a special class, this should not be considered mutually exclusive to embedding inclusive practice at whole-school level also. Emerging evidence suggests that the practice of identifying children with special educational needs as a separate and distinct group at both primary and secondary levels has inhibited a reconsidering of school culture and ethos to ensure it reflects the whole of the student body.<sup>71</sup> By accepting children with special educational needs but separating them from peers and controlling levels of access to the overall school environment and curricula, schools are less likely to be working with these students to ensure that overall culture is reflective of their needs and values.

## Covid-19 Measures

Progress towards maximising the educational participation and engagement of children with special educational needs has, however, been impacted by Covid-19. Although the NCSE produced resources for parents and teachers to support home learning,<sup>72</sup> the disruption to children's routines and increased isolation appears to have taken a particular toll on children with additional needs. While all children's experience of education has been dramatically altered by the pandemic, there is survey evidence to suggest that children

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68 Department of Education, 'A New Model for Allocating Special Education Teachers to Mainstream Schools: A better and more equitable way' <<https://bit.ly/3H5tdTw>> accessed 13 January 2021.

69 Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2019* (CRA 2020).

70 R. Rose and M. Shevlin, 'Support Provision for Students with Special Educational Needs in Irish Primary Schools' (2020) *Journal of Research in Special Educational Needs*, 20, 51–63.

71 David McKeon, 'Soft barriers' – The impact of school ethos and culture on the inclusion of students with special educational needs in mainstream schools in Ireland' (2020) *Improving Schools* Vol 23(2).

72 National Council for Special Educational Needs, 'Online Resources' <<https://bit.ly/3IOYTgz>> accessed 28 January 2022.

with special educational needs have been disproportionately adversely impacted by the closure of schools.<sup>73</sup> The number of children with special educational needs being home-schooled has more than doubled between 2020 and 2021.<sup>74</sup> Parents of children with special educational needs reported that their child's behaviour and social skills regressed during this period of social isolation, in some cases quite significantly.<sup>75</sup> In light of these additional needs, the NCSE has also produced resources to support the transition back to school.<sup>76</sup> To ensure that no child is discriminated against in accessing their right to education, in compliance with Article 2 of the UNCRC,<sup>77</sup> it is vital that particular assistance and support for children with special educational needs is provided to counter regressions experienced during the pandemic. Increased resources for the summer education programme and funding for the CLASS scheme have been a positive step in terms of addressing the learning needs of this cohort of children.

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73 Dr Carol Barron and Mary Jane Emmet, 'Impact of Coronavirus Restrictions on Children and Young People' <<https://bit.ly/3caTDqb>> accessed 28 January 2022.

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

75 Dr Carol Barron and Mary Jane Emmet, 'Impact of Coronavirus Restrictions on Children and Young People' <<https://bit.ly/3caTDqb>> accessed 9 October 2021.

76 National Council for Special Educational Needs, Online Resources, <<https://bit.ly/3IOYTgz>> accessed 28 January 2022.

77 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2.

## ➔ Recommendations

- ▶ Complete the review of the EPSEN Act 2004 in 2022 to ensure it complies with the UN Convention on the Rights of the child and the UN Convention on the Rights of Persons with Disabilities, and pending review. As part of the review provide a timeline for the commencement of the remaining sections of the Act.
- ▶ Complete the School Inclusion Model pilot and, based on the findings, put in place a plan for additional school supports to support children with special educational needs.
- ▶ Following the redeployment of staff specialised in Assessment of Need during the Covid-19 pandemic, ensure that teams are adequately resourced to enable system capacity to keep pace with demand.
- ▶ Increase departmental outreach with schools to highlight the need for children with disabilities to be accommodated in the school setting in line with their constitutional right and to better understand what schools need to allow them to achieve this..
- ▶ Where the Education (Admissions to Schools) Act 2018 is required to source a school place for a child, provide clear and transparent timelines for each stage of the process, to mitigate the risk that protracted delays occur further jeopardising children's education.

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# Traveller and Roma Education

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Section Grade:

**D**



## The Programme for Government commits to:

Undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education.

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▶ Progress: **Slow**

The Government commitment in relation to 'Traveller and Roma Education' receives a 'D' grade, down from a 'D+' last year. An evaluation of four pilot education projects for Traveller and Roma children was due to commence in September 2021 but the tender has not yet been issued. The lower grade reflects the lack of progress in this regard. The evaluation of the four pilot sites will provide important findings regarding the provision of increased educational resources for Traveller and Roma Children. The publication of the baseline research on the pilots has been a positive step, however, more concrete actions and a timeline for the evaluation's completion is needed in 2022.



## Ireland's duties and responsibilities in international law



Every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximise the child's ability and opportunity to participate fully in their society.<sup>1</sup>

The Committee is clear that discrimination 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities'.<sup>2</sup> Indigenous children, which includes Traveller children, are particularly at risk of experiencing serious discrimination in accessing their rights, including in education, contrary to Article 2 of the UN Convention on the Rights of the Child (UNCRC). Therefore, the Committee has explained that children from minority backgrounds require special measures to fully enjoy their rights.<sup>3</sup>

Education is a key enabler of economic, social and cultural rights, and can strengthen access to civil and political rights.<sup>4</sup> Full realisation of the right to education for indigenous children is considered essential for achieving individual empowerment and self-determination of indigenous peoples.<sup>5</sup>

Ireland committed to promote, respect and protect children's rights when it ratified the UNCRC in 1992 and was last assessed on progress in implementing the rights in the Convention in 2016. The Committee expressed several concerns about the experiences of Traveller and Roma children in Ireland, noting the stigmatisation and social exclusion they experience.<sup>6</sup> The Committee was particularly concerned about the structural discrimination minority children faced in access to education,

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 *ibid* para 10.

3 UNCRC 'General Comment No. 11 Indigenous children and their rights under the Convention' (2009) UN Doc CRC/C/GC/11 para 5.

4 *ibid* para 57.

5 *ibid* para 57.

6 UNCRC 'Concluding Observations: On the combined third and fourth periodic report of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 28(a).

health and an adequate standard of living<sup>7</sup> and recommended the State define specific budgetary lines for Traveller and Roma children which are protected at all times, including during times of economic crisis.<sup>8</sup>

## ► What is the context for this commitment?

Based on the 2016 census data, just under one per cent of the Irish population identify as Travellers, approximately 30,000 people.<sup>9</sup> In contrast to the general population, most Travellers in Ireland are young, with 60 per cent aged under 25,<sup>10</sup> and two thirds of these under 15 years of age.<sup>11</sup> Census 2022 will include Roma as a separate ethnic category, however, at present there is limited data available, with the best estimate suggesting there are approximately 4,200 Roma in Ireland.<sup>12</sup>

As recognised by the UN Committee on the Rights of the Child, Traveller and Roma children face significant structural discrimination in Ireland.<sup>13</sup> Persistent discrimination against the Traveller community contributes to poorer outcomes in health, education and employment and lower life expectancy.<sup>14</sup> Similarly, for the Roma community, persistent poverty and inadequate standards of living jeopardise their health and wellbeing, as well as access to education.<sup>15</sup>

The experience and attainment of Traveller and Roma children at school is of particular concern. While the overall attainment level of Irish Travellers

7 *ibid* para 69.

8 *ibid* para 16(d).

9 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' <<https://bit.ly/3rpzhxR>> accessed on 2 February 2022.

10 *ibid*.

11 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020) 2.

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

13 UNCRC 'Concluding Observations: On the combined third and fourth periodic report of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 69.

14 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' <<https://bit.ly/3rpzhxR>> accessed on 2 February 2022; Department of Health, *All Ireland Traveller Health Study: Our Geels* (UCD 2010).

15 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 59-66.

increased between 2011 and 2016, with more Travellers completing secondary school than before, many still do not.<sup>16</sup> Traveller children and young people are four times more likely to attend schools in the Delivering Equality of Opportunity in Schools (DEIS) programme than non-DEIS schools, and the number of Travellers receiving support in non-DEIS schools has declined.<sup>17</sup>

Census data shows only one in two people aged 15 to 19 in the Traveller population were still in education in 2016. This represents a slight improvement on the 2011 figures but is still far lower than the figure for the general population which showed nearly 90 per cent were still in education.<sup>18</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>19</sup> Given the absence of accurate population numbers, the proportion of Roma children attending primary or secondary school is not available.

Significant financial and cultural barriers can help explain lower rates of school completion amongst Traveller and Roma children. Traveller families are more likely to experience unemployment and have a greater number of children than settled families, and therefore the financial costs associated with school attendance may be particularly challenging to meet.<sup>20</sup> Similarly, poverty and inadequate standards of living, including overcrowded accommodation, have been identified as significant obstacles to Roma children's attendance and participation in education.<sup>21</sup>

Aligned to this, the marginalisation of Traveller and Roma culture within the Irish education system adversely affects young people's sense of belonging

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

17 *ibid* 28.

18 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

19 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020) 44.

20 Kathleen Marie Lawrence, *Traveller outcomes in education: A Traveller perspective* (Maynooth University 2017) 8.

21 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 114.

and place.<sup>22</sup> A review of the position of 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 then compounded by conscious and unconscious bias against Travellers in the school community.<sup>23</sup> Furthermore, the 2010 *All Ireland Traveller Health Study* highlighted that reluctance amongst the community to continue in mainstream education was because of the high level of discrimination they faced when seeking employment following education.<sup>24</sup> For Roma children, insufficient English language and literacy support can compound experiences of bullying and marginalisation at school.<sup>25</sup>

The Department of Children, Equality, Disability, Integration and Youth is currently seeking proposals for the evaluation of three equality strategies including the *National Traveller and Roma Inclusion Strategy 2017-2021 (NTRIS)*. The timeline for the completion of the review is June 2022 and the intention is that the review will help to inform how successor strategies in this field can work in tandem with one another.<sup>26</sup> A key commitment under the 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>27</sup> The NTRIS includes ten education actions to improve outcomes for children at primary and post primary level including, for example, actions on Traveller culture and history, bullying research and school admissions.<sup>28</sup> On foot of these, 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

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22 Kathleen Marie Lawrence, *Traveller outcomes in education: A Traveller perspective* (Maynooth University 2017); Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018).

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

24 Department of Justice and Equality, *The National Traveller and Roma Inclusion Strategy 2017–2021* (Department of Justice and Equality 2017) 12.

25 Pavee Point & Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 115.

26 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Joint Oireachtas Committee on Key Issues affecting the Traveller Community, 18 November 2021.

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

28 *ibid.*

project.<sup>29</sup> The pilot began in September 2019 with three sites – Galway, Wexford and Dublin, with a fourth site in Cork joining in 2020.<sup>30</sup> The Department of Education estimates the investment in the pilot has been €2 million over the first two years.<sup>31</sup> The project has been extended for a third year.<sup>32</sup>

The specific areas the pilot cover are Tuam, Bunclody/Enniscorthy, Finglas/Ballymun/Coolock and Cork and it was originally delivered in partnership with Tusla, the Child and Family Agency's Education Support Services, the Department of Justice and Equality and the Department of Children and Youth Affairs.<sup>33</sup> However, with the change in department remits under the new Government, the pilot is now a partnership between the Department of Education, Tusla and the Department of Children, Equality, Disability, Integration and Youth.<sup>34</sup>

Each pilot area is being provided with one additional Educational Welfare Officer, funded by the Department of Education via Tusla, one additional Home School Liaison Co-ordinator, funded by the Department of Education, and two additional Traveller and Roma education workers, funded by the Department of Children, Equality, Disability, Integration and Youth.<sup>35</sup> As well as supporting educational participation and engagement, the aim of the pilot is to increase engagement with Traveller groups, and the Government has stated that the pilot will inform the development of policy and innovative solutions to issues identified as barriers to participation and engagement.<sup>36</sup> With all sites operational, the pilot is currently available in around 59 schools, to over 1,300 children.<sup>37</sup>

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

30 *ibid.*

31 Communication received by the Children's Rights Alliance from the Department of Education, 27 January 2022.

32 *ibid.*

33 Enda Hughes, Principal Officer, Department of Education, Joint Committee on Education and Skills and Joint Committee on Key Issues affecting the Traveller Community, 3 December 2019.

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

35 *ibid.*

36 Enda Hughes, Principal Officer, Department of Education, Joint Committee on Education and Skills and Joint Committee on Key Issues affecting the Traveller Community, 3 December 2019.

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

## ► What has been achieved for children and young people so far?

The commitment in the Programme for Government is to undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education.

The Department of Children, Equality, Disability, Integration and Youth had responsibility for the development and implementation of the baseline research data into these pilots and contracted Dr Maria Quinlan to carry out this research.<sup>38</sup> Fieldwork to establish an understanding of the current baseline scenario began in September 2019 and a report based on the findings was published online in November 2021.<sup>39</sup>

The study explored the lived experience of parents and students from the Traveller and Roma communities, and teachers, principals, education welfare officers, home school community liaisons, and other members of the school communities across the four NTRIS pilot sites.<sup>40</sup> In total, it comprised 130 interviews and 15 interactive workshops across four sites with children, parents and teachers, to provide a range of views on the subject of Traveller and Roma children's engagement with school.<sup>41</sup> The focus was on exploring their thoughts, feelings, and experiences with regard to school attendance, engagement, participation, and retention.<sup>42</sup> The study had a strong focus on carrying out research with members of the Traveller and Roma community directly rather than about them.<sup>43</sup>

Traveller parents taking part in the study outlined how they want their children to feel included in school and to have a better educational experience than

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38 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

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

40 *ibid.*

41 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

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

43 *ibid.*

they had.<sup>44</sup> Increased support provided at primary school level for their children had a positive impact but, the transition to secondary school is challenging as the same level of support was not available.<sup>45</sup> In the absence of parents' direct experience or 'legacy knowledge' of secondary school, it was difficult for parents to support their children.<sup>46</sup> Parents were often faced with the challenge of balancing their commitment and desire for their children to acquire a second level education with the continued negative impact on their children's mental health that the participation in school created.<sup>47</sup> Roma parents also had strong ambitions for their children's participation in school however, practical barriers related to language, a lack of financial resources and transport were challenging with regard to participation.<sup>48</sup>

Traveller young people also expressed negative experiences of attending secondary school. Actions such as having to sit at the back of the class, racist name calling with no redress from teachers or principals meant that feelings of isolation and exclusion were commonplace. Young people expressed the desire to talk more about Traveller culture. Roma young people reflected their parents' ambitions for them to positively participate in education and they recognised the need to acquire certain educational qualifications to have a career.<sup>49</sup>

The impact of systemic racism and discrimination on the retention of Traveller students was identified in one of the four pilot sites.<sup>50</sup> The participants at this pilot site identified a general lack of additional supports for families to address the impact of these structural issues and therefore Traveller students fail to reap the same benefits from education as their settled peers. Young people from this pilot reported a lower incidence of negative experiences compared to other areas while greater participation in parent teacher meetings by Traveller parents was also observed. In contrast to this, other members of the school community perceive schools as inclusive of Traveller families and that it is up to the Traveller community to address the poor attendance and participation at school.<sup>51</sup>

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44 *ibid.*

45 *ibid.*

46 *ibid.*

47 *ibid.*

48 *ibid.*

49 *ibid.*

50 *ibid* 49.

51 *ibid.*



The Department of Children, Equality, Disability, Integration and Youth has confirmed that the second phase of the research will involve an evaluation of the actual pilots under the responsibility of the Department of Education.<sup>52</sup> Work on the Request for Tender document is currently ongoing.<sup>53</sup> The evaluation was due to commence in September 2021.<sup>54</sup> An assessment panel, which included a representative of Traveller organisations has been established.<sup>55</sup> As of November 2021, the NTRIS pilot oversight group was unaware of any progress in relation to the tender and no communication has been received by the Traveller organisations representative on the assessment panel.<sup>56</sup> Given the time needed to publish the tender, assess the responses and award a contract for the evaluation, it may be some time until the evaluation progresses.

It is important to note that the Covid-19 pandemic has had a significant adverse impact on Traveller and Roma young people's education, and this has affected delivery and evaluation of the pilots. The Department of Education has confirmed that the pilots have been extended for another year to ensure the evaluation findings are robust and relate to regular schooling.<sup>57</sup> The pilot teams have undertaken a number of initiatives to address participation and retention in education.<sup>58</sup> These include actions around Roma and Traveller cultural awareness, bespoke programmes to support transition from primary to secondary school and encouraging parental engagement in schools.<sup>59</sup> In addition to the general supports put in place for all schools, NTRIS pilot teams have been working with the parents and pupils involved to encourage engagement with distance learning and support them in accessing remote learning platforms.<sup>60</sup>

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52 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

53 Communication received by the Children's Rights Alliance from the Department of Education 27 January 2022.

54 Communication received by the Children's Rights Alliance from Irish Traveller Movement 18 November 2021.

55 *ibid.*

56 *ibid.*

57 Communication received by the Children's Rights Alliance from the Department of Education 27 January 2022.

58 *Ibid.*

59 *ibid.*

60 Communication received by the Children's Rights Alliance from the Department of Education, 2 February 2021.

## ▶ **What children and young people need next**

While it is positive to see a holistic research approach used to establish a reliable baseline against which progress can be measured, the formal evaluation has not yet commenced and there are no interim findings to share. The pilot was a key outcome of the *National Traveller and Roma Inclusion Strategy 2017-2021* and could have a significant impact on children and young people from marginalised communities, yet little is known as to what impact it is having.

### ➔ **Recommendations**

- ▶ The Department of Education needs to publish the Request for Tender document for the evaluation as a matter of priority. The pilot evaluation design should ensure Traveller and Roma children and young people, as service users, are involved as co-collaborators throughout the process.
- ▶ Building on the approach undertaken in the baseline study, and on the recommendations contained within it, ensure that solutions aimed at improving the experience of Traveller and Roma children in schools are co-created with these communities.

**7**

# Children in Adult Psychiatric Facilities

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Section Grade:

**E**



## The Programme for Government commits to:

Work to end the admission of children to adult psychiatric units by increasing in-patient beds, as well as examining the model of assigning these beds.

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▶ Progress: **None**

**'Children in adult psychiatric facilities' receives an 'E' grade, a decrease from the 'C' grade awarded last year. While the number of children admitted to adult psychiatric units in 2021 fell slightly from 27 to 25, more than 2,300 children and young people were waiting on a first appointment with Child and Adolescent Mental Health Services in August 2021. It is of particular concern that the admission of children to adult inpatient facilities is expressly included in the General Scheme of the Mental Health (Amendment) Bill 2021. While the provision aims to incorporate the current Mental Health Commission Code of practice into law, it means that for the first time the admission of children into adult units is placed on a statutory footing.**

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) affords every child the right to the highest attainable standard of physical and mental health.<sup>1</sup> This right covers the full spectrum of health and wellbeing and fulfilling the right requires 'a comprehensive multisectoral response ... through integrated systems ... that involve parents, peers, the wider family and schools and the provision of support and assistance through trained staff'.<sup>2</sup> The UN Committee on the Rights of the Child endorses a public health and psychosocial support approach to mental health rather than overmedicalisation and institutionalisation.<sup>3</sup>

In order to uphold the right to the best possible health provision for children, treatment facilities should be available to all and staffed by an appropriately trained workforce, with accountability and oversight to ensure that quality assurance standards are met.<sup>4</sup> For children with acute needs who require support in a psychiatric unit, the Committee is clear that adolescents should be separated from adults, where appropriate, and any decision on their care should be made in accordance with their best interests.<sup>5</sup>

Ireland committed to promote, protect and respect children's rights, including the right to health, when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention.

Ireland was last examined by the Committee in 2016. At that time, the Committee expressed several concerns relating to mental healthcare, including the long waiting times for treatment; the lack of access to out-

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, para 58.

3 *ibid.*

4 UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 1 February 2013 CRC/C/GC/15 para 27.

5 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.

of-hours support; and children being admitted to adult psychiatric wards owing to inadequate availability of mental healthcare facilities for children.<sup>6</sup>

The Committee recommended that Ireland improve the capacity and quality of its mental healthcare services for children and adolescents, with priority given to strengthening the capacity of its:

- ▶ mental healthcare services for inpatient treatment;
- ▶ out-of-hours facilities; and
- ▶ facilities for treating eating disorders.<sup>7</sup>

## ▶ What is the context for this commitment?

Ending child admissions to adult psychiatric wards is a key commitment to ensuring that all children receive the right support in the right environment for their mental health.

Research conducted with a representative sample of children and young people in Ireland suggests that approximately one in three young people 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>8</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>9</sup> including domestic abuse,<sup>10</sup> children living in poverty,<sup>11</sup> children who

6 UNCRRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 53.

7 *ibid* para 54.

8 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) 7.

9 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.

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

11 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) The Lancet Public Health, 2 (3).

have experienced discrimination, including homophobia or transphobia,<sup>12</sup> and children with chronic physical health conditions.<sup>13</sup>

Experience of mental ill-health and poor emotional wellbeing can have a significant adverse impact on the child, affecting their experience and attainment at school, their friendships and family relationships, and their day-to-day life.<sup>14</sup> When problems are unidentified and unsupported, and appropriate and timely help is not provided, they can deteriorate. Longitudinal research tracking the number of presentations to Irish hospital emergency departments for self-harm since 2007 found a significant increase over time, with younger teenage girls at greatest risk.<sup>15</sup> While there has been some reduction since the start of the decade, 2020 data shows that almost eight in every 100,000 children and young people aged 15-24 years die by suicide.<sup>16</sup>

The Covid-19 pandemic has had a negative impact on the health and wellbeing of young people, particularly those experiencing disadvantage.<sup>17</sup> Young people have reported feelings of loneliness and isolation, missing friends and relatives and a reduction in access to services due to the pandemic.<sup>18</sup> During the first eight weeks of the pandemic there was an increase in mental health emergency department attendance by children aged 16 and 18.<sup>19</sup> A survey of young people conducted in late June/early July 2020 provides some insight on adolescent mental health with respondents identifying mental health as the most common negative effect of Covid-19, including overthinking, concern,

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

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

14 JM de Lijster, et al, *Social and academic functioning in adolescents with anxiety disorders: A systematic review*, (2018) *Journal of Affective Disorders*; Whear, Ukoumunne, Bethel, Thompson-Coon, Stein & Ford *School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review* (2014) *Emotional and Behavioural Difficulties*, 20.

15 Griffin, McMahon et al, *Increasing rates of self-harm among children, adolescents and young adults: a 10-year national registry study 2007–2016* (2018) *Social Psychiatry Psychiatric Epidemiology*, 53.

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

17 Department of Children and Youth Affairs and SpunOut.ie, *How's your head? Young voices during Covid 19. Report of a national consultation with young people on mental health and wellbeing* (DCEDIY 2020).

18 *ibid.*

19 T McDonnell et al, *Increased Mental Health Presentations by Children Aged 5-15 at Emergency Departments during the first 12 months of COVID-19*, 144 *Irish Medical Journal* (5) 356.



worry, anxiety, depression and a sense of utter hopelessness.<sup>20</sup> An analysis of presentations at paediatric emergency departments in Dublin found that there was an increase in the number of children attending due to mental health concerns in the second half of 2020.<sup>21</sup> In comparison to 2019, presentations were found to have increased by 52 per cent in July and August and 45 per cent between September and December 2020 in paediatric emergency departments in the greater Dublin area.<sup>22</sup>

Surveys conducted by non-governmental organisations working with children and young people have indicated that there is a need to address increased levels of anxiety and depression.<sup>23</sup> However, the increased need for an overstretched Child and Adolescent Mental Health Services (CAMHS), coupled with the impact of the pandemic across all health resources, means that at the end of August 2021, 2,384 children and young people were awaiting CAMHS services<sup>24</sup> with end of year figures for 2021 currently unavailable.

International evidence clearly shows that most adult mental health disorders emerge in childhood and that early intervention and support can be crucial for ensuring that problems do not persist across the life course.<sup>25</sup> Childhood and adolescence are periods of significant malleability in social and neurological development and with the right support at the right time, children can make a full recovery, enabling them to live their lives in full. Early-intervention services, such as HSE-funded Jigsaw – The National Centre for Youth Mental Health, have also been overwhelmed because of Covid-19.<sup>26</sup> Jigsaw provides services to young people with mild to moderate mental health issues, and in November 2021 estimated a 19 per cent yearly increase in referrals from 2020.<sup>27</sup>

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20 Department of Children and Youth Affairs and SpunOut.ie, *How's your head? Young voices during Covid 19. Report of a national consultation with young people on mental health and wellbeing* (DCEDIY 2020).

21 T McDonnell et al, *Increased Mental Health Presentations by Children Aged 5-15 at Emergency Departments during the first 12 months of COVID-19*, 144 *Irish Medical Journal* (5) 356.

22 *ibid.*

23 M Darmody et al, *The implications of the Covid-19 pandemic for policy in relation to children and young people: A research review* (ESRI 2020).

24 Darragh Beringham, 170 children waiting more than a year for mental health services, *Irish Examiner* 8 November 2021.

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

26 HSE, Parliamentary Questions, Written Answer: Child and Adolescent Mental Health Services, 17 November 2021 [52052/21] <<https://bit.ly/3LIkEAC>> accessed 17 February 2022.

27 *ibid.*



Despite a robust evidence base showing the value in safeguarding and promoting mental health in childhood, a number of significant issues exist for CAMHS which combine to diminish children and young people's right to the highest attainable standard of mental health. These include long waiting lists for treatment,<sup>28</sup> combined with poor investment<sup>29</sup> and workforce recruitment and retention issues.<sup>30</sup>

Crucial to this government commitment, specialist inpatient provision is also 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>31</sup> In 2021, by the end of October there were 25 child admissions to adult units,<sup>32</sup> less than half the number admitted in 2019.<sup>33</sup>

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28 HSE, Parliamentary Questions, Written Answer: Child and Adolescent Mental Health Services, 4 February 2021 [3297/21] <<https://bit.ly/3ouSCgU>> accessed 17 February 2022.

29 Irish Hospital Consultants Association, 'New mental health policy fails to address critical staffing deficits, says IHCA' (Press Release 7 June 2020) <<https://bit.ly/3qPT2OV>> accessed 31 January 2022.

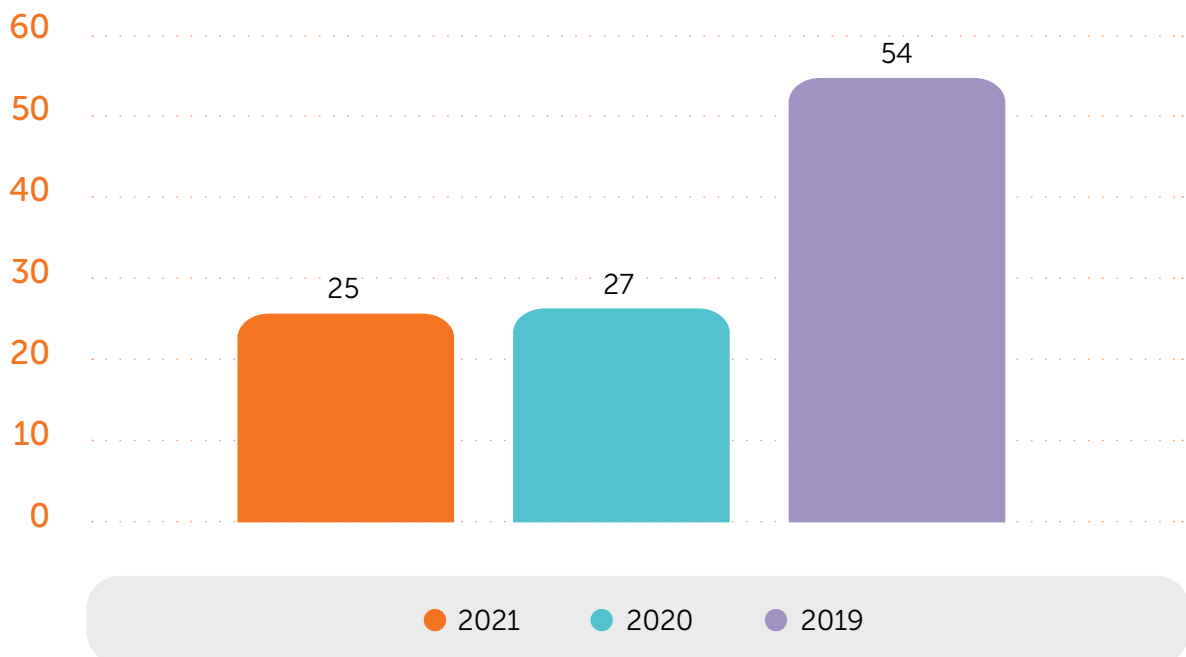
30 *ibid.*

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

32 *ibid.*

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

## Child Admissions to Adult Units 2019-2021



Official Health Service Executive (HSE) policy is that children should only be placed in adult units when 'all alternative options have been exhausted'.<sup>34</sup> However, in practise, 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. Of the six public and private child inpatient units, only two will take an out-of-hours referral, for example, over the weekend.<sup>35</sup> This is despite the HSE Clinical Guidelines stating that all four public units take out-of-hours referrals.<sup>36</sup> The HSE has no governance over private facilities.<sup>37</sup> The Mental Health Commission noted its concern that there was zero per cent compliance with the code of practice on the admission of children to approved centres,<sup>38</sup> as services did not provide

34 HSE, *HSE Performance Profile October-December 2019 Quarterly Report* <<https://bit.ly/39fn2hm>> accessed 31 January 2022, 34.

35 Mental Health Commission, *Annual Report 2019* <<https://bit.ly/3iKEcq5>> accessed 30 January 2022, 27.

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

37 *ibid.*

38 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).

age-appropriate facilities and programmes of activities to children admitted to adult units'.<sup>39</sup>

The Mental Health Commission observes that a child's 'first introduction to mental health care should not be through a service or building that is not specifically equipped to support their needs'.<sup>40</sup> Children who are placed in adult psychiatric wards are receiving care in a unit which isn't designed with their specific needs in mind. Furthermore, despite mental health recovery being enhanced by an ability to remain close to existing support networks, the State has historically sought the permission of the High Court to send Irish children with particularly complex needs to other jurisdictions for inpatient support due to the inadequacy of the specialist provision in Ireland.<sup>41</sup> While the High Court must keep the case under regular review, it is particularly concerning that children have been sent to facilities which have been found to be of poor quality. For example, in the past several children have been sent from Ireland to a facility in England that the British independent regulatory body, the Care Quality Commission, has identified as failing in its duty of care to vulnerable children.<sup>42</sup> However, the HSE has confirmed that the last referral to the UK from CAMHS was in November 2020 and there were no referrals abroad in 2021.<sup>43</sup>

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

40 *ibid* 5.

41 Lisa Colfer and Dr Carol Coulter, 'High Court oversight of children's complex care needs', January 2020 <<https://bit.ly/3iHRi7w>> accessed 31 January 2022.

42 Conor Gallagher 'UK mental health facility accommodating Irish children faces closure', *The Irish Times*, 8 June 2019.

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



**The Mental Health Commission  
observes that a child's 'first  
introduction to mental health  
care should not be through  
a service or building that is  
not specifically equipped  
to support their needs'.**

## ► What has been achieved for children and young people so far?

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>44</sup> yet a decade later, significant issues persist, and some children continue to be placed in age-inappropriate facilities. In 2021 the Mental Health Commission continued to report child admissions to adult units which did not offer age-appropriate facilities, nor a programme of activities appropriate to age and ability.<sup>45</sup> Moreover, children and young people were not provided access to age-appropriate advocacy services, an explanation on their rights nor information about the ward in language they could understand.<sup>46</sup>

While the previous mental health policy framework, *A Vision for Change*, had a target of providing 100 inpatient beds in child units based on the child population at the time, the updated version of this policy *Sharing the Vision* published in 2020, does not contain any targets for expanding capacity in child inpatient units.<sup>47</sup> *Sharing the Vision* acknowledges that adult inpatient units are not appropriate environments for children and states that where no there are no available CAMHS beds, 'and short-term admission to an adult unit is the only option, then a range of actions are necessary... consistent with the CAMHS inpatient standard operating guidelines to provide appropriate, effective and safe care'.<sup>48</sup> *Sharing the Vision* also commits to a 'comprehensive

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

45 Mental Health Commission, *Department of Psychiatry, Letterkenny University Hospital Annual Inspection Report 2021* (MHC 2021) 61; Mental Health Commission, *Sliabh Mis Mental Health Admission Unit, University Hospital Kerry Annual Inspection Report 2020* (MHC 2021) 55 - 56; Mental Health Commission, *Acute Mental Health Unit, Cork University Hospital Annual Inspection Report 2021* (MHC 2021) 60; Mental Health Commission, *St Michael's Unit, Mercy University Hospital Annual Inspection Report 2020* (MHC 2021) 60, 61; Mental Health Commission, *Department of Psychiatry, Waterford University Hospital Annual Inspection Report 2021* (MHC 2021) 59, 60; Mental Health Commission, *Acute Psychiatric Unit, Cavan General Hospital Annual Inspection Report 2020* (MHC 2021) 58; Mental Health Commission, *Admission Unit and St Edna's Unit, St Loman's Hospital Annual Inspection Report* (MHC 2021) 62.

46 Mental Health Commission, *Sliabh Mis Mental Health Admission Unit, University Hospital Kerry Annual Inspection Report 2020* (MHC 2021) 55, 56.

47 Department of Health, *A Vision for Change* (DOH 2006); Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020).

48 *ibid* 47.

specialist mental health out-of-hours response' for children and young people 'in all geographical areas' and 'in addition to current ED services'.<sup>49</sup>

Positively, over the last decade there has been a steady decrease in admissions of under 18s to adult units, with an 80 per cent reduction since 2011.<sup>50</sup>

Furthermore, *Sharing the Vision* recognises that there should be an out-of-hours service for young people in significant distress across all geographical areas<sup>51</sup> and includes a core commitment to trauma-informed care delivery.<sup>52</sup>

These are welcome developments and strengthen the case for ensuring children are supported in age-appropriate and accessible facilities in line with human rights standards<sup>53</sup> and principles of person-centred care.<sup>54</sup>

Aligned to this, in its 2021 National Service Plan, the HSE has prioritised the recruitment of an additional 123 staff, 29 of which will be new CAMHS staff.<sup>55</sup>

The Department of Health has also confirmed that once opened in 2023, the National Children's Hospital, will have an additional 20 inpatient CAMHS beds.<sup>56</sup> The National Forensic Mental Health Hospital, will open on a phased basis from quarter one 2022 with an additional 10 inpatient beds for children.<sup>57</sup>

These additions will bring the total number of child inpatient beds to 104.<sup>58</sup>

Budget 2022 provided €38 million for mental health services (comprising of €24 million for new services and €13 million to support provision of existing levels of services).<sup>59</sup> Part of this investment will allow for the further development of two Child and Adolescent Mental Health Hubs.<sup>60</sup>

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49 *ibid.*

50 Antoinette Daly and Sarah Craig *HRB StatLink Series 5 National Psychiatric In-patient Reporting System (NPIRS) Activities of Irish Psychiatric Units and Hospitals 2020* (HRB 2021) 19.

51 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020) 60.

52 *ibid* 17.

53 UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) the right of the child to the enjoyment of the highest attainable standard of health (art. 24) 1 February 2013 CRC/C/GC/15.

54 The Health Foundation, *Person-centred care made simple What everyone should know about person-centred care* (Health Foundation 2016).

55 Health Service Executive, *National Service Plan 2021* (HSE 2020) 65.

56 Communication received by the Children's Rights Alliance from the Health Service Executive, 3 November 2020.

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

58 Communication received by the Children's Rights Alliance from the Health Service Executive, 3 November 2020.

59 Government of Ireland, *Budget 2022, Expenditure Report* (DEPR 2021) 110.

60 *ibid.*



## ► What children and young people need next

### Ending Admission to Adult Units

The Government commitment to 'work to end the admission of children to adult psychiatric units by increasing in-patient beds as well as examining the model of assigning these beds' while welcome, is quite broad and should be accompanied by a transparent target around increased child inpatient bed capacity. Furthermore, there are several significant barriers to realising this commitment, given current levels of demand for child inpatient services. These barriers relate to three main areas: investment; workforce development; and referral pathways affected by limited out-of-hours support. Such interdependencies must also be acknowledged if progress is to be made. To enable the development of enhanced inpatient psychiatric care for children, a clear target for increasing inpatient bed capacity must be set and a dedicated budget must be provided. The absence of any inpatient bed target in *Sharing the Vision* will make it difficult to monitor progress over the course of this government term. Similarly, it is vital that implementation against this target is supported by the necessary investment.

Looking beyond investment, a key strand of mental health policy must be to stabilise workforce levels to ensure that mental health services, including inpatient units in particular, can provide appropriate and safe care to service users. The HSE noted in 2019 that the mental health workforce is still below recommended levels under *A Vision for Change*, with current capacity in community CAMHS representing 57.5 per cent of the recommended clinical staffing levels.<sup>61</sup> Of particular concern is the consistent decline in nursing capacity in child inpatient units, which was almost 20 per cent lower in 2019 than it was in 2014.<sup>62</sup> Aligned to this, children supported in inpatient units require significant clinical care and advanced expertise, yet 2020 consultant psychiatry numbers in Ireland were less than half the EU average<sup>63</sup> and 75 per cent of CAMHS psychiatrists indicated they were experiencing burnout.<sup>64</sup>

61 HSE Mental Health Service, *Delivering Specialist Mental Health Services* (HSE 2019) 45-6.

62 *ibid.*

63 McNicholas F, Sharma S, O'Connor C, et al. *Burnout in consultants in child and adolescent mental health services (CAMHS) in Ireland: a cross-sectional study* (2020) *BMJ Open* 7.

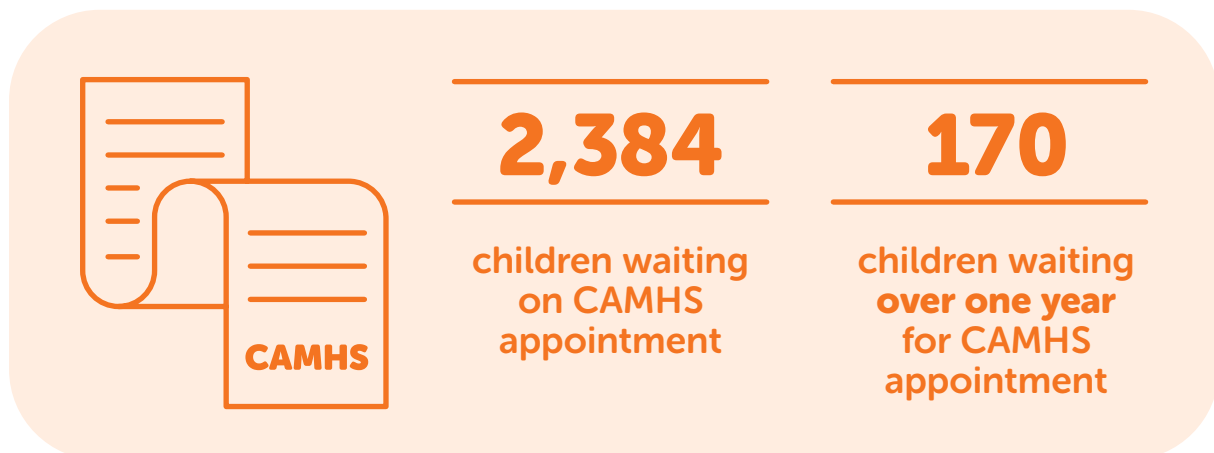
64 *ibid* 4.

Finally, greater attention must be given to the referral pathway for children in need of acute specialist support and the limitations of a nine to five service. In line with societal engagement with mental health and the normalisation of help-seeking, referrals to CAMHS have increased.

| Year            | 2020          | 2021                                     |
|-----------------|---------------|------------------------------------------|
| CAMHS Referrals | <b>10,424</b> | <b>10,553*</b><br>as at end October 2021 |

Source: Department of Health.<sup>65</sup>

At the end of August 2021, there were 2,384 children awaiting CAMHS services with 170 of those waiting more than a year to be seen.<sup>66</sup> While the waiting list shows a slight reduction since December 2020, the latest data only represents around 78 percent of available data due to the recent cyber-attack on the HSE which means waiting list data from some areas is still unavailable.



In 2019, the HSE committed to developing a seven-day CAMHS service nationwide<sup>67</sup> yet most CAMHS still only operate from Monday to Friday in standard working hours. This means that children who require significant assistance outside of this timeframe have no option but to continue to seek help through hospital emergency departments.<sup>68</sup> The 2021 *HSE National*

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

66 Darragh Beringham, 170 children waiting more than a year for mental health services, *Irish Examiner* 8 November 2021.

67 Health Service Executive, *National Service Plan 2019* (HSE 2019) 41

68 Mental Health Reform, *Briefing note on delivery of 24/7 community based mental health services* <<https://bit.ly/3Hp7Z3h>> accessed 2 February 2022.

*Service Plan* focuses on HSE investment in early intervention supports provided by non-governmental organisations.<sup>69</sup> From a children's rights perspective, under 18s needing inpatient assistance should be separated from adults and all support be provided in line with their best interests.<sup>70</sup> However, if a child presents to the emergency department on a weekend, it may not be possible for a full therapeutic assessment to be conducted by an appropriate specialist, and due to the immediate safeguarding concerns, it may be in the child's best interests to be clinically monitored until full assessment can take place. In the absence of an available bed in a child psychiatric unit, the child may have to be admitted to the general psychiatric ward designed for adults or to a general hospital ward,<sup>71</sup> rather than being supported in age-appropriate facilities as the guidance on implementation of the right to health recommends.

Given the limited number of child inpatient beds, it is critical that specialist outpatient services providing community care to children are resourced to meet existing levels of demand and expanded to enable delivery of out-of-hours support. *Sharing the Vision* contains recommendations about inter-agency care responses and training for mental health professionals.<sup>72</sup> Implementation is being progressed through the HSE's annual service plans and monitored by the Sharing the Vision Implementation Monitoring Committee.<sup>73</sup> A failure to invest upstream and develop a coordinated multi-agency response to initial presentations of need risks conditions worsening over time and increased demand on inpatient support units in the long run, including adult units. This may be particularly true for children with additional conditions, such as intellectual disabilities or autism whose needs can be more challenging to meet in the existing inpatient child units.<sup>74</sup>

It is worth noting that the impact of the Covid-19 pandemic may compound these problems and increase demand for mental and emotional wellbeing support. The Economic and Social Research Institute has highlighted that

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

70 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.

71 Mental Health Commission, *Annual Report 2019*, 27-28

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

73 *ibid.*

74 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020).

existing provision is unlikely to be adequate to support an increase in child service-users, particularly given the existing backlog in access and treatment.<sup>75</sup>

## Update to the Mental Health Act 2001

In July 2021, the draft heads of bill to amend the Mental Health Act 2001 were approved and published by Government. In November 2021, the General Scheme of the Mental Health (Amendment) Bill 2021 went before the Oireachtas Joint Sub-Committee on Mental Health, to undergo pre-legislative scrutiny. It is welcome that under the General Scheme, 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>76</sup> However, the guiding principle is limited by the clause 'in so far as is practicable', which, given the resource constraints that are currently fuelling child admissions to adult units, could 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>77</sup> While the provision aims to incorporate the current Mental Health Commission Code of practice into law,<sup>78</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 Government's commitment to end such practice and would be a retrograde step in the context of a child's right to be treated in an age-appropriate settings.<sup>79</sup>

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75 Merike Darmody, Emer Smyth and Helen Russell, *Implications of the COVID-19 pandemic for policy in relation to children and young people* (ESRI 2020).

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

77 *ibid* Head 128, s.108.

78 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.

79 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.

## Examining the model of allocation

In pledging its commitment to ending the admission of children to adult psychiatric wards, the Government indicated it would review the model of allocation of these beds. However, assignment of children to inpatient services is primarily a clinical matter.<sup>80</sup> If a bed is not available in the nearest child inpatient unit, and based on level of urgency, the referring team can refer the child to other inpatient units as part of a coordinated national network. To ensure alignment, the HSE's National Mental Health Division has recently commenced consultation with CAMHS inpatient services to examine the structures and activity levels of the four child inpatient units. The work is in its early stages, but this consultation will review governance, bed capacity and usage, admissions, discharges, and responsiveness to demand and referrals.<sup>81</sup>

This HSE consultation on child inpatient services will be helpful for better understanding psychiatric need and configuration of specialist inpatient services, and it is important this work progresses over 2021. However, to ensure that no more children are placed on adult wards in Ireland or sent abroad to facilities outside the State which may be providing sub-standard care, the Government's attention must focus on addressing systemic health policy issues such as resourcing, the referral pathway and recruitment and retention of specialist staff. Addressing these factors will help to mitigate the risk that children reach crisis point and are unable to be cared for in age-appropriate facilities designed to meet their needs in Ireland.

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80 Communication received by Children's Rights Alliance from HSE, 3 November 2020.

81 *ibid.*

## ➔ Recommendations

- ▶ Set a transparent target for increasing child inpatient unit capacity over the course of this Government based on projected levels of demand for acute psychiatric support.
- ▶ Undertake a recruitment drive, particularly of mental health nurses, to ensure all existing child inpatient units can operate at maximum capacity and provide enhanced clinical supervision and care for staff working in CAMHS to mitigate the risk of burn-out and staff shortages.
- ▶ Ensure that all adult units which are currently providing inpatient support to children adhere to the CAMHS Inpatient Code of Governance through regular service inspections.
- ▶ Conduct an audit of children's referral pathways into specialist inpatient care to better understand the profile of children in need of acute assistance, including groups of children who may be at particular risk, and examine whether there were opportunities for earlier intervention which could have averted need for inpatient support.
- ▶ Publish the HSE audit on the structures and activity levels of the four child inpatient units and examine if inpatient unit configuration could be refined to ensure all children can be supported in age-appropriate facilities.
- ▶ Increase funding for mental health as a portion of the overall health budget, with a particular focus on expanding capacity in primary care psychology and CAMHS to ensure that children receive timely help and conditions do not deteriorate necessitating inpatient admission.
- ▶ Revise the General Scheme of the Mental Health (Amendment) Bill 2021 to ensure that the admission of children to adult psychiatric units is recognised as a short-term, transitional measure, rather than a practice placed on a statutory footing.

8

# Food Poverty

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Section Grade:

C+





## The Programme for Government commits to:

Work across government to address food poverty in children and ensure no child goes hungry.

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▶ Progress: **Steady**

Continue to review and expand the rollout of the new Hot School Meals initiative.

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▶ Progress: **Steady**

'Food poverty' receives a 'C+' grade, an improvement on the 'D' grade received in Report Card 2021. There has been positive progress to address the drivers of food poverty through the setting up of a cross-government Working Group on Food Poverty. The allocation of increased funding in Budget 2022 to expand the provision of hot school meals is welcome and will result in more children benefitting from this programme. The publication of the initial research on the pilot Hot School Meals Initiative highlights many positive aspects for children and their families. However, there is no comprehensive plan in place on how the initiative will be scaled-up in the coming years.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) provides that every child has the right to enjoyment of the highest attainable standard of physical health and governments have an obligation to combat disease and malnutrition through the provision of adequate nutritious food.<sup>1</sup> The Committee on the Rights of the Child has recommended that in implementing this right, providing food in school is 'desirable to ensure all pupils have access to a full meal every day' and recommends that this is combined with education on nutrition and health.<sup>2</sup> The Committee further recommends that this should include the training of teachers in child nutrition and healthy eating habits.<sup>3</sup>

Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development<sup>4</sup> and States are required to 'take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.<sup>5</sup>

The UN International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living, including access to adequate and affordable food.<sup>6</sup> Under the UN Sustainable Development Goals (SDGs) the State has committed to 'end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030'.<sup>7</sup>

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 UNCRC General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15, para 46.

3 *ibid.*

4 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

5 *ibid.*

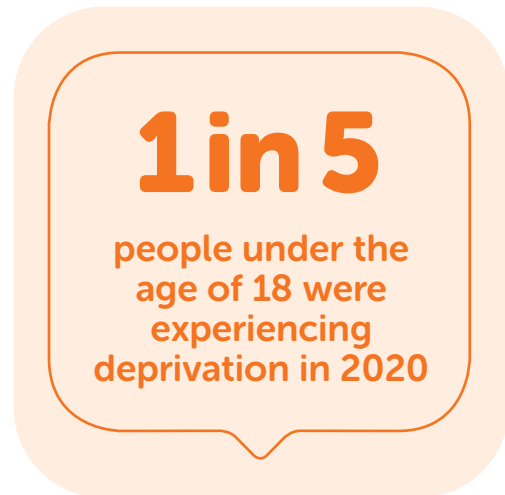
6 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3 (ICESCR) Art 11.

7 United Nations Department of Economic and Social Affairs Disability '#Envision2030 Goal 2: Zero Hunger' <<https://bit.ly/3bhOH2n>> accessed 31 January 2022.

## ► What is the context for this commitment?

The 2020 Survey of Income and Living Conditions (SILC) shows that 15.6 per cent of the population were experiencing deprivation.<sup>8</sup> This rose to 20.3 per cent amongst under 18s.<sup>9</sup> Of those living below the poverty line, 38.3 per cent were experiencing enforced deprivation, which means going without basics such as nutritious food.<sup>10</sup>

Food poverty is defined as the inability to have an adequate or nutritious diet due to issues of affordability or accessibility.<sup>11</sup> Food poverty is multidimensional, encompassing a lack of access to a nutritionally adequate diet and how these impacts on health and social participation.<sup>12</sup> In Ireland, eight per cent of households were at risk of food poverty in 2018, down from 13.3 per cent in 2013.<sup>13</sup> Households with children are more at risk of food poverty and this risk increases by family size.<sup>14</sup> In 2018, 19 per cent of 10 to 17-year-old children went to school or bed hungry compared to 22 per cent in 2014.<sup>15</sup>



The *EU Recommendation on Investing in Children* recommends that States 'invest in prevention, particularly during early childhood years, by putting in place comprehensive policies that combine nutrition, health, education and

8 Central Statistics Office, 'Survey of Income and Living Conditions 2020' (CSO 2021) <<https://bit.ly/3tm3KRS>> accessed 31 January 2022. The CSO has stated that the 2020 data is a break in time series which is not comparable to previous years' statistics.

9 *ibid.*

10 *ibid.*

11 Safe Food, *What is the cost of a healthy food basket in 2018?* (Safe Food 2019).

12 *ibid.*

13 Central Statistics Office, *Ireland's UN SDGs 2019 Report on Indicators for Goal 2 Zero Hunger* (2020) <<https://bit.ly/3bWkSl2>> accessed 31 January 2022.

14 Carney and Maître, *Social Inclusion Technical Paper No. 3, Dublin and Department of Employment Affairs and Social Protection* (DEASP 2012).

15 Költő and Gavin et al *The Irish Health Behaviour in School-aged Children (HBSC) Study 2018*. (Department of Health & Galway: Health Promotion Research Centre NUIG 2020).

social measures'.<sup>16</sup> Building on the *Recommendation*, in June 2021, the European Child Guarantee was adopted at EU level. It aims to prevent and combat child poverty and social exclusion by supporting the 27 EU Member States to make efforts to guarantee access to quality key services for children in need.<sup>16</sup> Member States are required to develop a national child poverty action plan by March 2022 outlining how they will progress the six commitments including providing free access to a healthy meal each school day and to ensure effective access to healthy nutrition.



## European Child Guarantee

**Under the EU Child Guarantee, Member States are required to develop a national child poverty action plan outlining how they will progress the six commitments including providing free access to a healthy meal each school day**

In Ireland, low-income households need to spend between 13 and 35 per cent of their net income to afford a minimum healthy food basket.<sup>17</sup> As children grow older food costs rise, with the cost of feeding a teenager double that of a pre-school child. A household with a teenager, reliant on social welfare, is required to spend almost a third of their income to meet the cost of a healthy food basket.<sup>18</sup> Rural households are particularly at risk of food poverty; in 2020, the weekly cost of a healthy food basket for a two-parent family with two children living in a rural area was €138.<sup>19</sup> This compared to €121 for the same size family living in an urban area.<sup>20</sup>

<sup>16</sup> European Commission, Commission Recommendation: Investing in children: breaking the cycle of disadvantage (Brussels, 20.2.2013 C(2013) 778 final).

<sup>17</sup> Safe Food, *What is the cost of a healthy food basket in 2020?* (Safe Food 2021).

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

Food poverty is one of the driving forces behind higher rates of obesity and ill-health in disadvantaged communities.<sup>21</sup> Research on the links between dietary energy density and dietary energy cost has found that refined foods, added sugars and added fats are some of the cheapest sources of dietary energy, as opposed to more costly nutrient-dense foods such as lean meat, fruit and vegetables.<sup>22</sup> The high cost of good quality, nutritious food often prices low-income families out of maintaining healthy diets by limiting their choices to more processed and refined food-based diets as a cost-effective way of meeting daily calorific requirements.<sup>23</sup>



**Weekly cost of a healthy food basket for a two parent family with two children in 2020**

|             |             |
|-------------|-------------|
| <b>€138</b> | <b>€121</b> |
| RURAL       | URBAN       |

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>24</sup> Poor nutrition in children is linked to reduced development, cognitive function, delayed school enrolment, impaired concentration, increased illness, absenteeism and early school leaving.<sup>25</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>26</sup> Evidence also shows that families living on low and fixed incomes tended to cut back on food

21 Richard Layte and Cathal McCrory, *Growing up in Ireland Overweight and obesity among 9 year olds*. (DCYA 2011).

22 David Madden, 'The Poverty Effects of a 'Fat-Tax' in Ireland' (2015) 24 *Health Economics*, 4.

23 *ibid.*

24 James Williams, Aisling Murray, Cathal McCrory, Sinéad McNally, *Growing Up in Ireland - Development From Birth To Three Years* (Department of Children and Youth Affairs 2013) 37.

25 Alessandro Rhyll Demaio, Francesco Branca, Decade of action on nutrition: our window to act on the double burden of malnutrition, *BMJ Glob Health* 2017; 3.

26 Richard Layte and Cathal McCrory, *Growing up in Ireland Overweight and obesity among 9 year olds*. (DCYA 2011) 33.

expenditure as it was easier to control than the cost of rent, utilities, or education.<sup>27</sup> Parents - and mothers in particular - within low-income households sometimes reduce their food intake in order to provide more for their children.<sup>28</sup>

In response to the issue of food poverty, the Government has committed in the *Roadmap for Social Inclusion 2020-2025* to develop a programme of work to explore the drivers of food poverty and to identify mitigating actions.<sup>29</sup> This will require coordinating activities across a number of government departments.

Schools are an excellent setting to reach children, teachers, families and the surrounding community.<sup>30</sup> They provide a social environment where children can access and enjoy food, without financial constraints.<sup>31</sup> Generally, there are two approaches to food education and school food: education separated from school meals, and education integrated into the provision of school meals.<sup>32</sup> A systematic review of 42 European interventions to promote healthy diet and obesity prevention provides strong evidence that multi-component interventions (food availability, education curriculum integration, and parent involvement) had relatively strong effects on dietary improvements among children.<sup>33</sup> The message is that multi-component interventions are more effective than only providing food to children. Ireland is unusual in the EU context in not providing a universal school meal programme.<sup>34</sup>



27 Society of St. Vincent de Paul, *Stories of Struggle: Experiences of living below the minimum essential standard of living* (SVP 2018).

28 Society of St Vincent de Paul, *"It's the hardest job in the world": An exploratory research study with one-parent families being assisted by the Society of St Vincent de Paul* (SVP 2014).

29 Department of Employment Affairs and Social Protection 'Roadmap for Social Inclusion 2020-2025' (DEASP 2020).

30 Healthy Food For All, *A Good Practice Guide to School Food Initiatives* (Healthy Food for All 2009).

31 *ibid.*

32 M Oostindjer and JAschemann-Witzel et al, *Are school meals a viable and sustainable tool to improve the healthiness and sustainability of children's diet and food consumption? A cross-national comparative perspective* (2017) *Critical Reviews in Food Science and Nutrition*, 57:18, 3942-3958.

33 *ibid.*

34 *ibid.*

The Department of Social Protection (DSP) funds the School Meals Programme. 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>35</sup> The objective of the scheme is to provide regular, nutritious food to children who are unable, due to lack of good quality food, to take full advantage of the education provided to them.<sup>36</sup>

## ► **What has been achieved for children and young people so far?**

In May 2021, a cross-government Working Group on Food Poverty was established by Minister for State with responsibility for social Inclusion, Joe O'Brien TD which also includes community and voluntary organisations.<sup>37</sup> The group met on four occasions in 2021 and has focused on two pieces of work. The first was a mapping exercise to establish what government initiatives currently exist to address food poverty.<sup>38</sup> The second involved the development of a proposal to commission case study research on a small number of geographic areas on the prevalence and drivers of food poverty alongside a mapping exercise of the actors and service providers in these areas.<sup>39</sup> It is envisaged that the outcome of this research will inform the realisation of the commitment contained in the *Roadmap for Social Inclusion 2020-2025*.<sup>40</sup>

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35 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.

36 Heather Humphries TD, Minister for Employment Affairs and Social Protection, School Meals Programme, Written Answers 14 July 2020 [15434/20].

37 Membership of the group includes the Departments of Agriculture, Food and the Marine; Children, Equality, Disability, Integration and Youth; Education; Health; Rural and Community Development and Social Protection. Organisations from the community and voluntary sector are also involved in the group including the Children's Rights Alliance, Crosscare and Society of St Vincent de Paul.

38 *ibid.*

39 Joe O'Brien TD, Minister for State for Social Inclusion, Food Poverty, Written Answers, 25 November 2021 [57822/21].

40 Communication received by the Children's Rights Alliance from the Department of Social Protection on 11 January 2022.



In September 2019, the DSP launched a hot school meals pilot which involved 37 primary schools benefitting 6,744 students for the 2019/2020 academic year.<sup>41</sup> While there was high demand to participate in the pilot, the final sample amounted to one per cent of the total primary schools in Ireland.<sup>42</sup> The pilot was completed in the 2019/2020 school year.<sup>43</sup>

In Budget 2020, €4 million was allocated to provide hot food to children currently in receipt of the existing school meals programme consisting of a cold food option.<sup>44</sup> The rollout of this was delayed and did not commence until January 2021 due to the closure of schools arising from the onset of the Covid-19 pandemic. The 37 schools in the pilot were permitted to continue to avail of hot school meals from September 2020 when schools reopened.<sup>45</sup> Budget 2021 allocated €5.5 million to support a further scale-up by enabling an extension of hot school meals from January 2021 until the end of the year and the DSP made arrangements to ensure that 35,000 children receiving the cold lunch option received a hot meal.<sup>46</sup> An additional €3 million in funding in Budget 2022 means a further 16,000 students, from schools that previously expressed an interest in the scheme, will benefit from January 2022.<sup>47</sup> In 2022, the provision of hot school meals will reach over 55,000 children.<sup>48</sup>

The Programme for Government committed to 'continue to review and expand the rollout of the Hot School Meals initiative'.<sup>49</sup> In March 2021, the DSP published

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41 Heather Humphries TD, Minister for Employment Affairs and Social Protection, School Meals Programme, Written Answers 14 July 2020 [15434/20]. All primary schools (over 3,000) were invited to apply with 506 schools registering interest, suggesting high demand for the limited pilot. The schools chosen to participate in the pilot were selected randomly, having regard to geographical spread, numbers enrolled, range of suppliers and the overall budget available.

42 Oireachtas Library and Research Services, *Education in Ireland Statistical snapshot, Houses of the Oireachtas 2020* (Houses of the Oireachtas 2020).

43 Communication received by the Children's Rights Alliance from the Department of Social Protection 21 December 2020.

44 Heather Humphries TD, Minister for Employment Affairs and Social Protection, School Meals Programme, Written Answers 14 July 2020 [15434/20].

45 Communication received by the Children's Rights Alliance from the Department of Social Protection 21 December 2020.

46 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

47 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.

48 *ibid.*

49 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 96.

the findings of research conducted in 2020 with principals, teachers/Special Needs Assistants, parents and suppliers regarding all aspects of the provision of the hot meals.<sup>50</sup> Notably, the outbreak of Covid-19 prevented both onsite visits as well as consultation with children.<sup>51</sup> The feedback overall was predominantly positive. Over two-thirds of principals, teachers and Special Needs Assistants noted that the hot meals were of better quality compared to the cold food provided previously.<sup>52</sup> One-third of parents said the provision of hot meals had a positive impact on their children in terms of attendance at school, physical health and emotional/psychological wellbeing.<sup>53</sup> Two-thirds of principals and teachers indicated that universal provision within the school would be important.<sup>54</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>55</sup>

Generally, the school meals programme does not provide funding to cover school holidays or for days when the school is closed. Due to school closures in March 2020 and again at the start of 2021 in response to the Covid-19 pandemic, funding under the school meals programme was used to support participating schools that identified pupils who were unlikely to receive nutritious food while the schools were closed.<sup>56</sup>

In light of Covid-19 restrictions, funding was made available to schools to extend the school meals programme over the summer periods in 2020 and 2021 in recognition of the hardship that families experienced.<sup>57</sup> In 2021, approximately 150 schools and organisations requested funding to support 37,000 children.<sup>58</sup>

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50 Ian McShane and Rachael Joyce, 'Hot School Meals Pilot Project' <<https://bit.ly/3zCQf0R>> accessed 31 January 2022.

51 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

52 Ian McShane and Rachael Joyce, 'Hot School Meals Pilot Project' <<https://bit.ly/3zCQf0R>> accessed 31 January 2022.

53 *ibid.*

54 *ibid.*

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

56 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020 and communication received by the Children's Rights Alliance from the Department of Social Protection 11 January 2022.

57 Heather Humphries TD, Minister for Employment Affairs and Social Protection, School Meals Programme, Written Answers 14 July 2020 [15434/20].

58 Communication received by the Children's Rights Alliance from the Department of Social Protection, 11 January 2022.

An evaluation of the School Meals Programme, which will include a review of the provision of hot meals, will commence in March 2022.<sup>59</sup> This evaluation will be completed in nine to 12 months and will include the views of children and young people receiving school meals under the programme.<sup>60</sup> The evaluation will also consider the feasibility of leveraging funding available through the European Social Fund Plus (ESF+) under the EU Child Guarantee.<sup>61</sup>

The Programme for Government also committed to 'work across government to address food poverty in children and ensure no child goes hungry'.<sup>62</sup>

The Joint Oireachtas Committee on Children and Youth Affairs previously recommended that Government establish clear targets for reducing socio-economic inequalities in childhood obesity, including food poverty, and implement an evaluation framework to monitor the progress.<sup>63</sup> It is positive to see some joint working between departments on the school meals rollout through the development of nutrition standards for the Hot School Meals Scheme,<sup>64</sup> and the launch of the first *Healthy Eating Guidelines for 1-4 Year-Olds, Children's Food Pyramid* in October 2020.<sup>65</sup>

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59 *ibid.*

60 *ibid.*

61 *ibid.*

62 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 96.

63 Joint Oireachtas Committee on Children and Young Affairs, *Report on Tackling Childhood Obesity*, (Houses of the Oireachtas, 2018) 4.

64 Communication received by the Children's Rights Alliance from the Department of Social Protection, 21 December 2020. The Department of Health, the Department of Social Protection and the Department of Education and Skills are working together on the development of the standards.

65 Communication received by the Children's Rights Alliance from the Department of Health on 12 January 2021.



## ► What children and young people need next

Increasing reliance on food banks and charitable support for food costs during the Covid-19 pandemic has demonstrated the challenges facing low-income families, however the institutionalisation of food banks as a response to food insecurity has been widely criticised by international experts.<sup>66</sup> Longer-term solutions to food poverty, which respond to the multi-faceted nature of this problem are needed and it is welcome that work is now underway to identify and address the drivers of food poverty across Government.

The UN Sustainable Development Goals commit the Government to ‘end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030’.<sup>67</sup> The response to food poverty must address accessibility,

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66 O de Schutter et al ‘Food banks are no solution to food poverty’ *The Guardian* 24 March 2019; Martin Caraher and Sinéad Furey ‘Are food banks merely a sticking plaster for food poverty?’ *RTE News* 7 February 2019 <<https://bit.ly/3hZqOhA>> accessed 31 January 2022.

67 United Nations, ‘#Envision2030 Goal 2: Zero Hunger’ <<https://bit.ly/3ASyGe7>> accessed 31 January 2022.

availability, affordability and awareness.<sup>68</sup> People living in communities with a lack of shops, supermarkets or public transport and who have to regularly shop in local convenience stores can find it more difficult to access healthy fresh foods, highlighting the relationship between low income, housing policy, local development plans, provision of public transport and food poverty.<sup>69</sup> Progressing this commitment in the Programme for Government necessitates the adoption of a holistic family-focused approach to the issue of poverty and food poverty.

The full realisation of the Programme for Government commitment to expand the provision of hot meals hinges on the evaluation of the School Meals Programme due to commence in 2022. While small scale expansions have taken place, with money being made available in the last three Budgets, no further expansion of the provision of hot meals will take place until the evaluation is complete.<sup>70</sup> Following the completion of this exercise there needs to be a comprehensive plan put in place as to how the Government will expand the initiative over its term in office. The evaluation should be prioritised to inform decisions being made for further rollout. The evaluation could consider how best to take the learnings forward and scale up the initiative and how to expand the programme to benefit children and young people in an alternative education setting. Holiday hunger remains a serious concern for children and young people experiencing poverty who rely on school meals.<sup>71</sup> The evaluation could consider how meal schemes could be extended through the summer months and other holiday periods.<sup>72</sup> The Department also needs to ensure it fully considers how it will implement the commitment under the EU Child Guarantee to provide a hot meal every school day.

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68 Committee on Economic, Social and Cultural Rights, General Comment No.12 (1999) on the right to adequate food (art. 11) E/C.12/1999/5 para 13.

69 Kimberly Morland et al, 'Obesity prevalence and the local food environment' (2009) *Health and Place* 15(2):491–495.

70 Communication received by the Children's Rights Alliance from the Department of Social Protection 11 January 2022.

71 Kitty Holland 'Thousands at risk of holiday hunger if school meals dropped' *Irish Times* 11 June 2020.

72 *ibid.*

## ➔ Recommendations

- ▶ In 2022, finalise and publish the research on exploring the drivers of food poverty and identify mitigating actions in line with the commitment in the *Roadmap for Social Inclusion 2020-2025*. The research should inform updated commitments in the revised Roadmap, the forthcoming National Action Plan on implementing the Child Guarantee and the next national policy framework for children and young people.
- ▶ Using the mapping exercise and the research on the drivers of food poverty, develop a national action plan to tackle food poverty with a view to associated plans being put in place at local level.
- ▶ Conduct and publish the findings of the evaluation of the School Meals Programme, including the hot school meals initiative, ensuring that children and young people are consulted on their views.
- ▶ Extend the Hot School Meals Programme to all schools participating in the existing meals programme and set out a roadmap with a clear timeline for how the scheme can be expanded to all schools within the lifetime of this Government.



**9**

# **Public Health Obesity Act**

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**Section Grade:**

**D**





## The Programme for Government commits to:

Work with key stakeholders to introduce a Public Health Obesity Act, including examining restrictions on promotion and advertising aimed at children.

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▶ Progress: **Slow**

'Public Health Obesity Act' receives a 'D' grade which is lower than the 'C' grade awarded last year. There has been no movement on the development of legislation with the only progress the expansion of the Advertising Standards Association of Ireland's Code of Standards to include restrictions on advertising high fat, salt and sugar products. The latter action will have a more limited impact than the establishment of a designated body to oversee this.

## Ireland's duties and responsibilities in international law



Every child has the right to enjoyment of the highest attainable standard of physical health and Governments have an obligation to combat disease and malnutrition through the provision of adequate nutritious food.<sup>1</sup> Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development<sup>2</sup> and States are required to 'take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.<sup>3</sup>

The UN Special Rapporteur on the Right to Food has highlighted five priority actions to combat obesity: regulating the sale of 'junk food'; restricting the advertising of 'junk food'; overhauling agricultural subsidies to make healthier foods cheaper than less healthy alternatives; taxing unhealthy products; and supporting local food production so that consumers have access to healthy, fresh and nutritious food.<sup>4</sup>

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living, including access to adequate and affordable food.<sup>5</sup> Under the UN Sustainable Development Goals (SDGs) the State has committed to 'end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030'.<sup>6</sup>

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 *ibid* Art 27.

3 *ibid* Art 27.

4 Human Rights Council, *Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter* (2012) UN Doc A/HRC/19/59, 17–18.

5 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3 (ICESCR) Art 11.

6 UN, Sustainable Development Goals' <<https://bit.ly/3sgsUyW>> accessed 3 February 2022.

## ► What is the context for this commitment?

One fifth of primary school children in Ireland are overweight or obese,<sup>7</sup> a reduction from one quarter in the last measurement in 2012.<sup>8</sup> The experience of overweight and obesity occurs in children and adults at all levels of the socio-economic spectrum and spans all social classes.<sup>9</sup> However, incidence for children is strongly related to the socio-economic status of their parents.<sup>10</sup> While four per cent of three-year-olds from professional/managerial headed households were classified as overweight and obese, this figure was more than double for the children whose parents had never worked.<sup>11</sup> Children attending schools participating in the Delivering Equality of Opportunity in Schools (DEIS) programme, located in areas of concentrated socio-economic disadvantage, have higher levels of overweight and obesity than children in non-DEIS schools.<sup>12</sup>

When children's Body Mass Index (BMI) was measured at age nine and again at 13 years, Growing Up in Ireland data found that children in lower socio-economic groups not only experience higher overweight and obesity rates than their advantaged peers, their experience is more profound.<sup>13</sup> This means they are more likely to exceed BMI thresholds, and they are more likely to



7 Healthy Ireland, *The Childhood Obesity Surveillance Initiative (COSI) in the Republic of Ireland* (DOH 2020) 17.

8 Department of Health, *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (Stationery Office 2016) 14.

9 L Howe, 'Childhood overweight: socio-economic inequalities and consequences for later cardiovascular health, Longitudinal and Life Course Studies', 2013 Volume 4 Issue 1, 4 – 16; Samantha Doyle, et al, 'Caring for Obese Children- A change in Paradigm' 2017 Irish Medical Journal, 4.

10 World Health Organisation, *Obesity and inequities Guidance for addressing inequities in overweight and obesity* (WHO Europe 2014) 4.

11 Growing Up in Ireland, *Key Findings: Infant Cohort (At 3 Years) No. 4 Children's Physical Growth from Birth to Age 3* (DCYA 2013).

12 L Mithcell et al, *The Childhood Obesity Surveillance Initiative (COSI) in the Republic of Ireland: Findings from 2018 and 2019* (HSE 2020).

13 David Madden, *Childhood obesity and maternal education in Ireland*, Geary WP2016/14 (UCD Geary Institute for Public Policy Discussion Paper Series 2016).

experience persistent overweight or obesity. This particularly impacts girls.<sup>14</sup> This suggests that social inequality-related overweight and obesity deepens into childhood, and becomes more entrenched and more gendered.

Obesity has been described as 'one of the most stigmatising and least socially acceptable conditions in childhood'.<sup>15</sup> It can affect children's social and emotional health and their quality of life. Children can be bullied, experience negative stereotypes, discrimination, and social marginalisation due to their weight.<sup>16</sup> Of 111 children participating in an obesity treatment programme in an Irish children's hospital, 63 per cent reported being teased about their weight in the past, almost half of them by their peers with 12 per cent missing days from school as a result of bullying.<sup>17</sup> Thirty per cent of them had learning difficulties and 15 per cent reported developmental delay at some point requiring some intervention, linking the condition with special needs.<sup>18</sup>

The World Health Organisation (WHO) affirms the child's right to health as a governing principle and strategy to act on behalf of the child to reduce the risk of obesity.<sup>19</sup> *Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020* committed to tackling the issue of childhood obesity through a range of legislative, policy and public awareness initiatives.<sup>20</sup> The UN Special Rapporteur on the Right to Food has highlighted five priority actions to combat obesity: regulating the sale of 'junk food'; restricting the advertising of 'junk food'; overhauling agricultural subsidies to make healthier foods cheaper than less healthy alternatives; taxing unhealthy products; and supporting local food production so that consumers have access to healthy, fresh and nutritious food.<sup>21</sup>

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14 *ibid.*

15 K Sahoo, et al, 'Childhood obesity: causes and consequences', *Family Med Prim Care*. 2015 Apr-Jun; 4(2): 187-192.

16 *ibid.*

17 S Doyle et al, 'Caring for Obese Children - A Change in Paradigm', 2017 *Irish Medical Journal*, 4.

18 *ibid.*

19 World Health Organisation, *Report of the Commission on Ending Childhood Obesity* (WHO 2016) 8.

20 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment 1.1.

21 Human Rights Council, 'Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter' (2012) UN Doc A/HRC/19/59, 17-18.

Advertising influences how much children eat,<sup>22</sup> and can lead to them 'pestering' parents to buy unhealthy products.<sup>23</sup> At 18 months, children can recognise brands, with preschool children demonstrating preferences for branded products.<sup>24</sup> Marketing is closely linked to a globalisation of unhealthy behaviours that influence nutrition opportunities, driven by rapidly expanding international trade, leading to diets that are higher in processed foods and saturated fats, salt and sugar, and lower in fibre, vitamins and minerals than the traditional diets they replace.<sup>25</sup> The processed food industry, 'has been successful in blocking governmental and societal efforts for implementing food policies for obesity prevention', through lobbying for industry voluntary codes and making public commitments to which they do not adhere.<sup>26</sup> This has contributed to poor global progress on obesity prevention.

In February 2018, the Department of Health launched the *Non-Broadcast Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement: Voluntary Codes of Practice*.<sup>27</sup> The voluntary nature of the codes mean that companies have no legal obligations in relation to marketing and advertising, and there are no restrictions on how they market their products to children. As outlined in the *Voluntary Codes of Practice*, the Minister for Health was due to designate a body to monitor compliance and effectiveness with the codes as well as to provide guidance to industry. The body would also be able to conduct independent research, investigate complaints and seek remedial action. The challenge with voluntary codes is that they allow for self-regulation, which may not sufficiently reduce

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22 E Boyland, et al, 'Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and non-alcoholic beverage advertising on intake in children and adults', *The American Journal of Clinical Nutrition*, Volume 103, Issue 2, 1 February 2016, 519–533.

23 G Hastings et al, *The extent, nature and effects of food promotion to children: a review of the evidence* (WHO 2006); L McDermott et al, 'International food advertising, pester power and its effects' (2015) *International Journal of Advertising*, 25:4, 513-539.

24 TN Robinson et al, 'Effects of Fast Food Branding on Young Children's Taste Preference' *Arch Pediatr Adolesc Med.* (2007) 161(8), 792–797.

25 A Rhyll Demaio et al, 'Decade of action on nutrition: our window to act on the double burden of malnutrition' (2017) *BMJ Glob Health*, 3.

26 B Swinburn et al, 'Strengthening of accountability systems to create healthy food environments and reduce global obesity' *The Lancet* 2015; 385: 2534–45.

27 Healthy Ireland, *No-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement: Voluntary Codes of Practice* (Department of Health 2018).

the advertising of unhealthy foods, nor reduce children's exposure to this type of advertising.<sup>28</sup>

Pending further progress on the development of a monitoring mechanism by the Department of Health, the Advertising Standards Authority of Ireland (ASAI) has revised its *Code of Standards* by incorporating provisions of the *Voluntary Codes of Practice* in relation to the advertisement of high fat, salt and sugar (HFSS) products.<sup>29</sup> Restrictions on the advertisement of such products came into effect on 1 December 2021. They include a ban on advertising HFSS products by any medium where more than half of the audience is under 15, a ban on promotions or competitions targeted at children in non-broadcast media and locations primarily used by children. For example, early years settings, schools, playgrounds and some healthcare settings will be free from all forms of marketing for HFSS foods.<sup>30</sup> From December 2022, commercial sponsorship of activities or events targeted towards children involving HFSS food will not be permitted.<sup>31</sup> The ASAI will be able to receive complaints on these new provisions. However, the ASAI operates a system of self-regulation, is financed by the advertising industry and is 'not a law enforcement body'.<sup>32</sup> As such, it cannot provide the additional functions intended for the proposed monitoring body in the *Voluntary Codes of Practice*.

Ireland is currently engaging with other European Union (EU) countries on a joint action called 'Best-ReMaP' and leading on a work package called 'Best practices in reducing marketing of unhealthy food products to children and adolescents'.<sup>33</sup> This will include the development of an EU-wide harmonised and comprehensive monitoring protocol for reducing unhealthy food

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28 S Galbraith-Emami and T Lobstein 'The impact of initiatives to limit the advertising of food and beverage products to children: a systemic review' (2013) 14 *Obesity Reviews* 960 – 74.

29 Communication received by the Children's Rights Alliance from the Department of Health 22 December 2022. The ASAI Code 'covers commercial marketing communications and sales promotions in all media in Ireland including digital web, social, mobile, in-game ads, influencer marketing (user-generated commercial content), print, outdoor, radio, TV, leaflets/brochures, SMS/MMS, cinema, and direct marketing'.

30 Advertising Standards Authority for Ireland, 'New rules relating to advertising of High Fat, Salt and Sugar (HFSS) food and beverage products unveiled by the Advertising Standards Authority for Ireland' (Press Release 30 June 2021) <<https://bit.ly/3n4VHox>> accessed 2 February 2022; Advertising Standards Authority of Ireland, *Section 8: Food and Non-Alcoholic Beverages*, (ASAI 2021).

31 *ibid.*

32 Advertising Standards Authority of Ireland, *Section 8: Food and Non-Alcoholic Beverages* (ASAI 2021)

33 Communication received by the Children's Rights Alliance from the Department of Health 12 November 2020.





marketing to children.<sup>34</sup> Work on this action commenced in October 2020 and will conclude in September 2023.<sup>35</sup> In November 2021, as part of its EU Presidency, Slovenia hosted an online policy conference on solutions for childhood obesity.<sup>36</sup>

In 2018, the Joint Oireachtas Committee on Children and Youth Affairs recommended the introduction of a statutory code for the advertising and marketing of food and non-alcoholic beverages in the context of non-broadcast media. They also called for the independent monitoring body to be established as a matter of priority to monitor compliance and the effectiveness of the *Voluntary Codes of Practice*.<sup>37</sup> The Joint Oireachtas Committee on Education and Skills has similarly recommended that digital marketing aimed at children by the food and drinks industries be appropriately regulated to

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34 *ibid.*

35 Communication received by the Children's Rights Alliance from the Department of Health 22 December 2021.

36 *ibid.*

37 Joint Oireachtas Committee on Children and Youth Affairs, *Report on Tackling Childhood Obesity*, (Houses of the Oireachtas, 2018) 7.



reduce the influence on their eating habits.<sup>38</sup> This Committee also called for Advertising on school grounds to be banned.<sup>39</sup> As part of the pre-legislative scrutiny of the Online Safety and Media Regulation Bill in 2021, the Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media has recommended that advertisements to children related to junk food and other foods high in fat/salt/sugar should be banned.<sup>40</sup>

## ► **What has been achieved for children and young people so far?**

The Programme for Government commits to 'work with key stakeholders to introduce a Public Health Obesity Act, including examining restrictions on promotion and advertising aimed at children'.<sup>41</sup> The Department of Health has acknowledged that careful consideration is needed to identify what areas are best put on a legislative basis.<sup>42</sup> However, there are no set timelines in place for the drafting of the scheme of a Bill.<sup>43</sup> *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* focuses on prevention of obesity to increase the number of people in Ireland with a healthy weight.<sup>44</sup> The Policy contains a commitment to 'develop, implement and evaluate a code of practice for food and beverages promotion, marketing and sponsorship'.<sup>45</sup> A review of the Plan will commence in early 2022. It is envisaged that this review, along with work undertaken in 2021 to identify gaps in implementation will inform what should be included in a Public Health Obesity Act.<sup>46</sup>

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38 *ibid* 16.

39 *ibid*.

40 House of the Oireachtas, Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht to begin Pre-Legislative Scrutiny of Online Safety and Media Regulation Bill 2020, 12 April 2021, <<https://bit.ly/3KNDkyr>> accessed on 3 February 2022.

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

42 Communication received by the Children's Rights Alliance from the Department of Health, 12 December 2020.

43 *ibid*.

44 Department of Health, *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (Stationery Office 2016).

45 *ibid* Action 3.2.

46 Communication received by the Children's Rights Alliance from the Department of Health 22 December 2022.

## ▶ **What children and young people need next**

While there has been no movement in 2021 towards the introduction of a Public Health Obesity Act, this is in the context of a global health pandemic, which continues to place substantial strains on the Department of Health and the health services. However, the introduction of statutory restrictions on the promotion of advertising to children can, as we have seen in the context of marketing restrictions in relation to alcohol,<sup>47</sup> take a long time to progress. The inclusion of rules in the ASAI code around the advertising of high fat, sugar and salt foods is welcome, but priority should be given to introducing a Public Health Obesity Bill in 2022 to ensure that this commitment is fulfilled during the Government's term in office.

### ➔ **Recommendations**

- ▶ **Prioritise the preparatory work and publish the proposed Public Health Obesity Bill in 2022.**

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<sup>47</sup> Children's Rights Alliance, *Report Card 2020* (Children's Rights Alliance 2021) 60.

**10**

# **Family Homelessness**

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**Section Grade:**

**E**



## The Programme for Government commits to:

Focus our efforts on reducing the number of homeless families and individuals and work with local authorities and housing agencies to support them into long-term sustainable accommodation.

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▶ Progress: **Poor**

'Family Homelessness' receives an 'E' grade, down from a 'C' grade last year. The protection measures introduced during 2020 in response to the Covid-19 pandemic appeared to have a positive impact in reducing family homelessness. Disappointingly, this progress has been eroded and 2021 has seen the number of children and families experiencing homelessness rise once more. While there was a welcome target of ending homelessness by 2030 and key measures in the Government's new Housing for All Strategy, published in 2021, there is a need to introduce additional measures to step-up efforts to tackle child and family homelessness particularly for those who are disproportionately impacted including one parent families, Traveller families, families with disabilities and people leaving Direct Provision.

## Ireland's duties and responsibilities in international law



Under Article 27 of the UN Convention on the Rights of the Child (UNCRC) all children have the right to a decent standard of living that is good enough to meet their physical and social needs and support their development. In cases where parents or carers are unable to provide this, the State must assist by providing “material assistance and support programmes particularly with regard to nutrition, clothing and housing”.<sup>1</sup> The UN Committee on Economic, Social and Cultural Rights is clear that the right to housing applies to everyone and must be accessible and affordable to all. The right is only fulfilled if the property is habitable, offers security of tenure and has provision of facilities essential for health, security, comfort and nutrition.<sup>2</sup>

The right to housing also comes with a duty to monitor the numbers of people who are homeless and those at increased risk of being disadvantaged with regard to housing.<sup>3</sup> States then have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.<sup>4</sup>

Aligned to this, States bear responsibility under Article 16 of the UNCRC to protect the child's private, family and home life. Given that homelessness deprives families of their own personal space, State failure to address homelessness through providing appropriate housing could be considered an interference with the child's right to privacy, as well as the right to a decent standard of living.

Ireland committed to promote, protect and respect children's rights when it ratified the UNCRC in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3(UNCRC) Art 27.

2 UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4 on the Right to Adequate Housing (Art 11(1) of the Covenant)' (1991) UN Doc E/1992/23, para 8.

3 *ibid* para 13.

4 UN & Habitat, The Right to Adequate Housing, Factsheet No 21/Rev. 1 (Office of the High Commissioner for Human Rights, 2014) 34.

in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee expressed several concerns relating to homelessness, including that families with children in Ireland were “facing significant delays in accessing social housing and frequently living in inappropriate, temporary or emergency accommodation on a long-term basis”.<sup>5</sup> The Committee urged Ireland to increase the availability of social housing and emergency housing support and ensure that the policy response is subject to adequate safeguards, reviews and evaluations.<sup>6</sup>

## ► What is the context for this commitment?

Since 2014, child and family homelessness had been rising rapidly but this trend abated somewhat towards the end of 2019. The onset of the Covid-19 pandemic and the subsequent introduction of related protection measures in Spring 2020 saw a significant decrease in the numbers experiencing homelessness by the end of that year.<sup>7</sup> A continued reduction in the number of families experiencing homelessness was evident in Q1 2021<sup>8</sup>. However, in Q2 the figures again began to climb with 925 families with children experiencing homelessness, increasing to 1,077 by December.<sup>9</sup>

### Children homeless in Ireland in 2021

Q1

2,166

Q2

2,167

Q3

2,344

Q4

2,451

Source: Department of Housing, Planning and Local Government, Homelessness Reports.

5 UN CRC ‘Concluding Observations: Ireland’ (2016) UN Doc CRC/C/IRL/CO/3-4, para 61.

6 *ibid* para 62.

7 Department of Housing, Local Government and Heritage, ‘Homelessness Data’ <<https://bit.ly/3op7UCh>> accessed 1 February 2022. For a visual representation see Focus Ireland, ‘Latest Figures on Homelessness in Ireland (Family)’ <<https://bit.ly/36cayoL>> accessed 4 February 2022.

8 *ibid*.

9 *ibid*.

During the same period the number of children experiencing homelessness rose from 2,166 to 2,451.<sup>10</sup> Homeless organisations have linked increases during 2021 to the discontinuation of the pandemic measures introduced during 2020, along with an inability to tackle the structural causes of the homelessness.<sup>11</sup>

A key driver of the decline in homelessness in 2020 was the introduction of the Emergency Measures in the Public Interest (Covid-19) Act 2020, enacted on 27 March 2020. The purpose of this legislation was to help restrict the movement of people, as part of a national effort to suppress the spread of Covid-19. The emergency measures to prevent homelessness expired on 1 August 2020 and were replaced by the introduction of the Residential Tenancies and Valuation Act 2020.<sup>12</sup> This legislation introduced better protections for tenants by prohibiting rent increases in all cases, and tenancy terminations in all but limited and exceptional cases.<sup>13</sup>

While the overall trend shows an increase in homelessness in 2021, by the end of Q4, 5,234 families with children had exited emergency accommodation.<sup>14</sup> Almost 70 per cent of these exits were into the private rental sector or through the Housing Assistance Payment (HAP).<sup>15</sup> In addition to this, throughout 2021 in the Dublin region, 53 per cent of families were prevented from entering emergency accommodation through the provision of a new tenancy arrangement.<sup>16</sup> Despite these positive initiatives, at the end of 2021 almost one in



10 *ibid.*

11 Focus Ireland, 'Homeless numbers increase to 8728 as Focus Ireland calls for a reintroduction of eviction bans and rent freezes due to recent Covid-19 restrictions' (Press release 28 August 2020) <<https://bit.ly/2DWsqZV>> accessed 4 February 2022.

12 Government of Ireland, *The Residential Tenancies and Valuation Act 2020: What this means for landlords and tenants* (Government of Ireland 2020).

13 Residential Tenancies and Valuation Act 2020.

14 Department of Housing, Local Government and Heritage *Homeless Quarterly Progress Report Quarter 4 2021*, <<https://bit.ly/34pay6y>> accessed 1 February 2022.

15 *ibid.*

16 *ibid.*



four children living in emergency accommodation in Dublin were there for more than two years.<sup>17</sup>

The progress achieved in 2020 shows that it is possible to reduce and ultimately end family homelessness once the correct and dedicated policies and actions are put in place. The publication of the Government's new strategy, *Housing for All*, in September 2021 had the potential to address the underlying causes of homelessness. The strategy makes an explicit commitment to eradicate homelessness by 2030, in line with the Government's signing of the 'Lisbon Declaration on the European Platform on Combatting Homelessness'.<sup>18</sup> The Strategy recognises the importance of early intervention initiatives and the role of Family Support services, both in terms of preventing homelessness and in providing a pathway to exit emergency accommodation.<sup>19</sup> There is a strong commitment to prevent entry into homelessness and to help those who are homeless to exit into sustained tenancies.<sup>20</sup> Specific targeted measures are included for those with complex needs.<sup>21</sup> However, there is little specific focus on children and in particular, there is a lack of a dedicated plan or targets to tackle child and family homelessness, particularly for those who are disproportionately impacted including one parent families, Traveller families, families with disabilities and people leaving Direct Provision.

There are many routes into homelessness, including lack of affordable housing, poverty, unsupported mental illness, and for women and children in particular, experience of domestic abuse.<sup>22</sup>

A key driver of family homelessness in the Irish context is the lack of affordable, secure housing and over-reliance on private market provision. Families who cannot afford market rents can avail of the Rent Supplement or HAP. While Rent Supplement and HAP are important supports in terms of affordability, many

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17 *ibid.*

18 Department of Housing, Local Government and Heritage, *Housing for All*, (Government of Ireland 2021) <<https://bit.ly/3CyJoXq>> accessed 4 February 2022, 51

19 *ibid.*

20 *ibid.*

21 *ibid.*

22 C Sullivan & L Olsen, 'Common ground, complementary approaches: adapting the Housing First model for domestic violence survivors' (2016) *Housing and Society* 43:3, 182-194.

prospective and current tenants face discrimination from landlords who refuse to accept them as a means of rent payment.<sup>23</sup> Discrimination based on the use of these supports is prohibited under the Equal Status Acts<sup>24</sup> and the Workplace Relations Commission (WRC) operates as a means of redress in such incidents. Between 2017 and 2020 the WRC received 329 complaints from tenants who say they have experienced such discrimination.<sup>25</sup>

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>26</sup> In October 2021, there was just one property available within the standard HAP limits for both families with one child and families with two children.<sup>27</sup> Vulnerable families are often left with no option but to pay an unofficial "top-up" directly to their landlord, in addition to their differential rent contribution to the local authorities.<sup>28</sup> Although local authorities have the ability to increase HAP in cases where the baseline payment is insufficient to secure suitable accommodation, evidence indicates that not all households who would benefit from accessing a higher rate of HAP are actually receiving it.<sup>29</sup>

Furthermore, under the Housing (Miscellaneous Provisions) Act 2014, HAP is considered to be a social housing support and consequently, households in receipt of a payment under the scheme are not eligible to remain on the main housing waiting list. However, the Department of Housing, Local Government and Heritage has confirmed that ministerial directions have been issued to ensure that, should they so choose, HAP recipients can avail of a move to other forms of social housing support through a transfer list.<sup>30</sup> Recipients should get full credit for the time they spent on the waiting list and be placed

23 Threshold, *HAP and Rent Supplement Discrimination* (Threshold 2021).

24 On 1 January 2016, the Equality (Miscellaneous Provisions) Act 2015 introduced "housing assistance" as a new discriminatory ground. This means that discrimination in the provision of accommodation or related service and amenities against people in receipt of rent supplement, HAP or other social welfare payments is prohibited. Further information is available at Irish Human Rights and Equality Commission, 'Housing Assistance Payment' <<https://bit.ly/3rr3rnr>> accessed 4 February 2022.

25 Threshold, *HAP and Rent Supplement Discrimination* (Threshold 2021).

26 Citizens Information Board, 'Rent Supplement Limits' <<https://bit.ly/2YmYlJi>> accessed 4 February 2022; S.I. No. 56/2017 – Housing Assistance Payment (Amendment) Regulations 2017.

27 Simon Communities of Ireland *Locked Out of the Market* (Simon Communities 2021).

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

29 *ibid.*

30 Communication received from Department of Housing, Local Government and Heritage, 13 November 2020.

on the transfer list with no less favourable terms than if they had remained on the main social housing waiting list.<sup>31</sup> Under *Housing for All*, the Department will undertake an analytical exercise to examine whether an increase in the level of discretion available to Local Authorities under HAP is required, in order to maintain adequate levels of HAP support.<sup>32</sup>

The human right to adequate housing is derived from the right to an adequate standard of living.<sup>33</sup> The denial of a child's right to this adequate standard of living, including the right to adequate housing, can have a significant adverse impact on their development and wellbeing. Global evidence reviews have found that homelessness in children and youth is associated with multiple negative physical, mental, and behavioural health outcomes, with the duration of homelessness compounding and elevating the risk of adverse outcomes.<sup>34</sup> Children who experience homelessness are also more likely to have developmental and learning delays and poorer academic attainment.<sup>35</sup>

Although the right to housing is absolute and should be accessible to all, there is significant discrimination in the housing market, with one parent families, people with disabilities and people from lower socio-economic backgrounds facing high levels of discrimination in access to housing.<sup>36</sup>

One parent families make up a disproportionate number of homeless families.<sup>37</sup> In June 2021, over half of all families experiencing homelessness were one parent families.<sup>38</sup> Since July 2021, the Department has not provided a breakdown of homelessness numbers by family type. This is due to a technical issue which occurred when the PASS system, which records the

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31 *ibid.*

32 Communication received from Department of Housing, Local Government and Heritage 28 January 2022.

33 UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4 on the Right to Adequate Housing (Art 11(1) of the Covenant)' (1991) UN Doc E/1992/23 para 1.

34 Laura E Gultekin et al, 'Health risks and outcomes of homelessness in school-age children and youth: a scoping review of the literature' (2020) *Journal of School Nursing* 36(1) 10– 18.

35 Saskia D'Sa et al, 'The psychological impact of childhood homelessness—a literature review' (2020) *Irish Journal of Medical Science*.

36 R Grotti et al, *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI 2018) ix-x.

37 Department of Housing, Local Government and Heritage, 'Homelessness Report, November 2020' <<https://bit.ly/3cg7iwn>> accessed 4 February 2022.

38 Department of Housing, Local Government and Heritage, 'Homeless Report, June 2021' <<https://bit.ly/3osnlab>> accessed 4 February 2022.

use of emergency accommodation and related homeless services, was upgraded.<sup>39</sup> Lone parents have a lower rate of homeownership, and a higher rate of occupancy in both the private rental and local authority sectors.<sup>40</sup> These families are also likely to have more affordability issues and experience housing deprivation, such as an inability to heat their home.<sup>41</sup>

Similarly, evidence highlights that people of minority ethnicities in Ireland experience significant discrimination in accessing housing, with Black Irish people 3.5 times more likely to experience discrimination than white Irish people and more likely to be represented among the homeless population.<sup>42</sup> Ethnic groups such as Travellers, Asian and Black minorities are more likely to live in overcrowded accommodation compared to other groups.<sup>43</sup> Migrant groups are also likely to have housing affordability issues.<sup>44</sup> Traveller families face significant barriers to accessing their right to housing and are at greater risk of experiencing homelessness than settled families.<sup>45</sup> Given the housing crisis, those with refugee status and people granted leave to remain have found it difficult to leave Direct Provision<sup>46</sup> and as of November 2021 there were 1,636 people in Direct Provision who have actually had their claim for protection processed and been recognised as refugees or granted leave to remain.<sup>47</sup> The publication of *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* in February 2021 commits to much needed action to support the housing needs of those in the international protection system.<sup>48</sup>

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39 Communication received from Department of Housing, Local Government and Heritage 28 January 2022.

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

41 *ibid.*

42 R Grotti et al, *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI 2018) 72-73.

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

44 *ibid.*

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

46 M Ní Raghallaigh et al, *Transition from Direct Provision to life in the community: The experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland* (Irish Refugee Council 2016) 39-42; S Malekmian, 'Some Ex-Asylum Seekers Say They're Stuck in Direct Provision Because Dublin Landlords Won't Accept Them', *The Dublin Inquirer*, 30 September 2020.

47 Communication received from the Department Children, Equality, Disability, Integration and Youth, 18 January 2022.

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



**It is now becoming evident that the progress made during the pandemic to reduce the number of families experiencing homelessness is being reversed.**

Official statistics published by the Department of Housing, Local Government and Heritage only give a limited view of the prevalence of homelessness in Ireland given the specific remit of this department.<sup>49</sup> They do not include families that are homeless but are accommodated in own-door accommodation or transitional housing. Nor do they include women and children in domestic violence refuges, 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. Families who have had to leave their home and are "couch surfing" or relying on friends or family for emergency assistance are also not captured in the official monthly statistics. There were 61,880 households on the social housing waiting list in November 2020, 24 per cent of which were living with their parents and a further ten per cent were living with relatives/friends.<sup>50</sup>

## ► **What has been achieved for children and young people so far?**

### **Reducing the number of homeless families**

It is now evident that the progress made during the pandemic to reduce the number of families experiencing homelessness is being reversed.

The protections which appear to have played a seminal role in reducing the number of families experiencing homelessness were lifted at points where the pandemic was under control. Aside from the retention of easier access to Rent Supplement for those families who have experienced domestic violence,<sup>51</sup> the emergency measures, although working to address homelessness, are considered extraordinary and temporary in nature due to the particular circumstances of the Covid-19 emergency.

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49 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).

50 Housing Agency, *Summary of Social Housing Assessments 2020* (Government of Ireland 2021).

51 Department of Social Protection, 'Minister Humphreys announces Access to Rent Supplement for Victims of Domestic Violence to become permanent' (Press Release 11 November 2021) <<https://bit.ly/3qo5bNO>> accessed 4 February 2022.

By the end of 2021, the majority of exits from homelessness had been to the private rental market, with local authority and approved housing bodies accounting for just 30 per cent of cases.<sup>52</sup> A comparison of the number of exits between 2021 and 2022 indicates that the number of exits is 11 per cent less in 2021.<sup>53</sup> However, there are considerably fewer properties available to rent, with just 1,460 homes available nationwide on 1 November 2021.<sup>54</sup> This is the lowest level of supply recorded since 2006, when this series of data commenced.<sup>55</sup> In comparison, there were 4,150 properties available less than 12 months previously in November 2020, the highest number since 2011.<sup>56</sup>

Rights-based policy analysis has highlighted that as long as the HAP remains the primary mechanism to access housing support, with construction of social housing a secondary objective, families experiencing homelessness will continue to be structurally excluded and liable to experience competition, discrimination, and exclusion within the private rental market.<sup>57</sup> A review of the international evidence suggests affordable rents and legal protections for tenancy rights are key components of effective homelessness prevention strategies.<sup>58</sup>

## **Work with local authorities and housing agencies to support families into long-term sustainable accommodation**

Under international human rights law, States have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.<sup>59</sup> To date, meaningful delivery against this right has been limited, and the central issues of scarce housing stock, high market rents and the insufficiency

52 Department of Housing, Local Government and Heritage, *Homeless Quarterly Progress Report Quarter 4 2021*, <https://bit.ly/34pay6y> accessed 1 February 2022.

53 *ibid*; Department of Housing, Local Government and Heritage, *Homeless Quarterly Progress Report Quarter 4 2020* <<https://bit.ly/3KXMjNL>> accessed 1 February 2022.

54 Daft.ie, *The Daft.ie Rental Price Report* (Daft.ie 2021).

55 *ibid*.

56 Ronan Lyons, 'The Daft.ie Rental Price Report: An analysis of recent trends in the Irish rental market 2020 Q3' <<https://bit.ly/2YkA86I>> accessed 4 February, 19.

57 R Hearne & M Murphy, 'An absence of rights: Homeless families and social housing marketisation in Ireland' (2018) *Administration* 66(2) 27-28.

58 Niall Pleace, *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

59 UN & Habitat, *The Right to Adequate Housing*, Factsheet No 21/Rev. 1 (Office of the High Commissioner for Human Rights, 2014) 34.



of subsidies alone to mitigate the negative impact of this, persist. Previous Governments' actions on homelessness have been largely reactive and narrow in focus, with the lion's share of homeless funding being used for emergency accommodation rather than tenancy sustainment or resettlement support.<sup>60</sup>

Policy on family homelessness has focused on ensuring that families receive initial support in facilities specifically designed to meet their needs, rather than generic emergency accommodation. This has led to the establishment of "family hubs" which have onsite cooking and laundry facilities for families, with access to support staff and some activities for children. In September 2021, there were 35 family hubs in operation providing over 766 units of family accommodation.<sup>61</sup> The introduction of hubs has contributed to significant progress in reducing the need for commercial hotels and B&Bs, with just 105 families accommodated in such facilities in Dublin in December 2021.<sup>62</sup> This was a decrease from December 2020 when 174 families were living in such accommodation.<sup>63</sup> While family hubs are an important first response, they do not represent long-term sustainable accommodation. Despite only being designed for short-term use, in 2019 the then Minister for Housing, Planning and Local Government confirmed family hubs were being used for an average of six months by families,<sup>64</sup> and research with children and parents living in family hubs suggests several problems, including a lack of space and privacy.<sup>65</sup>

Positively, the new Government has expressed a commitment to better understand the needs of families using emergency accommodation, and the Department has contracted the Housing Agency to undertake research into long-term family homelessness.<sup>66</sup> This research will assist in moving these families from emergency accommodation to suitable long-term

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60 Focus Ireland, 'Review of 7 years of spending on homelessness shows it's time to change' <<https://bit.ly/2YgRQaX>> accessed 4 February 2022.

61 Minister for Housing, Darragh O'Brien TD, Dáil Debates, Written Answers, Homeless Accommodation, 22 September 2021, [45456/21].

62 Communication received by the Children's Rights Alliance from Department of Housing, Local Government Heritage, 28 January 2022.

63 *ibid.*

64 Ombudsman for Children's Office, *No Place Like Home: Children's views and experiences of living in Family Hubs* (OCO)2019) 14.

65 *ibid.*

66 Communication received by the Children's Rights Alliance from Department of Housing, Local Government Heritage, 13 November 2020.



accommodation and help to further understand the reasons why they remain in emergency accommodation and the best ways of supporting them to exit homelessness.<sup>67</sup> The National Homeless Action Committee will advance this work.<sup>68</sup>

In recognition of the scale of the housing crisis in Ireland, Budget 2022 committed over €4 billion to capital housing funding; €194 million to support exits from homelessness and an additional €40 million for health supports.<sup>69</sup> The Government has also signalled its commitment to durable solutions by financing the development of over 4,000 affordable homes and adding 11,820 new social homes through build, acquisition and leasing programmes.<sup>70</sup> An additional 14,000 tenancies will also be provided under HAP.<sup>71</sup>

## ► What children and young people need next

To enable effective collaboration between housing agencies, local authorities and central government, all parties must recognise housing as a fundamental right which everyone is entitled to. The previous Government resisted calls for the right to housing to be inserted into the constitution, but promisingly the current Programme for Government has committed to a referendum on this issue.<sup>72</sup> Ireland has a duty, in line with its ratification of the UNCRC, to ensure that socio-economic rights, such as the fundamental right to housing, are fully incorporated in domestic law and policy. Independent analysis based on population rates estimates that to meet housing demand, 34,000 new dwellings must be built each year over the next decade.<sup>73</sup> Measured against this, the Budget 2022 addition of 15,950 new social and affordable homes

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67 *ibid.*

68 Department of Housing, Local Government and Heritage, *Department of Housing, Local Government and Heritage budget package of just under €6bn* (Press Release 12 October 2021) <<https://bit.ly/3HHGO3s>> accessed 4 February 2022.

69 *ibid.*

70 *ibid.*

71 Department of Public Expenditure and Reform and Department of Finance, *Budget 2022: Expenditure Report* (Government of Ireland 2021).

72 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 121.1.

73 T Conefrey and D Staunton, 'Population Change and Housing Demand in Ireland', Central Bank of Ireland Economic Letter, Vol. 2019, No. 14 (Central Bank of Ireland 2019).

is still much lower than what is required and would fail to deliver the right to housing for all citizens and residents in Ireland.<sup>74</sup>

Long-term and durable solutions to the homeless crisis requires rethinking the current approach of marketisation of social housing, and the effectiveness of the HAP model – particularly when it is not keeping pace with market value – to support low-income families at risk of homelessness. Sustainable and durable progress is needed on homelessness prevention. This requires development of adequate housing supply, affordable rents backed by strong legal protections for tenants, and ancillary rapid-rehousing services for those families who have already become homeless.<sup>75</sup> Unless there is a cohesive policy at a strategic level that recognises and mitigates the multi-faceted drivers of family homelessness, many children will continue to experience insecure or inadequate housing, with wide-ranging adverse impacts on their health and development.<sup>76</sup>

Aligned to this, much still needs to be done to redress the barriers that marginalised communities face in accessing their fundamental right to housing. Homeless Traveller and Roma families, and refugee families, require consideration both in relation to emergency accommodation and long-term social housing. Travellers are more likely to be homeless than the general population, with some Travellers experiencing difficulty in accessing emergency accommodation and a high level of hidden homelessness and overcrowding among Traveller families.<sup>77</sup> In one recent study by Focus Ireland, Traveller families represented a disproportionate number of homeless families: they made up seven per cent of homeless families while making up less than one per cent of the general population.<sup>78</sup>

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74 Department of Housing, Local Government and Heritage, *Department of Housing, Local Government and Heritage budget package of just under €6bn* (Press Release 12 October 2021) <<https://bit.ly/3HHGO3s>> accessed 4 February 2022.

75 Nicholas Pleace *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

76 Amy Clair, 'Housing: an Under-Explored Influence on Children's Well-Being and Becoming' (2019) *Child Indicators Research* 12:609–626.

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

78 A Long et al, *Family Homelessness in Dublin: Causes, Housing Histories, and Finding a Home* (Focus Ireland 2019) 24.

In recognition of these challenges, the previous Government published a *Traveller Accommodation Expert Review*.<sup>79</sup> A Programme Board was established to oversee the implementation and it met for the first time in March 2021 and put in place a work programme covering 18 of the 32 recommendations.<sup>80</sup> The Board is comprised of two Traveller representatives, two County and City Management Association (CCMA) representatives, two representatives from the Department of Housing, Local Government and Heritage and is independently chaired by the Chair of the National Traveller Accommodation Consultative Committee (NTACC).<sup>81</sup> The Board has met five times.<sup>82</sup>

Among the recommendations progressed by the Programme Board is research on the issue homelessness amongst the Traveller and Roma communities.<sup>83</sup> This work will include consideration of the recommendation to commission research to better understand homelessness in the Traveller population.<sup>84</sup> There are some signs of progress, with 2020 being the first year since 2014 that the €14.5 million funding provided for Traveller-specific accommodation was fully drawn down by local authorities.<sup>85</sup> However, €4.4 million of the €14.5 million budget was spent on emergency Covid-19 measures: the provision of basic services such as portaloos and water tanks, to alleviate the risk of Covid-19 in Traveller-specific accommodation, rather than on new builds.<sup>86</sup>

It is anticipated that the expenditure of the 2021 budget will be similar to 2020.<sup>87</sup> The budget for Traveller accommodation has increased from

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

80 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage, 28 January 2022.

81 *ibid.*

82 Communication received by the Children's Rights Alliance from the Irish Traveller Movement, 12 November 2021.

83 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage, 28 January 2022.

84 Communication received by the Children's Rights Alliance from Department of Housing, Local Government and Heritage, 13 January 2021.

85 *ibid*; Kitty Holland, 'Almost €15m spent on Traveller housing, the largest annual spend in decades' *The Irish Times*, 23 December 2020.

86 Communication received by the Children's Rights Alliance from the Irish Traveller Movement, 12 November 2021.

87 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage 28 January 2022.



€15.5 million in 2021 to €18 million in 2022. However, the Expert Review recommends a review of funding to consider restoring funding to levels prior to 2008, when the yearly Traveller accommodation budget was €40 million.<sup>88</sup>

Roma families face similar barriers and their particular housing needs must receive careful consideration as well. 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>89</sup> Furthermore, one of the qualifying criteria for the allocation of social housing is employment,<sup>90</sup> but given that national needs assessments suggest that just 17 per cent of Roma are employed,<sup>91</sup> most Roma will be ineligible for social housing support.

In May 2021, the Ombudsman for Children's Office published an investigation report *No End in Site*, which found serious and significant failings on the part of a Local Authority in relation to a Traveller halting site. The report highlighted that 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 hadn't been removed and arriving to school with dirty clothes and shoes because the route they took was muddy and full of water. The Ombudsman for Children stressed the abject failure of the Local Authority to consider the best interests of children, living on the site, including those with additional needs.<sup>92</sup> The Department of Housing, Local Government and Heritage is engaging on a continuous basis with the Local Authority concerned, to provide funding support and to ensure the issues raised in the report are addressed.<sup>93</sup>

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88 Communication received by the Children's Rights Alliance from the Irish Traveller Movement, 12 November 2021.

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

90 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.

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

92 Ombudsman for Children, *No End in Site* (OCO 2021).

93 Communication from the Department of Housing, Local Government and Heritage, 28 January 2022.

## ➔ **Recommendations:**

- ▶ Commit to a date for the referendum on the right to housing.
- ▶ Undertake a comprehensive review of the measures introduced during the initial response to the Covid-19 pandemic and their impact on family homelessness.
- ▶ Build on the progress that was made during the Covid-19 emergency measures, particularly in relation to the reduced number of families needing emergency accommodation, by adopting a preventive approach which prioritises development of long-term affordable and social housing stock.
- ▶ Publish an Implementation Plan for achieving the commitment in the Lisbon Declaration and Housing For All of 'working to end homelessness by 2030', with prioritised targets for ending homelessness for children in homeless families.
- ▶ Develop a Family Homelessness Strategy, which is child-centred and has clear responsibilities, targets and timelines. Specific targets for those who are disproportionately impacted including one parent families, Traveller families, families with disabilities and people leaving Direct Provision should be outlined under this strategy, with tailored objectives and goals.



# 11

# Youth Homelessness

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Section Grade:

# D



## The Programme for Government commits to:

Develop a National Youth Homelessness Strategy.

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▶ Progress: **Slow**

'Youth Homelessness' receives a 'D' grade. While the National Homeless Action Committee appointed by the Government has prioritised the development of a National Youth Homelessness Strategy, there was little progress on its development in 2021. The Department of Housing has committed to developing the strategy early in 2022, yet crucial information related to scope, departmental responsibilities and how children and young people will be involved in its development remain unclear.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) is clear that all children have the right to a decent standard of living<sup>1</sup> and to be safeguarded from any form of abuse.<sup>2</sup> In cases like youth homelessness, where the child is without an obvious caregiver, the State should provide the child with such protection and care as is necessary for their wellbeing.<sup>3</sup> Social policy and practice should reflect a government commitment to meeting child protection rights, and housing is recognised as an area which can have significant bearing on the prevention of violence to children.<sup>4</sup> The UN Committee on the Rights of the Child is also clear that homeless adolescents are particularly vulnerable to experience of institutional and interpersonal violence and that States must provide special protections to these children to mitigate risk of abuse and exploitation.<sup>5</sup>

The Committee is clear that interventions into youth homelessness are most beneficial when the children are active partners in assessing needs and devising solutions, rather than passive beneficiaries.<sup>6</sup> Authorities and decision-makers should recognise that children living on the streets, while vulnerable, can also be highly resilient,<sup>7</sup> and must consider children's views.<sup>8</sup>

Ireland committed to promote, protect and respect children's rights when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

2 *ibid* Art 19.

3 UNCRC, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 35.

4 *ibid* para 43.

5 UNCRC, General Comment No. 4 (2003) Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, para 23, 36.

6 UNCRC, General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, para 33.

7 *ibid* para 28.

8 *ibid* para 45.

every five years on its progress in implementing the rights in the Convention.

In 2016, the Committee expressed concern about the inadequate support provided to care leavers, particularly those who have experienced homelessness and recommended that Ireland amend the Child Care Act, 1991 to adequately address the needs of children who have experienced homelessness.<sup>9</sup>

## ► What is the context for this commitment?

The Programme for Government commits to develop a new Youth Homelessness Strategy with a related commitment to 'ensure that aftercare and transition plans and protocols are developed for vulnerable homeless people or those at risk of homelessness leaving hospital, state care, foster care, prison, or other state settings'.<sup>10</sup>

The last Irish *Youth Homelessness Strategy* published in 2001 by the Department of Health and Children focussed primarily on children under 18 who were not with their families,<sup>11</sup> and it is currently unclear what age range the new youth homelessness strategy will cover.

Homelessness can infringe on a child's right to an adequate standard of living and potentially jeopardise their safety and wellbeing. Like all forms of homelessness, youth homelessness is multi-faceted, but can be classified into three main categories:

- Rooflessness – rough sleeping, with emergency accommodation provided on a night-by-night basis;
- Houselessness – staying in emergency accommodation, bed and breakfast (B&B) accommodation, supported or unsupported temporary accommodation which is not durable or offering security; or

9 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 43-44.

10 Government of Ireland, Programme for Government, *Our Shared Future* (Government Publications 2020) 55.

11 Department of Health and Children, *Youth Homelessness Strategy* (DHC 2001).

- ▶ Insecure and inadequate housing - volatile situations in which a young person may be at risk of re-entering emergency shelter or sleeping rough, for example, returning to an unsupportive family home, housing without secure tenancy rights or sofa/couch surfing with friends.<sup>12</sup>

For children under 18, Section 5 of the Child Care Act 1991 provides that where a child is homeless without their family and Tusla, the Child and Family Agency, is satisfied that there is no accommodation available for the child that they 'can reasonably occupy', then Tusla has responsibility to take the child into care and provide accommodation for them. While in some cases the family issues which led to the child becoming homeless can be resolved swiftly through Tusla intervention, in other cases, the conflict may be protracted.<sup>13</sup> In the first nine months of 2021, 28 young people (aged 16/17 years) were accommodated under Section 5 compared with 22 during the course of the 12 months of 2020.<sup>14</sup>



Notably, Government statistics highlight that the number of young adults aged 18 and older who became homeless in Ireland more than doubled between 2015 and 2019.<sup>15</sup> In 2021 the number of young people between the age of 18 and 24 years experiencing homelessness rose from 780 in May to a high of 1,111 in November.<sup>16</sup> In December 2021, official statistics show that 929 young people aged 18-24 were homeless.<sup>17</sup> This data is based on those accessing emergency accommodation, and many more may not seek formal support, therefore, official records are likely to be a significant underestimate.

<sup>12</sup> FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019).

<sup>13</sup> Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 7 January 2021.

<sup>14</sup> Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 12 January 2022.

<sup>15</sup> Irish Coalition to End Youth Homelessness, *Call for government action on homelessness among young adults* (Irish Coalition to End Youth Homelessness 2019).

<sup>16</sup> Department of Housing, Planning & Local Government, 'Homelessness Data' <<https://bit.ly/3ANu34Q>> accessed 4 February 2022.

<sup>17</sup> Department of Housing, Planning & Local Government, 'Homeless Report, December 2021' <<https://bit.ly/33ZYt8n>> accessed 4 February 2022.

Evidence suggests that children and young people have a different pathway into homelessness and their own distinct needs, and therefore prevention and responses to youth homelessness should be considered separately to broader homelessness strategies.<sup>18</sup> Children and young people can become homeless for many different reasons, including experience of poverty, family conflict or abuse,<sup>19</sup> lack of acceptance and support for sexual or gender identity,<sup>20</sup> or experience of leaving state care.<sup>21</sup> For young people in Ireland, systemic factors such as the rising costs of rents, the scarcity of properties and bias towards older tenants, are having a significant adverse impact and driving youth homelessness.<sup>22</sup> Children and young people experiencing homelessness may therefore be experiencing multiple rights violations and marginalisation beyond the immediate issue of access to secure housing.

## ► What has been achieved for children and young people so far?

On appointment, the Minister for Housing, Local Government and Heritage, Darragh O'Brien TD established a High-Level Homelessness Taskforce to provide a forum for engagement with key organisations working to address homelessness.<sup>23</sup> The scope of the Taskforce included input into the Youth Homelessness Strategy. Between July 2020 and October 2021, the Taskforce met 12 times.<sup>24</sup>

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18 FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019).

19 L Embleton et al, 'Causes of Child and Youth Homelessness in Developed and Developing Countries: A Systematic Review and Meta-analysis' (2016) *JAMA Paediatrics*; 170(5).

20 A Quilty et al, *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland and Belong To 2020).

21 J Dixon et al, *Futures for Careleavers: A Consultation on Outcomes and Aftercare for Young People Leaving Care in Ireland* (Focus Ireland 2018).

22 Focus Ireland, 'Young People – Ireland's 'Forgotten Homeless'' (June 2018) <<https://bit.ly/3lYhdUg>> accessed 4 February 2022.

23 Minister for Housing, Darragh O'Brien TD, Dail Debates, Written Answers, Youth Homelessness Strategy, 6 October 2020 [28664/20]; Minister for Housing, Darragh O'Brien, Dail Debates, Written Answers, Youth Homelessness Strategy, 13 October 2020 [29879/20]. The membership of the taskforce comprises the Dublin Region Homeless Executive, Crosscare, Depaul, Focus Ireland, the Peter McVerry Trust, Dublin Simon Community and Threshold.

24 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage, 28 January 2022.

In September 2021, *Housing for All- A New Housing Plan for Ireland*, was published.<sup>25</sup> The plan recognises the importance of supporting young people at risk of becoming homeless through strategic interventions which can help avoid a cycle of longer-term homelessness.<sup>26</sup>

Reflecting the direction now set out in *Housing for All*, the functions and membership of the High-Level Homelessness Taskforce have been subsumed into the newly established National Homeless Action Committee.<sup>27</sup> The objective of the Committee is to bring together key government departments, agencies and stakeholders, to oversee implementation of the homeless inter-agency measures committed to under *Housing for All*.<sup>28</sup> The Committee held its first meeting in December 2021 and agreed that homelessness prevention and the development of a new Youth Homelessness Strategy would be prioritised.<sup>29</sup>

The Strategy will be prepared with inter-agency and cross-departmental inputs. Given that key elements of support services for young people in or at risk of homelessness fall within the responsibilities of a range of stakeholders, it will be critical that their views inform the Strategy's development.<sup>30</sup> The Department is currently engaged in scoping work in respect of the Strategy and it is envisaged it will be developed throughout Q1 2022.<sup>31</sup>

## ► **What children and young people need next**

The priority now is for the Government to progress the strategy development and publish it in 2022. It is welcome that the Government has adopted an integrative approach to policymaking with regard to the Strategy and that it recognises the necessity of effective joint working between the

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25 Department of Housing, Local Government and Heritage, *Housing for All*, (Government of Ireland 2021).

26 *ibid.*

27 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage, 28 January 2022.

28 *ibid.*

29 *ibid.*

30 *ibid.*

31 *ibid.*



Departments of Housing and Children. A further expansion of responsibility to the Departments of Health and Education would ensure the Strategy has a more holistic approach. As part of the Strategy's development, it is crucial that young people are seen as active partners in its design and are consulted in a meaningful way. All public bodies charged with implementation of the Strategy must be clear on their obligation under the Public Sector Equality and Human Rights Duty 'to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work'.<sup>32</sup>

During strategy development, a rights-based approach should be deployed which recognises young people experiencing homelessness as equal partners and respects their views.<sup>33</sup> The former UN Special Rapporteur on the Right to Housing has argued that elimination of youth homelessness is a top human rights priority.<sup>34</sup> In 2020, the UN Human Rights Council called on States 'to take positive measures with a view to prevent and eliminate homelessness by adopting and implementing laws, administrative orders, cross-sectional strategies and programmes at all levels that are, among others, gender-, age- and disability-responsive and based on international human rights law'.<sup>35</sup> This reinforces the need for Ireland's youth homelessness strategy to be underpinned by universal rights with the standards laid out in the UNCRC applied to children and young people under the age of 18 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) applied to everyone including children and young people over the age of 18.<sup>36</sup>

As such, the Strategy must also be developed in line with the guiding principle of non-discrimination, set out in Article 2 of the UNCRC and Article

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32 Irish Human Rights and Equality Commission, *Implementing the Public Sector Equality and Human Rights Duty* (IHREC 2019) 2.

33 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12.

34 Canada Without Poverty, *A Way Home, Youth Rights! Right Now! Ending Youth Homelessness: a Human Rights Guide*, (Canada Observatory on Homelessness (Canada Observatory on Homelessness, 2016) 4.

35 UN General Assembly, Resolution adopted by the Human Rights Council on 19 June 2020 43/14. Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context (2020) UN Doc A/HRC/RES/43/14, para 1(j).

36 Canada Without Poverty, *A Way Home, Youth Rights! Right Now! Ending Youth Homelessness: a Human Rights Guide*, (Canada Observatory on Homelessness, 2016) 11-12.

2 of the ICESCR.<sup>37</sup> At each stage, it is vital that all stakeholders are alert and responsive to the particular needs of different cohorts of young people who may have differing routes into homelessness and unique experiences of it. The independent evaluation of the 2011 *Youth Homelessness Strategy* found that there should have been greater consideration of the needs of minority groups, such as Travellers, ethnic groups and LGBT (Lesbian, Gay, Bisexual and Transgender) youth groups.<sup>38</sup> Building on this, 2020 research highlights that LGBTI+ young people in Ireland face similar risks of homelessness to their heterosexual and cis-gendered peers,<sup>39</sup> such as leaving care, family breakdown and the shortage of affordable accommodation. In addition, the experience of coming out and/or transitioning can also be a trigger for homelessness.<sup>40</sup> Enhanced capacity to support the rights and diversity of LGBTI+ homeless service users was an action of the *LGBTI+ Inclusion Strategy 2019-2021*.<sup>41</sup> It is vital that the proposed Youth Homelessness Strategy is synergised with both the *LGBTI+ Inclusion Strategy and the LGBTI+ Youth Strategy* and is able to address the additional barriers that these young people face.

Recent Irish research into youth homelessness found that family circumstances were the main driver of homelessness amongst young people.<sup>42</sup> This finding coheres with international research which points to conflict or breakdown in the family home, combined with substance misuse, mental health issues, and educational problems, being a key contributor to entry into homelessness.<sup>43</sup> It is important to remember that conflict between parent and child can occur in both birth and foster families. Given that these stressors do not occur in a vacuum, but are instead a product of broader structural and systemic factors, averting youth homelessness requires

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37 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2; International Covenant on Economic, Social and Cultural Rights (ICESCR) (13 December 1991) Art 2.

38 S Denyer et al, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

39 'A person whose gender identity and gender expression is aligned with the sex observed and recorded at birth'. A Quilty and M Norris *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland 2020) 9.

40 *ibid* 57.

41 Department of Children and Youth Affairs, *National LGBTI+ Youth Strategy 2018-2020: LGBTI+ young people: visible, valued and included* (DCYA 2018), action 13.2.

42 C Bairéad and M Norris, *Youth Homelessness in the Dublin Region: A profile of young, single emergency accommodation users in 2016, 2017 and 2018* (Focus Ireland: 2020).

43 K Schwan et al, *Preventing youth homelessness An international review of evidence* (Wales Centre for Public Policy: 2018).

engagement with macro-level drivers such as inadequate housing stock or social protection, and delays in accessing mental health and substance misuse support.<sup>44</sup> Aligned to this, a cohesive and coordinated strategy should be accompanied by appropriate budgetary allocation for prevention and early intervention services given the important role child protection and welfare services, as well as family support and youth services, play for children and young people at risk of, or who are already, homeless, which was also a main finding of the previous youth homelessness strategy evaluation.<sup>45</sup>

The Strategy must explicitly work to better understand and address the reasons why children who have experienced family conflict, abuse and neglect, and/or who have been in state care, are at heightened risk of homelessness and it should identify any other groups of young people who disproportionately experience, or are at risk of, homelessness. In particular, the previous youth homelessness strategy evaluation found that the needs of older adolescents and those at transition stage warrant particularly close attention to ensure that these young people do not fall between child and adult services.<sup>46</sup> This remains a major issue eight years after that evaluation was published.

In 2020, accommodation was the main overriding advocacy issue which children in care and young people with care experience contacted Empowering People in Care (EPIC) for assistance.<sup>47</sup> There are two legal and practice issues which increase the risk that young vulnerable adolescents in and at the edge of care becoming homeless. Firstly, eligibility thresholds for aftercare plans are restrictive, meaning some young people who could benefit from support are disqualified, and secondly, the fact that provision of an aftercare plan does not guarantee access to the necessary services - in this case, appropriate accommodation. Since 1 September 2017, young people leaving care at age 18 have the right to an aftercare plan prepared by Tusla, which provides assistance, including arrangements for accommodation for young people up to the age of 21 who have been in care.<sup>48</sup> However, only

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44 *ibid.*

45 S Denyer et al, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

46 *ibid.*

47 *EPIC Advocacy Report 2019-2020* (EPIC 2021).

48 Communication received by Children's Rights Alliance from Department of Housing, Local Government and Heritage, 13 November 2020.

children who have spent 12 months in the care of the State between the ages of 13 to 18 are eligible for this.

While older adolescents who experience a family breakdown at age 17 may receive housing support from Tusla under Section 5 of the Child Care Act 1991, they will not meet the 12-month eligibility threshold for aftercare, meaning no support can be provided to them after they turn 18.<sup>49</sup> Furthermore, even for those young people who are eligible for a plan, there is no mechanism to ensure that the provisions in the plan are actually provided, as the statutory entitlement is to a plan rather than a service or good. Indeed, there is a lack of supported or semi-supported accommodation which can assist young people as they transition out of care, and some young people report that student accommodation providers do not accept the Housing Assistance Payment (HAP) as a form of partial payment for accommodation.<sup>50</sup> These issues are placing young people at increased risk of homelessness and may partially explain why many young care-experienced people are seeking assistance from EPIC to find and secure appropriate accommodation to meet their needs.<sup>51</sup>

It is crucial that the proposed Strategy gives equal consideration to how the health and education rights of homeless youth can be supported. Young people experiencing homelessness are at an elevated risk of mental health concerns compared to their housed peers,<sup>52</sup> and thus, attention must be given to how crisis and out-of-hours support can be provided to young people experiencing homelessness. Also, and as outlined in the previous strategy's evaluation, close consideration should be given to how children and young people in precarious accommodation can be supported to continue in education.<sup>53</sup> For these aspects, it is vital that the strategy development involves the Department of Health, Tusla, the Department of Education and the Department of Further and Higher Education.

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49 TUSLA, *National Aftercare Policy for Alternative Care* (TUSLA 2017). Section 45 of The Child Care Act 1991 places a statutory duty on Tusla to form a view in relation to each person leaving care as to whether there is a "need for assistance" and if it forms such a view, to provide services in accordance with the legislation and subject to resources. This legislative provision is strengthened by the Child Care Amendment Act 2015.

50 Communication received by the Children's Rights Alliance from EPIC, 13 January 2021.

51 EPIC *Advocacy Report 2019-2020* (EPIC, 2021).

52 S Perlman et al 'Youth Homelessness: Prevalence and Mental Health Correlates', 2014, *Journal of the Society for Social Work and Research* 5:3.

53 S Denyer et al, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

Finally, the Strategy needs to be evidence-based and should engage with international best practice. One approach which has garnered global recognition is the *Housing First for Youth* framework which was developed for children and young people aged 13-24 in Canada and has since been adopted in several European countries.<sup>54</sup> This approach to ending youth homelessness is premised on the principle that housing is a human right and that adequate housing is a precondition for recovery. The model decouples provision of housing from service engagement so young people can access their right to housing without conditionality, with wrap-around support provided, and in line with trauma-informed principles. In Ireland, the model has been used with care leavers in Limerick and Cork in a collaboration between Focus Ireland and Tusla.<sup>55</sup> The previous Government committed to a Housing First model for tackling homelessness more broadly and this approach underpinned policy.<sup>56</sup> With regard to youth homelessness, it will be critical to have an evidence-based and youth-specific strategy which is championed across Government and supported by the necessary resources to enable effective implementation.

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54 Stephen Gaetz, *This is Housing First for Youth: A Program Model Guide* (Canadian Observatory on Homelessness 2017); Stephen Gaetz, *This is Housing First for Youth: Europe: A Program Model Guide* (Canadian Observatory on Homelessness Press 2019).

55 Triona O'Connor, Housing First for Youth Service: Support for Young people Leaving care and at risk of Homelessness powerpoint presentation Tusla, Focus Ireland <<https://bit.ly/2Mg4iVE>> accessed 4 February 2022.

56 Dublin Region Homeless Executive, *Housing First National Implementation Plan 2018-2021*, (DRHE, September 2018).

## ➔ Recommendations

- ▶ Prioritise the publication of the Youth Homelessness Strategy in 2022, ensuring that it recognises the challenges facing both those under 18 and young adults.
- ▶ Consult and partner with young people who have been affected by homelessness when designing the strategy to ensure it is grounded in and responsive to their lived experience.
- ▶ Ensure that the Youth Homelessness Strategy is aligned with the National Youth Strategy and the LGBTI+ Strategy, in particular, and builds on the learnings from both of these consultation processes.
- ▶ Learn from international best practice in youth homelessness prevention and responses and consider a Housing First model with provision for person-centred care and community support.
- ▶ Reconsider eligibility criteria for aftercare plans, particularly for 16 and 17-year-olds who may become homeless at this transition stage, but who will not have met the five-year threshold of care-experience to benefit from support after the age of 18.

**12**

**Children  
in Direct  
Provision**

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**Section Grade:**

**B-**





## The Programme for Government commits to:

Ending the Direct Provision system and replacing it with a new International Protection accommodation policy centred on a not-for-profit approach.

### We will:

Publish a White Paper by the end of 2020, informed by the recommendations of the Expert Group, which will set out how this new system will be structured and the steps to achieving it.

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#### ▶ Progress: **Complete**

In the short term, act on interim recommendations from the Chair of the Expert Group to improve conditions for asylum seekers currently living in the system. This includes vulnerability assessments, the right to work, the ability to apply for drivers' licences and bank accounts, an independent inspection process, measures to reduce the length of time in processing decisions, mental health services and the training of managers of Direct Provision Centres.

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#### ▶ Progress: **Steady**

Implement the measures identified by the Expert Group to ensure that international protection applications are dealt with and brought to finality as quickly as possible, while always ensuring fair procedure and a human rights-based approach.

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#### ▶ Progress: **Some**

**'Children in Direct Provision' receives a 'B-' this year, an increase on last year's 'C+' grade. This reflects the publication of the White Paper on Ending Direct Provision with clear commitments, that if implemented, will transform the lives of children and young people seeking asylum. The focus on child protection and welfare, family support and the proposed introduction of a child income payment equivalent to Child Benefit are all welcome commitments. Extending the Health Information and Quality Authority's (HIQA) remit to inspect centres currently accommodating international protection applicants is also a welcome development. Accountability and implementation structures have been put in place and will help to monitor progress to determine if the Government will meet its own deadline to end Direct Provision by 2024.**

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) requires States to assist all children seeking refugee status and ensure they can access the full range of convention rights including rights to health, housing, education and an adequate standard of living.<sup>1</sup> Ancillary to this, States are also obligated to pay particular attention to children experiencing trauma by giving appropriate protection and the special support necessary for recovery under Article 39. These rights apply to children who enter Ireland with their families and unaccompanied asylum-seeking children. Article 20 recognises that States have a duty to provide care and protection to children who are separated from their families. The Committee on the Rights of the Child is clear that equal standards of protection must be provided to every child under 18, infants and adolescents alike, and that child protection and welfare actors should take primary responsibility for children in the context of international migration.<sup>2</sup> Reception conditions for those awaiting status determination must provide adequate space and privacy for children and their families.<sup>3</sup>

Ireland's progress against meeting these Convention rights was last examined by the Committee on the Rights of the Child in 2016. The Committee expressed several concerns that children seeking asylum in Ireland were experiencing disadvantage, highlighting that numerous Direct Provision centres were not equipped to support the needs of families and the rights of children; there was no independent inspectorate to ensure children's rights were safeguarded and promoted in centres; and the that weekly allowance payment for asylum-seeking children did not reflect the cost of living in Ireland.<sup>4</sup>

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 22.

2 Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return* (2017) CMW/C/GC/4-CRC/C/GC/23 para 3 and para 13.

3 *ibid* para 50.

4 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 65.

The Committee noted that Ireland should strengthen its measures to ensure that children in an asylum-seeking or refugee situation can access the same support services as Irish children. The Committee recommended that Ireland:

- ▶ Ensure that all centres support the education and social development of children and provide child protection services and culturally appropriate support;
- ▶ Introduce independent inspection of centres; and
- ▶ Increase the child refugee allowance to align with the cost of living.<sup>5</sup>

## ▶ What is the context for this commitment?

The system of Direct Provision for those seeking international protection - housing and subsistence provided through segregated, institutional accommodation centres - was introduced in Ireland in April 2000. At the end of September 2021, there were 45 accommodation centres nationwide.<sup>6</sup> Some of these centres are commercially owned and operated through a for-profit model, while others are state-owned facilities using private contractors to deliver key services.<sup>7</sup> In October 2021, approximately one in every four applicants for international protection was a child, with 1,794 children in the system.<sup>8</sup>



<sup>5</sup> *ibid* para 66.

<sup>6</sup> Department of Children, Equality, Disability, Integration and Youth *International Protection Accommodation Services Monthly Report - October 2021* (DECDIY 2021).

<sup>7</sup> 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) 20; Irish Government Economic and Evaluation Service Unit of Department of Justice and Equality, *Direct Provision: Overview of current accommodation expenditure, Spending Review 2019* (DOJE 2019) 51.

<sup>8</sup> Department of Children, Equality, Disability, Integration and Youth *International Protection Accommodation Services Monthly Report - October 2021* (DECDIY 2021).

The UN Committee on the Rights of the Child, as well as several other domestic bodies,<sup>9</sup> have expressed concern that Direct Provision centres were not suitable for children's needs and that significant changes were required. The Committee recommended that the Government ensure that facilities are appropriate for young children and families; enhance child protection services and ensure that weekly allowance payment for asylum-seeking children is proportionately increased so that it corresponds with the cost of living in Ireland.<sup>10</sup>

Increased oversight and the provision of clear recommendations has led to accelerated reform. *Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* recognised refugee and asylum-seeking children as a particularly vulnerable group and pledged to safeguard and promote their welfare and to tackle discrimination and intolerance.<sup>11</sup> This recognition coincided with significant changes to asylum policy, including:

- ▶ the introduction of a single procedure for status determination in 2016, aimed at reducing the length of time applicants spend in Direct Provision;<sup>12</sup>
- ▶ the extension of the right to work in 2017;<sup>13</sup>
- ▶ the transposition of the EU Recast Reception Conditions Directive<sup>14</sup> into Irish law in 2018, setting out binding minimum standards for reception

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9 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); Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (DOJE 2015); Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (Houses of the Oireachtas 2019).

10 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4, para 66.

11 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (Department of Children and Youth Affairs 2014) 139–140.

12 The International Protection Act 2015 was commenced on 31 December 2015.

13 Department of Justice, 'Ministers Flanagan and Stanton announce enhanced access to the labour market for asylum seekers' (Press Release 27 June 2018) <<https://bit.ly/3iZ5xVB>> accessed 4 February 2022; the change in policy occurred because of the Supreme Court decision in *NvH v Minister for Justice* [2018] 1 IR 246, where it was held that the absolute prohibition on the right to work for protection seekers, where there was no temporal limit, was contrary to the applicant's constitutional rights.

14 European Commission, 'Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of application for international protection (recast)' OJEU L180/96.

conditions, including rights relating to healthcare, accommodation, employment and education;<sup>15</sup>

- ▶ the development of the 2019 *National Standards for accommodation offered to people in the protection process*, which aim to standardise the quality of care in all accommodation centres irrespective of location;<sup>16</sup> and
- ▶ an increase in the residents' weekly allowance to €38.80 per adult and €29.80 per child in 2019.<sup>17</sup>

Both the transposition of the EU Recast Reception Conditions Directive into Irish law and the introduction of the *National Standards for accommodation offered to people in the protection process* are crucial steps towards enabling policy reform through a rights-based approach. The *National Standards* address the rights and needs of children through, for example, the requirement to provide families with own-door accommodation, dedicated space for educational activities, access to cooking facilities and age-appropriate information and engagement with children on matters affecting them.<sup>18</sup> Across all areas, service providers are also obliged to act in the best interests of the child in line with the UNCRC.<sup>19</sup> The *National Standards* have the ability to improve quality, challenge underperformance and provide oversight and will help to ensure that there is uniformity in service provision.<sup>20</sup>

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15 European Communities (Reception Conditions) Regulations 2018, SI 230/2018.

16 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (DOJE 2019).

17 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

18 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019) see Theme 4: Accommodation; Standard 4.6; Standard 6.1.9; Theme 5: Food, Cooking and Catering Facilities.

19 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 3.

20 Michele Clarke, *Briefing Paper on the Inspection of Direct Provision* (Department of Justice and Equality 2015) 7.

## ► What has been achieved for children and young people so far?

The Government has committed, during its five-year term, to end the Direct Provision system and will replace it with a new international protection accommodation policy. To achieve this, it has made specific commitments which are examined in detail in the following paragraphs.

### White Paper to End Direct Provision

In February 2021, the Government published *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*.<sup>21</sup> The *White Paper* sets out the Government's approach to fulfilling its commitment in the Programme for Government to end Direct Provision and to replace it with a new international protection accommodation policy, centred on a not-for-profit approach.

The *White Paper* was informed by the work of the Dr Catherine Day Advisory Group which was asked to consider "new ways in which we can better meet the needs of asylum seekers".<sup>22</sup> The Day Report demonstrated how the current model could be ended and replaced with a new, more cost-effective model.<sup>23</sup> This new model proposes a two-phased approach to accommodating applicants for international protection.

In phase one:

- Vulnerability Assessments will be carried out to determine accommodation and service needs, and help define suitable supported pathways for the most vulnerable.<sup>24</sup>

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

22 Department of Justice and Equality, 'Ministers Flanagan and Stanton announce establishment of Expert Group on Direct Provision' (Press Release 28 December 2019) <<https://bit.ly/3qYb8OP>> accessed 4 February 2022.

23 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work' (Press Release, 21 October 2020) <<https://bit.ly/3pnMDKu>> accessed 4 February 2022.

24 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 29.



- ▶ Applicants will be initially accommodated in a reception and integration centre for four months before moving on to own-door accommodation for families, and own-room for single people, with specific tailored accommodation for those with identified vulnerabilities.<sup>25</sup>
- ▶ There will be a focus on identifying needs and linking applicants to appropriate services using an approach that seeks to encourage integration.<sup>26</sup>
- ▶ Accommodation will be State-owned and managed by not-for-profit organisations on the State's behalf.<sup>27</sup>
- ▶ Applicants will be provided with information about the international protection process and the services available to them, including access to the Legal Aid Board, the health service, educational supports, childcare, employment and English language orientation programmes.<sup>28</sup>
- ▶ Applicants will be offered a health assessment with a particular focus on the needs of children.<sup>29</sup> Applicants will also be eligible for an Irish drivers' licence.<sup>30</sup>

The second phase is intended to focus on applicants fostering an independent life:

- ▶ All accommodation will be own-door and self-contained units and will be situated within the community.<sup>31</sup>
- ▶ Not-for-profit organisations will provide supports for vulnerable people on a contractual basis, with the Department of Children, Equality, Disability, Integration and Youth to facilitate such services at a particular location.<sup>32</sup>

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25 *ibid* 28.

26 *ibid*.

27 *ibid* 92.

28 *ibid* 28.

29 *ibid* 29.

30 *ibid*.

31 *ibid*.

32 *ibid*.

- ▶ Applicants and their families will have the right to access mainstream services, such as education and health.<sup>33</sup>
- ▶ Access to further intensive English language supports will be provided.<sup>34</sup>
- ▶ Applicants will receive an income support payment at a similar rate to the Supplementary Welfare Allowance, if they have not yet entered employment.
- ▶ Applicants with children will also receive a child support payment.<sup>35</sup>
- ▶ Applicants will be entitled to access employment if they do not receive a first instance decision within six months of applying for protection.<sup>36</sup>

In both phase one and two, there will be an emphasis on child welfare and child protection.<sup>37</sup> It is welcome that Children and Young People’s Services Committees (CYPSCs), comprising key statutory and voluntary sector agencies in different counties, will provide a specific focus on the needs of children, young people and their families in international protection accommodation settings, with the input of Tusla, the Child and Family Agency. Parenting supports and child development services will also be made available to families to support child development<sup>38</sup> and childcare will be provided to enable parents to attend English language classes.<sup>39</sup>

With over 1,000 children living in Direct Provision,<sup>40</sup> any plans to transform their lives must start with the system built around them. It is welcome to see a commitment to reduce the length of time spent in initial reception accommodation in phase one of the *White Paper*, with the aim to move to own-door, family-appropriate accommodation in the community in phase two.

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33 *ibid* 30.

34 *Ibid* 53.

35 *ibid* 30.

36 *ibid*.

37 *ibid* 30

38 *ibid* 30.

39 *ibid*.

40 Department of Children, Equality, Disability, Integration and Youth, *International Protection Accommodation Services Monthly Report - October 2021* (DECDIY2021).

Delays in the international protection processes have a profound impact on the mental health of children and families. Dignity, respect and integration must be the values to guide future changes and to ensure the new centres work to alleviate the anxiety and instability that many children experience both before and when they first arrive here. The provision of own-door accommodation is one way to ensure that children and young people are growing up in an environment conducive to their needs physically, mentally and socially. The Children's Rights Alliance has consistently recommended the provision of own-door accommodation and we believe that access to this type of accommodation will have a hugely positive impact on the lives of families as it prevents potential institutionalisation.<sup>41</sup> In the context of the current housing crisis, it is important that the Government adopt a comprehensive strategy to ensure equity across waiting lists for own-door accommodation among both international protection applicants and Irish residents.<sup>42</sup>

We commend the Government for the clear focus on children and their needs, particularly the emphasis on child welfare and protection,<sup>43</sup> outlined in the *White Paper*, which will play a crucial role in their future. Tusla, the Child and Family Agency, will play an important role in focusing on parenting supports and child development services and the recognition that some families who have experienced conflict or trauma may need additional support.<sup>44</sup> The dedicated funding for Tusla in the *White Paper* is a positive sign that concerns about a lack of parenting supports, and the disproportionate number of child protection and welfare referrals, have been heard.<sup>45</sup> Tusla will also play a vital role in supporting children to access school places, although the *White Paper* falls short of proposing individual assessments for children in terms of their level of education and their educational needs.<sup>46</sup>

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41 Children's Rights Alliance, *Submission to the Expert Group on the Provision of Support, Including Accommodation, to Persons in the International Protection Process* (CRA 2020) 9 <<https://bit.ly/3J0qrzy>> accessed 12 January 2022.

42 Prevention and Early Intervention Network, *PEIN Response to Government Plans for International Protection Reforms* (PEIN 2021) 4.

43 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 30.

44 *ibid* 65.

45 Ombudsman for Children's Office, *Safety & Welfare of Children in Direct Provision – An Investigation by the Ombudsman for Children's Office* (OCO 2021) 31.

46 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 43.

The CYPSCs will play a key role in ensuring that children's needs remain a priority and to address any disconnect that children and young people feel from the community that they live in.<sup>47</sup> It is welcome that each CYPSC will ensure that there is a focus on the needs of children and their families in International Protection Accommodation, through the creation of an action plan for the coordination and provision of services and supports from CYPSC member organisations to applicants and their families.<sup>48</sup> Consistent funding of such voluntary sector agencies will be required to ensure the ongoing provision of support to asylum-seeking children and young people, both within and outside the work of the CYPSCs.<sup>49</sup>

The *White Paper* commits to prioritising the protection applications of unaccompanied minors and aims to provide a final instance decision to young people before they turn 18.<sup>50</sup> This will be a marked improvement to the current situation, where young people transfer into Direct Provision when they turn 18. The *White Paper* clearly accepts that Direct Provision is manifestly unsuitable for children, but it must be noted that transferring overnight to accommodation from foster care or dedicated residential accommodation will be particularly challenging for young people who are in Ireland alone.

Another important and welcome aspect of the new system is the fact that for the first time in more than 20 years, children in the protection process will be treated equally to other children living in Ireland, who get a Child Benefit payment every month. Parents of children in the protection process will receive a monthly International Protection Child Payment which will be provided at the same rate as Child Benefit,<sup>51</sup> as they move into phase two accommodation.<sup>52</sup> At phase two, parents may also receive a means-tested International Protection Payment, which will be aligned with rate of

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47 *ibid* 60-61.

48 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

49 Prevention and Early Intervention Network, *PEIN Response to Government Plans for International Protection Reforms* (PEIN 2021) 3.

50 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 61.

51 *ibid* 64-65.

52 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

the Supplementary Welfare Allowance and the payment of the phase one expenses allowance will be discontinued.<sup>53</sup> Positively, such new payments may be made available in 2022, when certain applicants are scheduled to transition into phase two accommodation.<sup>54</sup>

The focus on creating a new system 'grounded in the principles of human rights, respect for diversity and respect for privacy and family life'<sup>55</sup> for people seeking international protection is long overdue and is very welcome. It will ensure that the new reception centres respect the rights of the children, young people and families who pass through their doors. Ensuring that families with children can create homes in our communities around the country will be a significant departure from the current system. Maintaining this focus will be crucial to the implementation of the *White Paper* and determining whether it will have the transformative effect it promises.

The Department of Children, Equality, Disability, Integration and Youth has established a Transition Team to advance the implementation of the *White Paper*, which will be overseen by a Programme Board and an External Advisory Committee.<sup>56</sup> It is welcome that a detailed implementation plan is in development and that cooperation with implementation partners, such as the Department of Housing, Local Government and Heritage, the Housing Agencies and local authorities, has been initiated and continues to be fostered.<sup>57</sup>

In July 2021, Minister for Children, Equality, Disability, Integration and Youth Roderic O'Gorman TD, announced the membership of the Programme Board.<sup>58</sup> It is tasked with monitoring the progress of, and overseeing the

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53 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 30, 64-65.

54 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

55 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 11.

56 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

57 *ibid.*

58 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman announces Membership of the Programme Board overseeing the end of Direct Provision' (Press Release 23 July 2021) <<https://bit.ly/34BI2Pu>> accessed on 4 February 2022.

implementation of, the *White Paper* and has met on five occasions in 2021.<sup>59</sup> In September 2021, the Minister also announced the appointment of a three-person Expert Advisory Group to monitor the implementation of the *White Paper*.<sup>60</sup> This group met twice since its establishment.<sup>61</sup>

A new centre comprising own-door accommodation for up to 35 families opened in Galway city in September 2020 and another such centre opened in Letterkenny in February 2021, for up to 60 families.<sup>62</sup> These are positive developments, and the State must continue to increase system capacity during the transition period to ensure that use of emergency accommodation is phased out, given the unsuitability of this type of accommodation, particularly for children.

## Independent Inspections

For many years the Children's Rights Alliance has called for HIQA (the Health Information and Quality Authority) to take on inspection of the Direct Provision system.<sup>63</sup> With the *National Standards*,<sup>64</sup> in place from 2021, included in new or renewed contracts with accommodation providers as contractual obligations that must be met, it is welcome to see the clear commitment that HIQA will conduct such inspections. The *White Paper* indicates that HIQA will continue to monitor existing centres against the agreed standards as the system transitions, but its expertise will be sought to develop a new and robust inspections system for the new model.<sup>65</sup> In November 2021, the Department

59 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

60 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman appoints independent group to track progress on ending Direct Provision' (Press Release 23 September 2021) <<https://bit.ly/3IUFP0m>> accessed on 4 February 2022. The group's members are Dr Catherine Day, former Secretary General of the European Commission and Chair of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process; Dr David Donoghue, retired diplomat and former Ambassador to the United Nations; Dr Lorcan Sirr, Senior Lecturer at Technological University Dublin and housing policy expert.

61 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

62 *ibid.*

63 Children's Rights Alliance, *Submission to the Joint Oireachtas Committee on Justice and Equality on direct provision and the international protection process* (CRA 2019) <<https://bit.ly/3orsqoF>> accessed 4 February 2022.

64 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (DOJE 2019).

65 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 66.

of Health and the Department of Children, Equality, Disability, Integration and Youth entered into a formal relationship with HIQA for the purpose of conducting the preparatory work needed to ensure HIQA assumes its monitoring role in 2022.<sup>66</sup> However, it is unclear when HIQA will commence inspecting centres against the *National Standards*.

## Vulnerability Assessments

Ireland committed to carrying out vulnerability assessments within 30 days when it adopted the EU Reception Conditions Regulations July 2018.<sup>67</sup> This is a statutory obligation which Ireland should already be meeting and because of this, the Government has agreed to expedite these assessments.<sup>68</sup> The Day Report recommended such assessments should be introduced promptly and be offered to all asylum seekers within 30 days of their arrival, by 2023 at the latest.<sup>69</sup> The implementation of this recommendation will represent another critical step towards ensuring that children's lived experience of Direct Provision is improved in the interim and goes some way towards recognising the State's obligation to support children experiencing trauma.<sup>70</sup>

As a new model of international protection is introduced, increased emphasis must be placed on how the State can support the socio-emotional and mental health needs of asylum-seeking children and their families. Asylum-seeking and refugee children are at significant increased risk of psychological distress,<sup>71</sup> and it is vital that on arrival in Ireland, a comprehensive needs assessment is in place to identify and provide appropriate support in a timely manner. This will require an effective multi-agency approach to ensure there is joined-up support and that children are not disadvantaged in accessing their full range of rights

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66 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

67 European Communities (Reception Conditions) Regulations 2018, S.I. No. 230/2018 s8.

68 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work' (Press Release, 21 October 2020) <<https://bit.ly/3pnMDKu>> accessed 4 February 2022.

69 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DOJ 2020) 74.

70 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 39.

71 L Bronstein and P Montgomery, 'Psychological distress in refugee children: a systematic review' (2011). *Clinical Child and Family Psychology Review* 14(1).



without discrimination.<sup>72</sup> It is imperative that the role of prevention and early intervention services<sup>73</sup> is considered when conducting assessments in a manner that is linguistically and culturally appropriate.<sup>73</sup>

It is also critical that these vulnerability assessments apply a strength-based approach in line with a person-centred model of care. Narratives around victimhood or vulnerability are unlikely to be helpful and do a disservice to the perseverance and tenacity of children who either alone, or with their families, have travelled thousands of kilometres, often in perilous conditions. While the *White Paper* recommends a single assessment on entry to Ireland,<sup>74</sup> assessments should not be a once-off element of an induction package given that resilience and vulnerability are not static concepts, and the particular needs of the child may change over time. For example, it is well-documented that the difficulties in adjusting to life in a new country while experiencing post-immigration stressors such as poverty and deprivation, or social isolation, can compound trauma.<sup>75</sup> If the State is committed to a rights-based approach to reception for people seeking international protection, it is vital that assessment and support is considered in an ongoing and iterative manner, in line with the State's duties under the EU Reception Conditions Directive.<sup>76</sup>

The Department of Children, Equality, Disability, Integration and Youth began carrying out vulnerability assessments on a pilot basis in January 2021, which was extended to all new applicants from February 2021.<sup>77</sup> By 21 April 2021, 306 applicants had entered the vulnerability assessment process with 165

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72 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 2. For example, evidence from the UK suggests that refugee and asylum-seeking youth do not receive comparable levels of support to British children; it has been estimated that over 90 per cent of migrant and refugee children deemed in need of mental health services never receive them – this is in part due to concerns about service accessibility and stigma. See M Fazel et al, 'The right location? Experiences of refugee adolescents seen by school-based mental health services' (2016) 21 *Clinical Child Psychology and Psychiatry* 368.

73 Prevention and Early Intervention Network, *PEIN Response to Government Plans for International Protection Reforms* (PEIN 2021) 5.

74 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 60.

75 P Vostanis, 'Meeting the mental health needs of refugees and asylum seekers' (2014) *British Journal of Psychiatry* 204(3); P Vostanis, 'New approaches to interventions for refugee children' (2016) *World Psychiatry* 15(1).

76 European Communities (Reception Conditions) Regulations 2018, S.I. No. 230/2018 s 8.1b.

77 Irish Human Rights and Equality Commission, Opening statement by Sinéad Gibney, Chief Commissioner of the Irish Human Rights and Equality Commission, delivered to the Oireachtas Joint-Committee on Public Petitions, 16 September 2021.

assessments completed and 129 assessments ongoing.<sup>78</sup> The evaluation of the vulnerability assessment pilot programme, due to be completed by the end of 2021, has not been published but its findings are expected to inform the long-term implementation of such assessments.<sup>79</sup> This evaluation must take account of the concerns expressed by civil society that the pilot vulnerability assessment lacks a disability lens.<sup>80</sup>

## Emergency Accommodation

The use of inappropriate emergency accommodation remains a key area of concern as outlined in the *Day Report*. Due to limited capacity in existing accommodation centres, there were 24 Temporary Emergency Accommodation Centres, primarily hotels, in use in December 2021.<sup>81</sup> There were 129 children resident in five such Centres.<sup>82</sup> This represents an improvement on December 2020, where 205 children were housed in such emergency accommodation.<sup>83</sup>

Given that many of these sites operate on a commercial basis as hotels or guesthouses,<sup>84</sup> not all staff have training on the needs of those seeking international protection.<sup>85</sup> This lack of awareness is compounded by the inability of all these sites to meet children or parents' rights, particularly in relation to independent cooking facilities and appropriate private leisure space. Children living in emergency accommodation have experienced difficulty in accessing their education rights, another reason for ending this form of

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78 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, Asylum Seekers, 28 April 2021 [21891/21].

79 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, Question to Children 6 July 2021 [36292/21].

80 M Fagan, 'Nasc: State's pilot project on vulnerability of asylum applicants is too limited' *The Irish Examiner* (11 February 2021); K Barry 'The Vulnerability Assessment Tool and Disability in Direct Provision: Submission to Minister O'Gorman and Minister Rabbitte' (Irish Centre for Human Rights, NUIG 2021) available at <<https://bit.ly/3seal9q>> accessed 4 February 2022.

81 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

82 *ibid.*

83 *ibid.*

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

85 *ibid.* 20.

accommodation, which the *Day Report* acknowledges.<sup>86</sup> It is of particular concern that 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 International Protection Accommodation Services (IPAS).<sup>87</sup>

It is welcome that the Department of Children, Equality, Disability, Integration and Youth has reduced the number of emergency accommodation centres, from 44 in operation in 2020 to 28 and further in 2021, from 28 to 24.<sup>88</sup>

## Experience of school

The *White Paper* contains very little detail in relation to education supports for children and young people. While the *Day Report* recommended that children between the ages of five and 18 should be educated in mainstream schools in the community, with additional language supports provided as needed and special arrangements made for children with special needs,<sup>89</sup> as well as specific teacher-training,<sup>90</sup> the *White Paper* does not build on this recommendation or contain commitments on education beyond existing provision.

At present, Tusla's Education Welfare Officers (EWOs) identify families who may need assistance in finding school places for their children and can also provide support to families in accommodation centres should issues arise in school.<sup>91</sup> However, the Children's Rights Alliance believes that there needs to be a comprehensive school induction pack developed for all asylum-seeking children to ease and support their transition into school life in Ireland. It is key

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86 *ibid* 78.

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

88 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021. In 2020 additional emergency centres were opened in the context of Covid-19 to allow for a reduction in numbers sharing rooms and to provide better capacity for self-isolation within a centre, where so advised by the Health Service Executive.

89 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DOJ 2020) 13.

90 Government of Ireland, *Report of the Advisory Group on the provision of support, including accommodation, to persons in the internal protection process* (Government Publications 2020) recommendation 5.4.

91 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

that children attend school as early as possible when they arrive in Ireland as any significant break in access to education “may negatively affect a child’s educational experience... as well as their chances of a successful integration”.<sup>92</sup>

Earlier intervention and prevention are predicated on the timely identification of needs. Since 2017, schools have had greater autonomy to determine how best to use their special education allocation based on the needs of their student community identified through school profile data.<sup>93</sup> The profiled allocation takes account of the extent of the school’s literacy needs, including where these needs arise due to language difficulties.<sup>94</sup> However, a report commissioned by the Children’s Rights Alliance on the needs of children and young people coming to Ireland under the International Refugee Programme found that schools and educational services need more support in assessing the academic abilities and needs of young refugees independent from language.<sup>95</sup> Providing access to English as an Additional Language (EAL) and learning support is central to refugee children and young people’s right to education and vital that the allocation schools receive from government under the new model allows for this targeted support. In order to ensure equality of opportunity, provision and access needs to be equal for all children.<sup>96</sup> All children should receive an assessment of their needs prior to entering the school system. This should include an assessment of any language or learning support needed, as well as any emotional or psychological support a child will need in school in line with vulnerability assessment(s). On foot of this, a suite of resources should be available to support children in the school system including adequate English language support, access to the National Education Psychological Services and mental health supports, and access to home support for learning including, but not limited to, home language tuition.

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92 Rosa De Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendation* (UNHCR 2006) 86.

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

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

95 M Ni Raghallaigh et al, *Safe Haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study, Executive Summary* (Children’s Rights Alliance 2019) 6.

96 *ibid* 6.



**It is key that children attend school as early as possible when they arrive in Ireland as any significant break in access to education “may negatively affect a child’s educational experience... as well as their chances of a successful integration”.**

The provision of comprehensive information and support to schools and educational services, through toolkits or information packs and access to interpreters, is key to promoting best practice, creating inclusive educational environments and easing the transition to school for young refugees.<sup>97</sup> Educational settings are also important sites for identifying and responding to socio-emotional and psychological needs and education professionals should have access to trauma-awareness training.<sup>98</sup> The UN Refugee Agency (UNHCR) is clear that asylum-seeking and refugee children should be provided with particular supports to engage in education and to address their specific needs. In its *Refugee Education 2030: A Strategy for Refugee Inclusion* it sets out a clear roadmap with three strategic objectives:

1. Promote equitable and sustainable inclusion in national education systems for refugees, asylum seekers, returnees, stateless and internally displaced persons;
2. Foster safe, enabling environments that support learning for all students, regardless of legal status, gender or disability;
3. Enable learners to use their education toward sustainable futures.<sup>99</sup>

It highlights steps that host countries can take to support children and young people in education at all levels including identifying solutions to financial barriers to ensure access to school supplies including textbooks, uniforms or other materials.<sup>100</sup> The *Strategy* provides a roadmap for inclusive education for refugee children and young people ensuring that they are included in education planning, have access to school or alternative education where appropriate, as well as to adequate language training where needed. They should also be provided with 'conditions that foster social and emotional learning (SEL), and where needed, receive mental health and psychosocial support, allowing them to concentrate, learn and develop healthy relationships'.<sup>101</sup>

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97 *ibid.*

98 *ibid.*

99 UNHCR, *Refugee Education 2030: A Strategy for Refugee Inclusion*, (UNHCR 2019) 7.

100 *ibid* 46.

101 *ibid* 25.

As part of the *White Paper* implementation, the Department of Education should take account of the UNCHR guidance and ensure that it includes specific actions in its implementation plan to deliver on the three strategic UNCHR objectives in the Irish context.

### Swift decision-making on international protection applications

The International Protection Act 2015 introduced a new single procedure for examining all international protection applications which helped to reduce delays and time spent in the asylum system. Covid-19 has adversely impacted decision-making timeframes. Prior to the pandemic, initial decision-making on non-priority cases took approximately 12 months, however, by the third quarter of 2020 the median processing time was 19 months from the date of application.<sup>102</sup> Notably, decision-making timeframes do not align with length of stay in Direct Provision, and at 21 months,<sup>103</sup> the average duration in Direct Provision is too long, particularly in the context of a global pandemic. It is of grave concern that as of December 2021, the average length of stay for children (0-17 years of age, inclusive) across IPAS accommodation is 32 months.<sup>104</sup>

The Day Report recognised that the system is not equipped for long-term stays in reception centres, and the new model should reflect that 3,500 people will seek international protection in Ireland each year and their applications must be reviewed swiftly, in a time-bound way.<sup>105</sup> It recommended that first decisions be taken within six months and that appeals be decided within a further six months to ensure that during the transition period, the number of people left in limbo in accommodation centres is reduced.<sup>106</sup> While the *White Paper* does not make any specific commitment in relation to processing times, it notes that in order to achieve the recommended reduced timelines of six months for processing first instance applications and six months for

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102 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 6 November 2020.

103 H Gupta, *Spotlight: Direct Provision* (Houses of the Oireachtas Library and Research Services 2020) 34.

104 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

105 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DOJ 2020) 10.

106 *ibid.*



processing appeals, additional resources and funding is required, in addition to increased investment in the ICT system.<sup>107</sup>

The key mechanism for enabling an expedited process is a strengthening of capacity in both the International Protection Office and the International Protection Appeals Tribunal, as well as the Legal Aid Board, with a move to an online form and use of regional locations, rather than a centralised and lengthy paper-based application system.<sup>108</sup> Adequate resources must be urgently allocated to these services in order for progress to be achieved in 2022. The announcement of the new landmark Regularisation of Long-Term Undocumented Migrants Scheme,<sup>109</sup>

also open to international protection applicants who have been waiting for a decision for two years or more, is a hugely positive development which should also support efforts to reduce overall waiting times for decision-making.

Given the current reliance on the use of emergency accommodation, it is vital that the recommended expedited decision-making process will progress in 2022. Further detail is needed on how Government will ensure that decisions and appeals are considered in the specified timeframe and what, if any, redress will be available for asylum-seekers whose cases have not been reviewed within the initial six-month window.

In advancing this commitment, additional consideration should also be given to the particular needs of children in the asylum process, in line with the best interests principle. The *White Paper* commits to the



**New landmark Regularisation Scheme is hugely positive step and should support efforts to reduce overall waiting times for decision-making**

107 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 110.

108 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DOJ 2020) 49.

109 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (Press Release 3 December 2021) <<https://bit.ly/3GFnLWF>> accessed 4 February 2022.

prioritisation of applications from unaccompanied minors, which is a welcome step.<sup>110</sup> Unfortunately, there is no commitment to prioritising applications from accompanied children as part of a family unit, such as fast-tracking applications, or specialist training for decision-makers and legal representatives.

Consideration should be given to these areas as Government progresses the *White Paper* and changes to the international protection decision-making process.

### Supporting victims and survivors of sexual violence

Access to services to groups of victims and survivors of sexual violence resident in IPAS accommodation was particularly challenging to facilitate in 2021 given the Covid-19 pandemic. Many did not have access to a phone or smart phone to connect with online services and did not have the privacy needed to access remote support from a Rape Crisis Centre. In 2020, five per cent of those attending Rape Crisis Centres in Ireland were from people seeking international protection.<sup>111</sup> This amounted to 60 people accessing Rape Crisis services, the majority of whom were women, and this group disclosed higher than average levels of sexual violence as well as higher than average levels of physical violence than the general population of victims and survivors.<sup>112</sup> In this context, it is welcome that training is to be offered, through Spirasi, for international protection staff in detecting sexual violence and trauma awareness.<sup>113</sup>

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110 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 61.

111 Rape Crisis Network Ireland, *RCNI Rape Crisis Statistics 2020* (RCNI 2021) 24.

112 *ibid.*

113 Communication received by the Children's Rights Alliance from the Rape Crisis Network Ireland, 9 November 2021.

## ► What children and young people need next

In 2016, the Committee on the Rights of the Child made specific recommendations with respect to ensuring that “all refugee accommodation centres” were subject to independent inspection.<sup>114</sup> Progress on this recommendation has been slow and clarity is urgently required on when HIQA will begin inspecting centres against the new *National Standards* and the long-term system of independent inspections that is to accompany the new international protection system envisaged in the *White Paper*.

It is essential that the Government offers vulnerability assessments to asylum seekers within 30 days of arrival in Ireland. The State has been under an obligation to offer vulnerability assessments within this timeline for almost four years, since it adopted the EU Reception Conditions Regulations in July 2018. The vulnerability assessment pilot scheme, while a welcome development, was long overdue and the evaluation of the scheme must involve engagement and consultation with key stakeholders and civil society groups.

Temporary Emergency Accommodation Centres are a manifestly unsuitable form of accommodation for asylum-seekers, particularly children. While the slight reduction in the use of this type of accommodation in 2021 is welcome, it is essential that the Government continues to increase system capacity during the transition period outlined in the *White Paper*, to guarantee that this type of accommodation is phased out permanently.

The fact that children and young people are spending almost three years on average in IPAS accommodation<sup>115</sup> is unacceptable. The Government must adopt a coordinated approach to ensure the reduction of this length of stay and in the wait times for decision-making in the international protection process and expedite the move to an online, decentralised application process.

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114 UNCRC ‘Concluding observations on the combined third and fourth periodic reports of Ireland’ 29 January 2016 UN Doc CRC/C/IRL/CO/3-4 para 66.

115 Communication received by the Children’s Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

## ➔ Recommendations:

- ▶ Commence HIQA inspections of existing international protection centres against the *National Standards* as a matter of urgency and develop a clear framework for independent inspections of the future accommodation model.
- ▶ Allocate funding in Budget 2023 to introduce the International Protection Child Payment for all children living in the international protection system before the end of 2022.
- ▶ Complete the evaluation of the vulnerability assessments pilot and ensure that all international protection applicants are offered an assessment within 30 days of arrival.
- ▶ Develop a standalone implementation plan for actions relating directly to children and young people, with a specific focus on their needs and particular vulnerabilities. This should include concrete actions on education, health, child protection and welfare, financial support, integration and community support.
- ▶ Commit to the permanent phasing-out of Temporary Emergency Accommodation Centres, supported by increased resources and system capacity.
- ▶ Allocate increased resources to the International Protection Office and the International Protection Appeals Tribunal, as well as the Legal Aid Board to assist in reducing waiting times for decisions in international protection applications.

**13**

# Pathways for Undocumented Children

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Section Grade:

**B**



## **The Programme for Government commits to:**

Create new pathways for long-term undocumented people and their dependents meeting specified criteria to regularise their status within 18 months of the formation of the Government, bearing in mind European Union and Common Travel Area commitments.

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▶ Progress: **Good**

**'Pathways for Undocumented Children' receives a 'B' grade, an increase on the 'D' grade awarded last year. In December 2021, the Government approved the scheme to regularise the status of undocumented people living in Ireland. People with an outstanding application for international protection, who have been in the asylum process for at least two years, will also be eligible to apply for the scheme. In December, the Government approved the scheme to regularise the status of thousands of undocumented persons living in Ireland which opened in early 2022 for a period of six months.**

## **Ireland's duties and responsibilities in international law**



Every child has the right to equal treatment irrespective of the status of their parents or guardian.<sup>1</sup> As part of its commitments when signing up to the UN Convention on the Rights of the Child (UNCRC), Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. The Committee expressed concern that there were no clear and accessible formal procedures for conferring immigration status on children in irregular migration situations.<sup>2</sup> It also expressed concern that there are inadequate measures to ensure that children who are in care with an irregular migration status receive independent legal advice, frequently resulting in such children not receiving timely clarification on their migration status.<sup>3</sup>

The Committee emphasised that all children are entitled to the full protection and implementation of their rights under the Convention, and it urged the State to ensure that the rights enshrined in the Convention are guaranteed for all children regardless of their migration status or that of their parents, and to address all violations of those rights.

In particular, the Committee urged Ireland to:

- ▶ Expediently adopt a comprehensive legal framework that is in accordance with international human rights standards to address the needs of migrant children;
- ▶ Ensure that the legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations; and

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989), Art 2.

2 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/34 para 67.

3 *ibid.*



- ▶ Take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status.<sup>4</sup>

## ▶ What is the context for this commitment?

There are an estimated 15,000 to 17,000 undocumented people living in the State including 2,000 to 3,000 children.<sup>5</sup> In 2019, the Migrant Rights Centre of Ireland (MRCI) carried out a survey of 108 parents of undocumented children in Ireland which found that 68 per cent of undocumented children had been born in Ireland.<sup>6</sup> Of those children born outside Ireland, 78 per cent had been living here for five years or more.<sup>7</sup>

Since 2004, following a constitutional referendum and the enactment of the Irish Nationality and Citizenship Act 2004, there is no automatic right to citizenship for all children born on the island of Ireland.<sup>8</sup> Commenting at the time of the referendum, the Irish Human Rights Commission expressed concern that the proposed constitutional amendment had not undergone comprehensive consideration of the human rights consequences.<sup>9</sup>



The Platform for International Cooperation on Undocumented Migrants has highlighted that uncertain, precarious or irregular status has negative impacts

4 *ibid.*

5 Department of Justice, *Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants* (Press Release 3 December 2021) <<https://bit.ly/3u53QNW>> accessed 10 January 2022.

6 Migrant Rights Centre Ireland 'Growing up undocumented in Ireland' <<https://bit.ly/3sSKYil>> accessed on 10 December 2021.

7 *ibid.*

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

9 Irish Human Rights Commission, *Observations on the Proposed Referendum on Citizenship* (IHRC 2004) 13.

on the health and well-being of children and young people.<sup>10</sup> They are at risk of being deported.<sup>11</sup> Their access to further education, training, employment and vital services is restricted.<sup>12</sup> It limits their ability to plan for the future and develop.<sup>13</sup> Clear status determination procedures that provide children and young people with a secure and long-term residence status are crucial to ensure the full enjoyment of their rights.

Undocumented children are being denied the opportunities to plan for the future: to access further education; to travel outside Ireland to see family or for educational opportunities; and the ability to obtain secure employment upon completing school. These children are missing key milestones while watching their peers, with whom they are likely to have spent years at school, living 'normal lives' and progressing to an adulthood which will not be stunted or diminished by immigration status.<sup>14</sup>

In December 2018, nations of the world, including Ireland, adopted the UN Global Compact for Safe, Orderly and Regular Migration, the first global agreement on a common approach to international migration.<sup>15</sup> The Compact recognises the need for a cooperative approach to optimise the benefits of migration, alongside addressing the risks and challenges of migration for individuals, communities, and states.<sup>16</sup>

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10 Platform for International Cooperation on Undocumented Migrants, *Manual on regularisations for children, young people and families* (PICUM 2018) 6.

11 *ibid.*

12 *ibid.*

13 *ibid.*

14 RTE News, 'Migrant group calls for rights for undocumented children' (3 July 2019) <<https://bit.ly/3cegEIQ>> accessed 10 December 2020.

15 United Nations, *Global Compact for Migration* (UN 2018).

16 *ibid.* 2.

## ► What has been achieved for children and young people so far?

The current Programme for Government committed to creating pathways to regularisation for the undocumented and their dependents.<sup>17</sup> The Department of Justice has made positive progress on this commitment in 2021. Following the publication of an initial draft in April 2021,<sup>18</sup> in December the Government approved the scheme to regularise the status of thousands of undocumented persons living in Ireland.<sup>19</sup> In developing the scheme, the Department was informed by research into previous national regularisation schemes implemented by the Department; programmes in other EU Member States; consultation with key civil society and NGO stakeholders; and engagement with Government Departments, as appropriate.<sup>20</sup> To qualify for the scheme, applicants will:

- Have a period of four years residence in the State without an immigration permission, or, in the case of those with children, three years, on the date on which the scheme opens for applications;
- Be granted an immigration permission that allows for unrestricted access to the labour market (also known as a Stamp 4);
- Have years of residence with that permission reckonable for the purposes of pursuing citizenship by way of naturalisation;
- Not need to demonstrate that they do not pose a financial burden on the State; and
- Be required to meet minimum standards in relation to good character and criminal record/behaviour and must not pose a threat to the State. Minor criminal convictions will not, of itself, disqualify the applicant from the scheme.<sup>21</sup>

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17 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020)76.

18 Department of Justice, 'Minister McEntee outlines draft scheme to regularise undocumented migrants to Cabinet' (Press Release 23 April 2021) <<https://bit.ly/3ALEyFQ>> accessed 31 January 2022.

19 *ibid.*

20 Communication received by the Children's Rights Alliance from the Department of Justice 27 January 2022.

21 *ibid.*

The scheme also provides that a short period of absence (maximum 60 days from a short-term tourist permission) from the State may be disregarded for the purpose of calculating the above residency periods.<sup>22</sup> Importantly, individuals with expired student permission or those with an existing Deportation Order may apply for the scheme, provided they satisfy the minimum undocumented residence requirement.<sup>23</sup> People with an outstanding application for international protection, who have been in the asylum process for at least two years, will also be eligible to apply for the scheme.<sup>24</sup> The inclusion of those engaged in the asylum process in the scheme implements the recommendation of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, made in 2020.<sup>25</sup>

Individuals will be required to pay €550 to apply for the scheme while a fee of €700 will apply to a family application and there will also be a registration fee once permission is granted.<sup>26</sup> There are concerns that this may pose challenges for some individuals and families who do not have the necessary resources to apply.<sup>27</sup> It is welcome that international protection applicants will not be required to pay either fee.<sup>28</sup>

Applications under the scheme may be refused where they do not meet the prescribed criteria or where they contain inadequate or inconsistent information or false or misleading information.<sup>29</sup> Where applicants are unsuccessful, they may appeal the first instance decision to the Immigration service within a limited time frame.<sup>30</sup> A reviewing officer will then confirm the

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22 Department of Justice, Migration Policy Unit, *Briefing on the Regularisation Scheme for Long-term Undocumented Migrants in Ireland* (Department of Justice 2021).

23 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (Press Release 3 December 2021) <<https://bit.ly/3u53QNW>> accessed 10 January 2022.

24 *ibid.*

25 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (Department of Justice 2020) recommendation 6.7.

26 Department of Justice, Migration Policy Unit, *Briefing on the Regularisation Scheme for Long-term Undocumented Migrants in Ireland* (Department of Justice 2021).

27 Immigrant Council of Ireland, 'Undocumented Regularisation Scheme to be profoundly transformative for thousands of migrants' (Press Release, 3 December 2021) <<https://bit.ly/3sbULR8>> accessed 31 January 2022.

28 *ibid.*

29 Department of Justice, Migration Policy Unit, *Briefing on the Regularisation Scheme for Long-term Undocumented Migrants in Ireland* (Department of Justice 2021).

30 *ibid.*

initial refusal or grant the application.<sup>31</sup> The scheme will not create any rights to family reunification with family members who are not already residing in Ireland.<sup>32</sup>

While the 2021 Justice Plan indicated that the scheme would be open for online applications by the end of 2021,<sup>33</sup> the scheme opened for online applications in January 2022, for a limited period of six months.<sup>34</sup>

The Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018 was initiated in the Seanad in 2018.<sup>35</sup> In March 2021, the Bill advanced to Committee Stage and was adjourned, following an agreement with the Minister for Justice, Helen McEntee TD to implement aspects of the Bill.<sup>36</sup> The willingness of the Minister for Justice, Helen McEntee TD, to engage in a cross-party approach to this issue is to be commended. The 2018 Bill contains two substantive elements. Under the Bill, children born in Ireland will not need to satisfy the usual residency conditions to apply for citizenship by way of naturalisation. The Bill proposes that a child will need to have lived in Ireland for a period of two years<sup>37</sup> instead of the usual four years, with an additional year immediately preceding the application for citizenship. The child would also not need to satisfy the usual requirement that the residence is lawful.<sup>38</sup> These changes are to be included in the Courts and Civil Law (Miscellaneous Provisions) Bill 2021 and the General Scheme for this Bill was published in July 2021.<sup>39</sup> While a welcome development, this Bill will have a limited impact on undocumented children born now and into the future, who will not benefit from the intended change.

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31 *ibid.*

32 *ibid.*

33 Department of Justice, *The Justice Plan 2021* (Department of Justice 2022) action 182.

34 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (Press Release 3 December 2021) <<https://bit.ly/3u53QNW>> accessed 10 January 2022.

35 A similar Private Members Bill, the Irish Nationality and Citizenship (Citizenship for Children) Bill 2020, initiated by Irish Solidarity–People Before Profit, has not progressed since September 2020.

36 Department of Justice, 'Minister McEntee to make it easier for children to secure Irish citizenship' (Press Release 23 March 2021) <<https://bit.ly/3IQKAbk>> accessed 10 January 2022.

37 Irish Nationality and Citizenship (Naturalisation Of Minors Born In Ireland) Bill 2018, s2(1).

38 See generally Sarah Groarke and Róisín Dunbar, *ESRI Research Series Number 116: Pathways to citizenship through naturalisation in Ireland*, (ESRI 2020).

39 General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021.



**Undocumented children are missing key milestones while watching their peers, with whom they are likely to have spent years at school, living 'normal lives' and progressing to an adulthood which will not be stunted or diminished by immigration status.**

The Employment Permits (Amendment) Act 2014 allows for children under the age of 16 to register with the Garda National Immigration Bureau.<sup>40</sup> This subsection has yet to commence. Registration is important so that children's time spent in the State can be calculated towards their reckonable residency for the purposes of immigration applications. As the Regularisation Scheme for Long-term Undocumented Migrants in Ireland has minimum residency requirements, it is vital that children have a means of registering their residency. Otherwise, the scheme may preclude young people who have turned 18 and cannot demonstrate that they meet the minimum residency requirements. Providing for registration for children will also ensure their effective participation in any future potential regularisation schemes and would fulfil the Government commitment to introduce registration for children in 2022, as contained in the *Migrant Integration Strategy 2017-2020*.<sup>41</sup>

## ► **What children and young people need next**

The Committee on the Rights of the Child made recommendations in respect of the regularisation of undocumented children in 2016.<sup>42</sup> It is welcome that the Department of Justice has announced a Regularisation Scheme for Long-term Undocumented Migrants, but progress on the full implementation of the Committee's recommendation has been slow. Each year, more and more undocumented children are missing milestones such as attending college, obtaining secure employment, travelling outside Ireland, as well as the fundamental sense of security and belonging. This is time that undocumented children simply cannot afford to lose.

While the Regularisation Scheme for Long-term Undocumented Migrants in Ireland is a very positive development, it is a once-off opportunity that is available for just six months. The scheme will serve to regularise only one cohort of undocumented children and young people in Ireland and contains no plans for alternative pathways to regularisation nor any permanent mechanism to address the long-term issue of other undocumented children

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40 The Employment Permits (Amendment) Act 2014, s35(b).

41 Department of Justice, *Migrant Integration Strategy 2017-2020*, (DOJ 2017).

42 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/3-4 para 68.



and young people growing up in Ireland who will fall outside the scope of the scheme. The Programme for Government commits to the creation of multiple “new pathways” for long-term undocumented people and their families to regularise their status.<sup>43</sup> This commitment demands a comprehensive approach to the issue of regularisation, that is not limited to a single, one-off scheme. The learnings from this scheme should be documented and used to inform the development of further, more permanent pathways for regularisation.

The High Court decision in *Iurescu (a minor) v Minister for Justice and Equality* clarified that the Minister for Justice was not entitled to take account of a parent or guardian’s character when determining whether a child is entitled to citizenship by naturalisation.<sup>44</sup> Consideration should be given to amending the ‘good character’ assessment in respect of a child applying for citizenship.

## ➔ Recommendations

- ▶ Bring forward necessary legislation to advance multiple, sustainable pathways for the regularisation of undocumented children and young people, and not just a once-off time bound scheme.
- ▶ Ensure engagement and collaboration with non-governmental organisations and stakeholders in the design and dissemination of information/material related to the new scheme, to ensure it reaches as many undocumented people as possible.
- ▶ Conduct a children’s rights focused review of the “good character” assessment in terms of a child’s application for citizenship and amend the assessment accordingly.

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43 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020)76.

44 *Iurescu (a minor) v Minister for Justice and Equality* [2019] IEHC 535.

**14**

**Harassment,  
Harmful  
Communications  
and Related  
Offences Bill**

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**Section Grade:**

**A**



## The Programme for Government commits to:

Enact the Harassment & Harmful Communications Bill (as amended) in order to outlaw image based sexual abuse and to prevent abusive sharing of intimate images online.

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▶ Progress: **Complete**

Progress on the 'Harassment, Harmful Communications and Related Offences Bill' receives an 'A' grade, an increase on the 'B' grade awarded last year. The Act, which was passed into law in December 2020, was commenced in full in February 2021.

## Ireland's duties and responsibilities in international law



All children have the right to be protected from abuse, neglect and sexual exploitation.<sup>1</sup>

The UN Committee on the Rights of the Child has noted in its 2021 General Comment that '[t]he digital environment is becoming increasingly important across most aspects of children's lives'.<sup>2</sup> The Committee also noted that the increased importance of the digital environment 'affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse'.<sup>3</sup> The Committee recommended that States should 'review, adopt and update national legislation in line with international human rights standards'.<sup>4</sup>

The Committee has also recommended that States 'should take legislative and administrative measures to protect children from violence in the digital environment, including the regular review, updating and enforcement of robust legislative, regulatory and institutional frameworks that protect children from recognized and emerging risks of all forms of violence in the digital environment'.<sup>5</sup>

Ireland committed to promote, protect and respect children's rights when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this commitment, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee in 2016. At that time, the Committee recommended that the State ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.<sup>6</sup> Ireland signed the Optional Protocol on 7 September 2000

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

2 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 3.

3 *ibid* at para 3.

4 *ibid* at 23.

5 *ibid* at para 82.

6 UN Committee on the Rights of the Child (2016) Concluding Observations Ireland, CRC/C/IRL/CO/3-4, para 77.

but has yet to ratify it and is now the only European Union (EU) Member State not to have ratified the Protocol.<sup>7</sup>

## ► What is the context for this commitment?

The internet has revolutionised the modern world and in turn, the lives of children worldwide; the reality is that they make up one third of global online users.<sup>8</sup> While it brings unparalleled opportunity for children to learn, create, connect and socialise it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health, well-being, online grooming and extortion. In Ireland, 93 per cent of children aged eight to 12 years own their own smart device and 84 per cent use their own social media and instant messaging accounts.<sup>9</sup> Most children and young people accessing the digital world have enjoyable and positive experiences. They use the online world to maintain friendships and relationships, have fun, support their education and learn about their world.

The Council of Europe notes that there are a number of areas of concern for children's healthy development and well-being which may arise in connection with the digital environment, including, risks of harm from sexual exploitation and abuse, and online grooming.<sup>10</sup> It recommends that any protective measures should take into consideration the best interests and evolving capacities of the child and not unduly restrict the exercise of other rights.<sup>11</sup>



7 UN Committee on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (25 May 2000) A/RES/54/263.

8 Unicef, *Children in the Digital World* (2017).

9 Cybersafelreland, *Annual Report 2020*, (CyberSafelreland 2021) 24.

10 Council of Europe, 'Recommendation CM/Rec (2018) 7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 19.

11 *ibid.*

There is growing concern that online grooming, as well as the sharing of child exploitation material, increased online during Covid-19.<sup>12</sup> Irish teenagers are the fourth highest users in the EU for sexting.<sup>13</sup> The growing use of technology amongst peers must be recognised in any reforms, with legal progress matched in school-based relationships and sex education that emphasises the importance of mutual respect and active consent.

The production and distribution of child sexual abuse and exploitation materials – whether in print, online, or livestreamed – represent a fundamental violation of children's rights.<sup>14</sup> These images effectively represent a crime scene and people accessing these images directly contribute to the exploitation of child victims because they create demand and perpetuate the child's trauma as the abuse is ongoing until the image is removed. In 2020, the Internet Watch Foundation received a 19 per cent increase in reports, of which 153,383 reports were confirmed as containing child sexual abuse and exploitation material.<sup>15</sup> Similarly, Hotline.ie, the Irish national reporting centre for illegal online content, has experienced a sustained demand for its services – 2020 was the third consecutive year when Hotline.ie received over 10,000 public reports (10,583).<sup>16</sup> Despite this, Irish cases involving 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>17</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>18</sup> Delays are reported at every stage in the process including taking victim statements, arresting or interviewing suspects and sending the file to the Office of the Director of Public Prosecutions (DPP).<sup>19</sup>

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12 Interpol, 'Child Sexual Exploitation and Abuse threats and trends: COVID-19 Impact' <<https://bit.ly/34unFDS>> accessed 1 February 2022.

13 Dublin City University, 'Irish Teens the Fourth Highest in the EU for Sexting' <<https://bit.ly/3qTC2HK>> accessed 6 January 2022.

14 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

15 The Internet Watch Foundation, 'IWF Annual Report 2020 – Face the Facts' <<https://bit.ly/34unFDS>> accessed 17 January 2022.

16 Hotline.ie, *2020 Annual Report* (2021) 20.

17 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.

18 *ibid.*

19 Garda Síochána Inspectorate, *Responding to Child Sexual Abuse, A Follow Up Review from the Garda Inspectorate* (Garda Inspectorate 2017) 10-11.

In 2016, the Law Reform Commission (LRC) published its report entitled *Harmful Communications and Digital Safety*.<sup>20</sup> The report noted that there were gaps in criminal law regarding harmful communication, in particular online. The report contained a draft Harmful Communications and Digital Safety Bill, which proposed the consolidation and reform of criminal law on harmful communications and highlighted that 'the views of young people on the issues covered by this project need to be considered, because they are one of the groups most affected by harmful digital communications'.<sup>21</sup> The proposed Bill introduced new offences to deal with sending, distributing or publishing intimate images without consent. In relation to the imposition of criminal law sanctions, the LRC recommended that a hierarchical approach be adopted, which, the report states, was necessary because this type of harmful communication often involves children and young people for whom the criminal justice process should be seen as a last resort.<sup>22</sup>

## ► What has been achieved for children and young people so far?

The Programme for Government committed to enact the Harassment & Harmful Communications Bill to outlaw image-based sexual abuse and to prevent abusive sharing of intimate images online.<sup>23</sup> The Harassment, Harmful Communications and Related Offences Bill 2017 was first introduced in the Dáil in 2017 and following debate and amendment was signed into law in December 2020.<sup>24</sup> The legislation introduces new offences concerned with the recording and distributing of intimate images without consent<sup>25</sup> and the publishing or sending of threatening messages or grossly offensive

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20 Law Reform Commission, *Report on harmful communications and digital safety* (LRC 116 - 2016).

21 *ibid* para 10.

22 *ibid* para 19.

23 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 84.

24 President of Ireland, 'President Higgins signs Harassment, Harmful Communications and Related Offences Bill 2017' <<https://bit.ly/3pxcboN>> accessed 1 February 2022.

25 Harassment, Harmful Communications and Related Offences Act 2020, s2 and 3. Section 2 of the Act makes it an offence to distribute, publish (or threaten to do so) intimate images without the consent of the person where they intend on causing harm which is defined as interfering with the other person's peace and privacy or cause alarm or distress. Section 3 creates an offence of recording distributing or publishing intimate images without consent.



communication.<sup>26</sup> The Act does not define how the term 'grossly offensive communication' is to be interpreted. Intimate images are defined in the Act as including pictures, videos or digital representation (including any accompanying sound or document) of what is or what purports to be a person's 'genitals, buttocks or anal region' and breasts, underwear, nudity or in which a person is engaged in sexual activity.<sup>27</sup>

Importantly, the Act provides that the consent of the DPP must be obtained before a person under the age of 17 can be charged with an offence.<sup>28</sup> This reflects the LRC's recommendation that criminal justice proceedings should be invoked only after other responses, such as education or suitable diversion programmes, have been applied and as a last resort.<sup>29</sup> Children and young people who display harmful sexual behaviours are more likely to have histories of maltreatment,<sup>30</sup> and so, it is important that other responses are considered including child protection and welfare, particularly in cases where younger children are viewing and sharing the images. Every child has the right to be protected against the distribution of images of a sexual or intimate nature.<sup>31</sup> However, under the current provisions a child who is 16 cannot be charged without the consent of the DPP whereas if a child is 17 consent is not needed and they can be charged straight away. It is regrettable that all children under 18 are not treated the same under the Act. The Act does not include provision for application to the Court for a civil restraint order to prevent someone from engaging in harassing behaviour as was initially provided for in the first iteration of the Bill.<sup>32</sup> Consideration should be given in future law reform to how these protections can be introduced.

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26 *ibid* s4. Section 4 prohibits the distributing, publishing or sending of threatening or grossly offensive communication which is intended to 'seriously interfere with the other person's peace and privacy or causes alarm or distress to the other person'.

27 *ibid* s1.

28 *ibid* s8.

29 Law Reform Commission, *Report on harmful communications and digital safety*, (LRC 116 - 2016) 7.

30 Simon Hackett, 'Children and young people with harmful sexual behaviour', (Research in Practice 2014) <<https://bit.ly/3qQme8u>> accessed 1 February 2022.

31 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

32 Harassment, Harmful Communications and Related Offences Bill 2017 (as initiated) s13.

The Act also does not include stalking as a specific offence. In July 2021, Senator Lisa Chambers introduced the Non-Fatal Offences Against the Person (Amendment)(Stalking) Bill 2021 to make stalking a stand-alone offence.<sup>33</sup> This Bill is currently at second stage in the Dáil.

## ► **What children and young people need next**

It is welcome that the Act was enacted in 2020 and commenced in full in February 2021.

Budget 2022 provided an additional €10.5 million for Garda operational expenditure which includes provisions for the Garda National Protective Services Bureau, equipment for a range of Garda specialist units, and includes €5.2 million in increased funding for victims including vulnerable witnesses and to combat domestic, sexual and gender-based violence.<sup>34</sup> Hotline.ie reported a 142 per cent increase in 2020 in child sexual abuse material which appeared to be self-

generated images or videos.<sup>35</sup> Just one public report can lead to hundreds, if not thousands, of online sexual abuse images or other material being uncovered. Additional investment will not only address the crimes occurring now, but it will also serve as an important preventive measure to intervene as accessing this type of content at a very young age can lead to people committing offences later on.

**142%**

**increase in child sexual abuse material (which appeared to be self-generated images or videos) in 2020.**

33 Non-Fatal Offences Against the Person (Amendment)(Stalking) Bill 2021, s1.

34 Department of Public Expenditure and Reform *Budget 2022, Expenditure Report* (DEPR 2021) 130.

35 Hotline.ie, *Annual Report 2020* (Hotline.ie 2021) 15.



**Education programmes  
which are embedded  
in a whole-of-  
school approach,  
and supported by  
parent and carer  
engagement at home,  
are a significant  
component of a public  
health approach to  
child sexual abuse  
prevention.**

The Gardaí must be properly equipped to enforce the proposed legislation including having the appropriate digital equipment to obtain and retain the evidence necessary to bring prosecutions under the proposed legislation where the perpetrator of the offence is aged over 18.

The UN Committee on the Rights of the Child recommends that States should take a holistic approach to address the risks posed by digital media.<sup>36</sup> While this legislation marks an important step forward, it is a reactive measure and more must be done to prevent child sexual abuse occurring in the first instance. The Government has committed to 'develop inclusive and age-appropriate [Relationships and Sexuality Education] RSE and [Social, Personal and Health Education] SPHE curricula across primary and post-primary levels, including an inclusive programme on LGBTI+ relationships'.<sup>37</sup> It is vital that this commitment is prioritised, and work undertaken to ensure that all young people receive the vital knowledge and skills that can support them to navigate the world around them. Education programmes which are embedded in a whole-of-school approach, and supported by parent and carer engagement at home, are a significant component of a public health approach to child sexual abuse prevention.<sup>38</sup> There is good evidence that school-based education programmes help children to recognise what constitutes abuse or inappropriate behaviour, and increase the likelihood that children are able to disclose experience of abuse.<sup>39</sup>

A modern curriculum will support children from a young age to recognise the concept of personal boundaries and inappropriate touch or contact. Drawing on research from England which found that a third of all child sexual abuse is perpetrated by a peer,<sup>40</sup> it is vital that in line with age and developmental stage, learning introduces the principle of consent and how it applies in digital spaces, as well as in our physical interactions. RSE can also support children

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36 UNCRRC, *Report of the 2014 General Day of Discussion, Digital Media and Children's Rights* (OHCHR 2014) para 105.

37 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 95.

38 J Brown and A Saied-Tessier, *Preventing Child Sexual Abuse: Towards a national strategy for England 2015* (NSPCC 2015).

39 K Walsh et al, 'School-based programmes for the prevention of child sexual abuse', *Cohrane Review*, 16 April 2015 <<https://bit.ly/3pwUMw4>> accessed 20 January 2021.

40 Simon Hackett, 'Children and young people with harmful sexual behaviour', (Research in Practice 2014) <<https://bit.ly/3qQme8u>> accessed 1 February 2022, 59.

to understand what actions might amount to a criminal offence under the law, and the effects such behaviour might have on the victim. This education is central for ensuring that children understand their rights to be treated with dignity and respect and their responsibility to treat peers in this way too.

## **Recommendations**

- ▶ Engage in a widespread public information campaign to make the provisions of the new legislation widely known by the general public.
- ▶ Resource the Gardaí to effectively implement the legislation.
- ▶ Develop inclusive and age appropriate RSE and SPHE curricula across primary and post-primary levels that include information on online communications and the potential risks associated with it.

**15**

# **Child Safety Online**

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**Section Grade:**

**C-**



## **The Programme for Government commits to:**

**Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner.**

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▶ **Progress: Steady**

**'Child Safety Online' received a 'C-' grade, an increase from the 'D-' grade awarded last year. In 2021, the Joint Committee on Tourism, Culture, Arts, Sport and Media engaged in extensive pre-legislative scrutiny of the General Scheme of the Bill and published its report in November with detailed recommendations, including the need to establish an individual complaints mechanism. The Online Safety and Media regulation Bill was published in January 2022 and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media has convened an expert group to examine the possibility of providing for an individual complaints mechanism in the Bill.**



## Ireland's duties and responsibilities in international law



All children have the right to be protected from abuse, neglect and sexual exploitation.<sup>1</sup> The UN Committee on the Rights of the Child has noted that '[t]he digital environment is becoming increasingly important across most aspects of children's lives, including during times of crisis, as societal functions, including education, government services and commerce, progressively come to rely upon digital technologies. It affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse.'<sup>2</sup>

The Committee also recommended in its 2021 General Comment that 'States parties should ensure that appropriate and effective remedial judicial and nonjudicial mechanisms for the violations of children's rights relating to the digital environment are widely known and readily available to all children and their representatives'.<sup>3</sup> The Committee also recommended that 'States parties should review relevant laws and policies to ensure that children are protected against economic, sexual and other forms of exploitation and that their rights with regard to work in the digital environment and related opportunities for remuneration are protected'.<sup>4</sup>

In 2018, the Council of Europe published its Recommendation, *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment* which recommends that States require businesses to meet their responsibilities by requiring them to implement measures and 'encourage them to co-operate' with the State and other stakeholders, including children.<sup>5</sup> It further recommends that Member States should ensure that a child's right to an effective remedy under the European Convention of

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

2 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 3.

3 *ibid* at para 44.

4 *ibid* at para 113.

5 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 11.

Human Rights<sup>6</sup> is respected and protected when their rights have been infringed online.<sup>7</sup> Guidance is given on what constitutes an effective remedy and it includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>8</sup> Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.<sup>9</sup>

## ► What is the context for this commitment?

Children make up one third of global online users.<sup>10</sup> Results from a National Survey of Children, their Parents and Adults regarding Online Safety conducted between December 2019 and October 2020, found that 62 per cent of children and young people in Ireland, aged nine to 17 years, use social media<sup>11</sup> This rises to 90 per cent of 15 to 17 year olds.<sup>12</sup> While the online world brings unparalleled opportunity to children to learn, create, connect and socialise, it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health and well-being, online grooming and extortion. In 2020, CyberSafeKids reported that a quarter of all children surveyed have seen or experienced something online in the last year that bothered them, with almost one third of those children having kept it to themselves rather than report it to their parents or someone else.<sup>13</sup>



**One in four  
children**

**have seen or  
experienced something  
online in the last year  
that bothered them**

6 European Convention of Human Rights Art 6 and 19.

7 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 24.

8 *ibid.*

9 *ibid.*

10 Unicef, *Children in the Digital World* (UNICEF 2017).

11 National Advisory Council for Online Safety, *Report of a National Survey of Children, their Parents and Adults regarding Online Safety 2021* (2021) 8.

12 *ibid.*

13 CyberSafeKids, *Annual Report 2020*, (2021) 3.

In 2018, the Council of Europe published its Recommendation, *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment* and noted that the online world is reshaping children's lives in many ways, resulting in "opportunities for and risks to their well-being and enjoyment of human rights".<sup>14</sup> Recognising that businesses have a responsibility to respect children's rights,<sup>15</sup> the Council of Europe recommends that States require businesses to meet their responsibilities by compelling them to implement measures and 'encourage them to co-operate' with the State and other stakeholders, including children.<sup>16</sup> A key proposal of these Guidelines is that, in relation to the processing of children's personal data, States should require relevant stakeholders to implement safety by design, privacy by design and privacy by default measures, taking into account the best interests of the child.<sup>17</sup> Legislating to incorporate these principles would help ensure that, from the planning stages of technology development onward, children are protected.

The Council of Europe recommends that Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights<sup>18</sup> is respected and protected when their rights have been infringed online.<sup>19</sup> This means that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'.<sup>20</sup> Guidance is given on what constitutes an effective remedy and it can include, depending on the context: explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>21</sup> Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.<sup>22</sup>

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14 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 10.

15 UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights CRC/C/GC/16.

16 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 11.

17 *ibid* 23.

18 European Convention of Human Rights Art 6 and 13.

19 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 24.

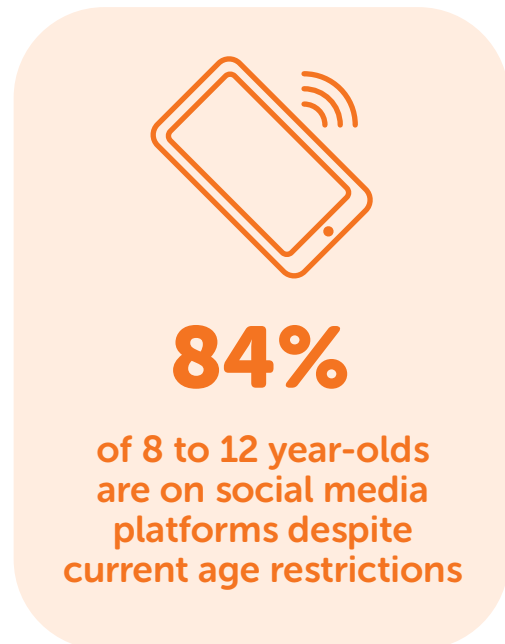
20 *ibid* 22.

21 *ibid* 24.

22 *ibid*.

In 2016, the Law Reform Commission (LRC) recommended establishing a statutory Digital Safety Commissioner, modelled on comparable offices in Australia and New Zealand.<sup>23</sup> The LRC envisioned that this office would also have a role in promoting digital safety and positive digital citizenship among children and young people. The Digital Safety Commissioner would have responsibility for publishing a Code of Practice on Digital Safety which would include an efficient take-down procedure.<sup>24</sup> If a digital service did not comply with the standards in the Code of Practice, an individual could then appeal to the Digital Safety Commissioner, who could direct a digital service to comply with the standards in the Code.<sup>25</sup> The LRC also recommended that if a digital service did not comply with the Digital Safety Commissioner's direction, the Commissioner could apply to the Circuit Court for a court order requiring compliance.<sup>26</sup>

Research commissioned by the Children's Rights Alliance in 2021 found that 91 per cent of the public believe that the Government should stand up to the big tech companies and set rules that protect the public from harmful or illegal use. This research also showed that 70 per cent of the public believe that the Government should introduce laws that hold social media companies responsible for content they allow on their platforms.<sup>27</sup> Self-regulation of the industry can result in inconsistent standards being applied and data from CyberSafeKids reveals that 84 per cent of eight to 12 year olds are on social media platforms despite current age restrictions.<sup>28</sup> While the internet undoubtedly has significant positive impacts



23 Law Reform Commission, *Report on Harmful Communications and Digital Safety* (LRC 116 - 2016) 144.

24 *ibid*

25 *ibid*.

26 *ibid*.

27 Children's Rights Alliance, 'Irish public send clear message to Government – do not shy away from regulating social media and big tech', (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

28 CyberSafeKids, *Annual Report 2020*, (2021) 24.

both for children and wider society, for too long legislation and policy have not kept pace with the evolution of the online world. This has left children and young people at risk and unprepared to appropriately and safely navigate online platforms.

## ► **What has been achieved for children and young people so far?**

The Programme for Government commits to enact the Online Safety and Media Regulation Bill and establish an 'Online Safety Commissioner', who will carry out a number of functions including: requiring platforms to have timely and effective takedown measures; requiring services to operate effective complaints procedures; promoting digital citizenship among children and young people; requiring platforms to build safety into the design of their platforms; and ensuring that new online safety codes can combat cyberbullying material and material promoting eating disorders, self-harm, and suicide.<sup>29</sup>

Following a public consultation, the General Scheme of the Online Safety and Media Communications Bill was first published in January 2020<sup>30</sup> but fell with the change in government later that year. An updated General Scheme was published in December 2020. The purpose of the Bill is to replace the Broadcasting Authority of Ireland with a Media Commission and transpose the revised European Union (EU) Audiovisual Media Services Directive.<sup>31</sup>

The 2020 Scheme provided that the Commission would conduct public information campaigns for the purpose of educating and providing information to the public in relation to online safety and media literacy.<sup>32</sup> One of the other proposed functions of the Commission was to promote 'educational initiatives and activities relating to online safety' and to advise any educational or training institution, Ministers, Departments of State or any

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29 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 87.

30 General Scheme of the Online Safety & Media Regulation Bill.

31 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 12 January 2021.

32 General Scheme of the Online Safety & Media Regulation Bill, Head 10 (xii).

public body.<sup>33</sup> However, the 2020 Scheme did not give the Commission the power to evaluate and regulate the educational and community awareness programmes on online safety in the same manner as the Australian scheme (E-Safety Commissioner), which has the power to evaluate educational programmes and provides a list of trusted providers of online safety education.<sup>34</sup>

While one of the objectives of the Commission is to 'protect the interests of children, taking into account the vulnerability of children to harmful content and undue commercial exploitation',<sup>35</sup> the Scheme of the Bill did not specify that one member of the proposed Commission will be an Online Safety Commissioner. The Media Commission will be empowered to delegate functions to individual commissioners, and it is intended that one of the three initial commissioners will be delegated the functions relating to online safety.<sup>36</sup>

The proposed Scheme did not follow the recommended approach of the LRC, nor the existing models in Australia (E-Safety Commissioner) or New Zealand (Netsafe), in providing a mechanism for individuals to appeal to the Commissioner when an online platform/service fails to comply with the standards of the Code of Practice on Digital Safety. Instead, the General Scheme of the Bill provided for a 'systematic complaints scheme'<sup>37</sup> or 'super complaints'<sup>38</sup> designed for nominated bodies, such as expert Non-Governmental Organisations (NGO), to bring systematic issues to the attention of the Commission, an example of which could be providers that have a vast number of complaints against them. The General Scheme provided for the Commission to have the power to audit the complaints handling system of a service provider<sup>39</sup> and direct them to take specified actions including changes to their systems or the removal or restoration of content.

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33 *ibid* Head 10 (xiv).

34 Australian Government, Australian E- Safety Commissioner, 'What we do' <<https://bit.ly/3gfuFHc>> accessed 1 February 2022.

35 General Scheme of the Online Safety & Media Regulation Bill, Head 9(4).

36 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 12 January 2021.

37 General Scheme of the Online Safety & Media Regulation Bill, Head 52B.

38 *ibid* explanatory note at Head 52.

39 *ibid* Head 52A.

In April 2021, the General Scheme was referred to the Joint Committee on Tourism, Culture, Arts, Sport and Media for pre-legislative scrutiny.<sup>40</sup> Following extensive hearings with stakeholders, the Committee published its report in November 2021 in which it made a series of recommendations for amendments to the General Scheme of the Bill.<sup>41</sup> The Committee recommended that the proposed legislation explicitly name the position of the Online Safety Commissioner and that the Media Commission and the Online Safety Commissioner should be satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement.<sup>42</sup> The Committee recommended social media platforms should be required to 'provide a quarterly report to the Media Commission on their complaints handling'.<sup>43</sup> It also recommended regulated entities should be obliged 'to provide periodic reports on compliance with any codes that the Commission develops', as well as 'an 'any kind of granular information the Commission deems necessary to fulfil its supervisory tasks'.<sup>44</sup>

On the issue of complaints procedures, the Committee recommended that the Bill should provide for an individual complaints mechanism that is responsive to the needs and protection of children and other groups.<sup>45</sup> The Committee also recommended that a regulatory role in online safety education is explicitly included within the legislation for the Online Safety Commissioner.<sup>46</sup> Similar recommendations were made by the Joint Oireachtas Committee on Education in August 2021 calling for the establishment of an Online Safety Commissioner with an investigation mandate, to include dealing with individual complaints, and an educational function.<sup>47</sup>

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40 House of the Oireachtas, Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht to begin Pre-Legislative Scrutiny of Online Safety and Media Regulation Bill 2020, 12 April 2021, <<https://bit.ly/3KNDkyr>> accessed on 3 September 2021.

41 Houses of the Oireachtas, *Joint Committee on Tourism, Culture, Arts, Sport and Media Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill (2021)*.

42 *ibid* 12.

43 *ibid*.

44 *Ibid* 15.

45 *ibid* 11- 12.

46 *ibid* 13.

47 Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, *Report on School Bullying and the Impact on Mental Health* (Houses of the Oireachtas 2021) 13.





**77% of the public think that an Online Safety Commissioner should have the power in law to investigate complaints made by members of the public when social media companies fail to uphold the rights of the person.**

## ► **What children and young people need next**

The continued momentum in progressing the Online Safety and Media Regulation Bill is welcome and is a step in the right direction for the protection of children and young people online. While the updated Online Safety and Media Regulation Bill was expected by the end of 2021, it was not published until January 2022.

The 2022 Bill provides for the establishment of a new Media Commission and sets out a number of functions of the Commission in relation to online safety. The Commission will be tasked with 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>48</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>49</sup> The Commission will also have the power to appoint someone to carry out an audit of compliance.<sup>50</sup>

In relation to education the Commission will have the power to 'encourage research, promote or endorse educational initiatives and activities and co-operate for that purpose with educational bodies'.<sup>51</sup> While it is welcome that the Commission will have the power to co-operate with educational bodies, it does not give the Commission the power to evaluate and regulate the educational and community awareness programmes on online safety in the same manner as the Australian scheme. The Australian E-Safety Commissioner has the power to evaluate educational programmes and provides a list of trusted providers of online safety education.<sup>52</sup>

While the 2022 Bill does not specifically provide for the establishment of an Online Safety Commissioner as part of the Media Commission, the

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

49 *ibid* s139O(1)

50 *ibid* s139P(1)

51 *ibid* s7(3)(f)

52 Australian Government, Australian E- Safety Commissioner, 'What we do' <<https://bit.ly/3gfuFHc>> accessed 1 February 2022.

Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin TD, has confirmed that the Media Commission 'will include an Online Safety Commissioner to enforce not just this legislation, but also additional forthcoming legislation, including at European level, in the coming years'.<sup>53</sup> Importantly, the Bill does not provide for an individual complaints mechanism. However, the Minister committed to setting up an expert group to examine the issue, which is due to report before the Bill reaches Committee stage.<sup>54</sup> The Alliance and members of our 123 Online Safety campaign will continue to monitor progress in 2022, in particular the recommendations of the Expert Group on the individual complaints mechanism.

The Online Safety Commissioner must be adequately resourced, with appropriate ring-fenced funding and staffing, and granted robust statutory powers to sanction companies who do not comply with timebound codes, that are in line with fair procedures. The powers of the Commission set out in the current Bill should be amended in line with the recommendations of the Oireachtas Media Committee. The inclusion of an individual complaints mechanism is vital to ensure that children and young people whose rights are not respected by the online service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.<sup>55</sup> This provision would be in line with the Council of Europe Guidelines which state that in the digital environment an effective remedy can include, depending on the violation in question inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>56</sup>

There is clear public support for such a measure, as 77 per cent of those surveyed on behalf of the Children's Rights Alliance think that an Online Safety Commissioner should have the power in law to investigate complaints made

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53 Speech by Minister Catherine Martin TD, 'Publication of Online Safety and Media Regulation Bill', <<https://bit.ly/3Ah1dtt>> accessed 19 January 2022.

54 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 'Minister Martin presses forward with vital online safety law to establish regulator' (Press Release 12 January 2022) <<https://bit.ly/3Kuhlr5>> accessed 19 January 2022.

55 European Convention of Human Rights Arts 6 and 13.

56 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) 24.

by members of the public when social media companies fail to uphold the rights of the person.<sup>57</sup>

While there are concerns about the volume of complaints that the Online Safety Commissioner could receive, including from online users across the EU as many of the online platforms are headquartered in Ireland, this is not a reason to exclude an individual complaints mechanism from the scope of the legislation. It is only the most complex cases that should need to be resolved by the Media Commission, provided that the online platforms put in place their own appropriate complaints mechanisms which comply with the legislation and the codes of conduct that the Online Safety Commissioner will develop.

### ➔ **Recommendations:**

- ▶ Enact the Online Safety and Media Regulation Bill as a matter of priority, while ensuring that the legislation specifically provides for the establishment of an Online Safety Commissioner as part of the Media Commission.
- ▶ Ensure the legislation provides for an individual complaints mechanism so that vulnerable children and young people whose rights are not respected by the online providers and who have exhausted all appropriate channels with the relevant platform, have access to an effective remedy.
- ▶ Ensure the legislation includes provisions for the Online Safety Commissioner to evaluate and approve educational and community awareness programmes on online safety.

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57 Children's Rights Alliance, 'Irish public send clear message to Government – do not shy away from regulating social media and big tech', (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.





# 16

# Reform of the Family Law Courts

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Section Grade:

**C-**



## The Programme for Government commits to:

Enact a Family Court Bill to create a new dedicated Family Court within the existing court structure and provide for court procedures that support a less adversarial resolution of disputes.

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▶ Progress: **Limited**

Build a new Family Law Court building in Dublin and ensure that court facilities across the country are suitable for family law hearings so these hearings can be held separately from other cases.

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▶ Progress: **Limited**

'Reform of the Family Law Courts' receives a 'C-' grade a decrease on the 'C' grade awarded last year. In May 2021, a public consultation was launched by the Department of Justice as part of the ongoing work of the Family Justice Oversight Group. The Oversight Group has been tasked with agreeing a high-level vision for the development of a national family justice system. The Joint Oireachtas Committee on Justice concluded its pre-legislative scrutiny of General Scheme of the Family Court Bill in December 2021, and the findings will inform the progression of the



**Bill. There is no updated timeline available for when this work will progress or be completed. In June 2021, the Courts Services indicated that the Children's Court will not form part of the new court complex planned for the Hammond Lane site and that the complex is at design phase with preparatory work expected to begin onsite in Spring 2022.**

## **Ireland's duties and responsibilities in international law**



The UN Convention on the Rights of the Child (UNCRC) obliges the State to ensure that the child's best interests are a primary consideration in all actions concerning children, including in courts of law.<sup>1</sup> In examining Ireland's progress under the UNCRC, the Committee on the Rights of the Child expressed concerns at the delays in hearing family law cases and that judges in family law cases are not provided with 'systematic training for dealing with cases concerning children'.<sup>2</sup> The Committee recommended that sufficient resources be provided to train judges hearing family law cases involving children and that these cases 'are prioritised in the court system'.<sup>3</sup>

The Council of Europe's *Guidelines on Child-Friendly Justice* provide that States should ensure that proceedings involving children are dealt with in 'non-intimidating and child-sensitive settings'.<sup>4</sup> The Guidelines recommend that interviewing and waiting rooms for children 'in a child-

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 3.

2 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 47.

3 *ibid* para 48.

4 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 29.

friendly environment' be provided in court settings.<sup>5</sup> They recommend that children should be familiarised with the Court setting, the layout and the roles and identities of officials ahead of attending proceedings and that Court sessions involving children should be adapted to the child's pace and attention span with planned regular breaks and hearings that are limited in duration.<sup>6</sup> The Guidelines also recommend that all proceedings involving children should be heard in a speedy manner and that the urgency principle should be applied.<sup>7</sup> States should establish 'a system of specialised judges and lawyers for children' and 'further develop courts in which both legal and social measures can be taken in favour of children and their families'.<sup>8</sup>

## ► What is the context for this commitment?

Ireland does not have a dedicated system for hearing family law proceedings. In Dublin, there are dedicated courts that only hear family law cases. Outside of Dublin, while there are designated family law days, the same courts hear both family law cases and all other legal cases, including criminal law cases, that fall within its jurisdiction.<sup>9</sup> Family law proceedings are subject to the *in camera* rule (meaning they are heard in private).

Family members are often at loggerheads during family law proceeding and the current physical court environment does not provide them with the necessary space and privacy to deal with very personal and sensitive matters.<sup>10</sup> The design of courtrooms has 'a direct impact on the way in which family law proceedings are conducted': the way in which they are designed forces parties into close proximity with one another, leading to increased 'anxiety, tension and has given rise to significant safety issues'.<sup>11</sup> Judges are making decisions

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5 *ibid.*

6 *ibid.*

7 *ibid* 28.

8 *ibid* 33.

9 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 22.

10 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.

11 *ibid* 7.

in courts around the country about intimate family issues, often in the same rooms that are used for dealing with other matters, such as criminal law issues.<sup>12</sup>

The family law system and the structure of the Family Law Courts have not been designed with the presence of children and families in mind and have been subject to criticism and review by stakeholders and experts for over two decades. In 1996, the Law Reform Commission (LRC) published a report on the reform of the Family Law Courts<sup>13</sup> in which it highlighted the issues in the system and noted that '[t]he courts are buckling under the pressure of business. Long family law lists, delays, brief hearings, inadequate facilities, and over-hasty settlements are too often the order of the day'.<sup>14</sup> The LRC also highlighted that 'Judges dealing with family disputes do not always have the necessary experience or aptitude. There is no proper system of case management' and that 'the courts lack adequate support services, in particular the independent diagnostic services so important in resolving child-related issues'.<sup>15</sup> The LRC recommended the establishment of a system of regional family courts at Circuit Court level presided over by a Circuit Court Judge nominated for a period of a least one year 'assigned on the basis of his or her suitability to deal with family law matters'.<sup>16</sup>

Notwithstanding that all family law proceedings are subject to the *in camera* rule, a large number of court facilities still lack basic privacy. There is a lack of consultation rooms which results in delays in the hearing of family law applications and leads to the provision of legal advice sometimes in hallways, rather than in child-friendly consultation rooms.<sup>17</sup> Generally, there is no special provision made to accommodate children involved in family law proceedings and children who are present in the Court may witness or experience violence or other upsetting behaviour due to insufficient staffing of Gardaí in courthouses.<sup>18</sup>

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12 Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (DCYA 2018) 72.

13 Law Reform Commission, *Report on Family Courts* (LRC 1996).

14 *ibid* ii.

15 *ibid* ii.

16 *ibid* 22.

17 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.

18 *ibid*.

The Child Care Law Reporting Project (CCLRP) has highlighted issues around accessibility such as the lack of ramps, poor acoustics, lack of proper waiting areas and a lack of privacy.<sup>19</sup> It recommended the establishment of a specialist family court sitting in court venues that “afford the litigants dignity and privacy and provide for private consultations with their lawyers along with a minimum level of physical comfort”.<sup>20</sup> CCLRP also recommended that the venues should have easy access, a reception area with information on the proceedings of the day, waiting areas with seating and access to water and vending machines, consultation rooms and a separate waiting area for vulnerable litigants, witnesses and children.<sup>21</sup>

In 2019, the Joint Committee on Justice and Equality published a report on *Reform of the Family Law System* and recommended that legislation be brought forward as a priority, providing for a ‘more efficient family law courts structure’ and observed that a dedicated and integrated family court be established within the existing court structures.<sup>22</sup> The Committee also noted that current venues are not fit-for-purpose and recommended that a review be undertaken of the physical infrastructure of family law courts, with a view to ‘producing a blueprint for a modern, efficient and family-friendly courts infrastructure’.<sup>23</sup> It also recommended that the necessary funding be allocated to build the dedicated family law complex in Dublin.<sup>24</sup>

## ► What has been achieved for children and young people so far?

### Family Law Court Bill

The Programme for Government committed to enact a Family Law Court Bill that will create a new dedicated Family Court and will provide for court

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19 Carol Coulter, *District Court Child Care Proceedings: A National Overview* (Child Care Law Reporting Project 2019) 38.

20 *ibid.*

21 *ibid.*

22 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 43.

23 *ibid.*

24 *ibid.*

procedures that 'support a less adversarial resolution of disputes'.<sup>25</sup> Specialised family court systems are commonplace in most legal systems, though the form can vary from specialist divisions in existing court structures, to separate specialist courts.<sup>26</sup>

In September 2020, the Government published the Heads of Bill to provide for the establishment of a District Family Court,<sup>27</sup> a Circuit Family Court<sup>28</sup> and a Family High Court<sup>29</sup> within existing court structures. Each court level will have a principal Judge with a number of other specialist Judges.<sup>30</sup> The Heads of Bill provide that in order for a person to be assigned as a Judge to any of the Family Courts, they have to be a 'a suitable person to deal with matters of family law' by reason of their 'training or experience and temperament'.<sup>31</sup> Judges of the District and Circuit Courts will be required to undertake 'courses of training or education, or both, as may be required by the Judicial Studies Committee established by the Judicial Council',<sup>32</sup> but there will be no such requirement included for Judges of the Family High Court. The Heads of Bill also provides that all proceedings at every level shall be 'as informal as practicable' and that judges, barristers and solicitors shall not wear wigs and gowns during proceedings.<sup>33</sup>

Currently in Ireland, most child and family law cases are heard by generalist judges in the general courts system. It is welcome that there will be a requirement for judges to have some level of suitability to become a judge in the Family Law Courts and that there will be a requirement to undergo training to ensure that they have the necessary skills for engaging with children and young people. Consideration should be given to extending the requirement to undergo training to judges of the High Court also. It is disappointing that

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25 Government of Ireland, *Programme for Government, Our Shared Future*, 85.

26 Consultative Council of European Judges *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges* (Council of Europe 2012) <<https://bit.ly/3pkuihB>> accessed 21 January 2021.

27 Family Court Bill General Scheme (September 2020) Head 6.

28 *ibid* Head 11.

29 *ibid* Head 16.

30 *ibid* Heads 6(2), 11(2) and 16(2).

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

32 *ibid* Heads 6(8) and 11(8).

33 *ibid* Heads 10(5), 15(5) and 17(3).

the Heads of Bill do not make any reference to the need for solicitors and barristers to undergo similar training. The Council of Europe's *Guidelines on Child-Friendly Justice* provide that States should establish 'a system of specialised judges and lawyers for children'.<sup>34</sup> Consideration should be given to requiring specialist training of all professionals working in the family law courts, reflecting child friendly justice principles and how to communicate with children and young people.

The Heads of Bill published in 2020 provide for a Family Law Rules Committee to be established which would develop a comprehensive set of overarching rules and practice guidelines.<sup>35</sup> This is a welcome measure to work towards consistency in the new system. In the new system, the jurisdiction for non-contentious cases of Judicial Separation, Divorce, and Civil Partnership will rest in the District Court, with complex or contested Family Law cases to be heard in the Circuit Family Court, with the Family High Court maintaining jurisdiction to hear cases on adoption, child abduction and special care cases, as well as having the jurisdiction to hear cases stated and appeals.<sup>36</sup>

It is welcome that the guiding principles contained in the Heads of Bill provide that where a child is involved in proceedings, or is likely to be affected by the outcome, that the best interests of the child is 'a primary consideration'<sup>37</sup> and that when a child is capable of forming their own views, there is an obligation to ensure 'as far as practicable that the views of the child are ascertained and given due weight having regard to the age and maturity of the child'.<sup>38</sup>

The *Guidelines on Child Friendly Justice* provide that services such as family support and other services have a 'role to play in the follow-up of family conflicts, to ensure the best interests of the child'.<sup>39</sup> The publication of the Heads of Bill is a positive development, but the next iteration of the Bill could address some important challenges. This reform presents an opportunity to

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34 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 33.

35 Family Court Bill General Scheme (September 2020) Head 18.

36 *ibid* Part 3.

37 *ibid* Head 5(3)(d)(i).

38 *ibid* Head 5(3)(d)(ii).

39 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 91.

house key ancillary services and agencies under the one roof and develop a new model that will promote an interdisciplinary system, as recommended by the Joint Oireachtas Committee on Justice and Equality.<sup>40</sup> This could mean that family law judges could refer parties to skilled personnel to: draw up parenting plans, carry out assessments such as parenting capacity assessments; implement supervised access orders; and monitor custody and access orders and facilitate their restoration if they break down.<sup>41</sup>

Children and families contact the Children's Rights Alliance on an ongoing basis as they find the family law system hard to navigate and are seeking information on their rights and the legal process.<sup>42</sup> According to the Council of Europe's *Guidelines on Child-Friendly Justice*, children should be promptly provided with information on their rights, the legal system and the procedures involved. The child's role should also be explained along with any existing support mechanisms and the appropriateness and possible consequences of using in-Court or out-of-Court proceedings, such as mediation for proceedings involving children.<sup>43</sup> The proposed legislation could provide that relevant information is given to children and their parents or legal representatives and that child-friendly materials on legal proceedings be made available and widely distributed, as outlined in the *Guidelines*.<sup>44</sup> Any information provided to children should be adapted to their age and maturity and be in a language they can understand, which is sensitive to gender and culture.<sup>45</sup> Digital technology could help to make information accessible to children and to the families and organisations who support and work with them. Legislators could also consider making a provision to employ a specialist child court liaison officer in all regions, to provide information and support for children and young people who come into contact with the family law system.

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40 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 43.

41 *Ibid.*

42 Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2019 (2020)* 9; and Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2020 (2021)* 16.

43 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe 2010) 20-21.

44 *ibid.*

45 *ibid.*





**The design of courtrooms has 'a direct impact on the way in which family law proceedings are conducted', [forcing] parties into close proximity with one another, leading to increased 'anxiety, tension and has given rise to significant safety issues'.**

The Government established a Family Justice Oversight Group in 2020 to agree a high-level vision and medium- and long-term objectives for the development of a national family justice system, in parallel with the establishment of a dedicated Family Court structure.<sup>46</sup> The Group was also tasked with reviewing and evaluating the effectiveness of the approach to the development of the national family justice system within two years.<sup>47</sup> A commitment has been made to holding a consultation specifically with children and young people.<sup>48</sup> In May 2021, a month-long public consultation was launched by the Department of Justice.<sup>49</sup>

The Department of Justice views the Family Court Bill as a major component in the development of 'a more efficient and user-friendly family court system that puts families at the centre of its activities, provides access to specialist supports and encourages the use of alternative dispute resolution in family law proceedings'.<sup>50</sup> The overall aim is to change the culture so that the focus of the family justice system meets the complex needs of people who require help with family justice issues.

The General Scheme of the Family Court Bill was referred to the Joint Oireachtas Committee on Justice for pre-legislative scrutiny<sup>51</sup> and in February 2021, it sought submissions as part of this process. The scrutiny of the Bill concluded in December 2021, with the submissions being made available to the Minister for Justice, to inform the progression of the Bill.<sup>52</sup> The Department of Justice's *2021 Action Plan* aimed to both '[p]rogress the Family Court Bill, taking account of the outcome of consultations and the pre-legislative scrutiny process' by the fourth quarter of 2021. There is no updated timeline available for when this work will progress or be completed. The work of the Family Justice Oversight Group was due to be completed at the end of 2021

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46 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

47 *ibid.*

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

49 Department of Justice, *Open consultation on the future of family justice* <<https://bit.ly/3ASNcCR>> accessed on 24 September 2021

50 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

51 *ibid.*

52 Joint Oireachtas Committee on Justice, Letter to Minister for Justice Helen McEntee 16 December 2021 <<https://bit.ly/3G2za2g>> accessed 10 January 2021.

with a view to producing a draft Family Justice Strategy 'with necessary inputs by representatives of users and civil society' in the first quarter of 2022.<sup>53</sup>

## Family Law Court Complex

The Programme for Government also committed to constructing a new Family Law Court building in Dublin and to working to ensure that court facilities outside of Dublin are suitable for Family Law hearings.<sup>54</sup> In 2015, it was announced that a site purchased by the Office of Public Works in Hammond Lane, Dublin would be used for building a purpose-built family law complex. However, progress had stagnated due to the failure to reach agreement on the structure and funding.<sup>55</sup> The project, as originally proposed, envisaged a court complex providing for a Family Law court facility and a new Children's Court to replace the existing Children's Court in Smithfield.<sup>56</sup>

In June 2021, the Courts Services indicated that the Children's Court will not form part of the Hammond Lane site and that the complex is at design phase, with preparatory work expected to begin onsite in Spring 2022.<sup>57</sup>

While the progress to date and the renewed commitment to build a dedicated Family Law Court complex in Dublin is welcome, the new renewed momentum needs to be maintained. The Office of Public Works purchased the site for £4 million in 1999 and it has remained vacant since that time, for some 20 years.<sup>58</sup> In developing and designing the new family courts, all stakeholders should be consulted including legal professionals, families and those who work to support them. Children and young people should also be consulted for their views as was done with the development of the Children's Court in Smithfield. It is essential that the opportunity to provide a child-friendly environment is not missed. The Council of Europe's *Guidelines on Child-Friendly Justice* should inform the design of the new court building, in

53 Department of Justice, *Justice Plan 2021* (DoJ 2021) 20-21.

54 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 85.

55 Irish Legal News, Funding secured for Hammond Lane family courts complex, 15 July 2020 <<https://bit.ly/3601bs8>> accessed 21 January 2021.

56 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

57 Government of Ireland, *Performance Delivery Agreement between the Courts Service and the Department of Justice 2021* <<https://bit.ly/3IHgzKQ>> accessed 27 January 2022.

58 Olivia Kelly, 'OPW targeted for criticism over vacant sites', *The Irish Times* 5 August 2013.

particular to ensure that interview and waiting rooms for children are provided 'in a child-friendly environment' in court settings.<sup>59</sup>

A number of courthouses outside of Dublin were refurbished in 2018 to provide 'state of the art' family law court facilities in Wexford, Waterford, Letterkenny, Mullingar and Drogheda.<sup>60</sup> The updated *National Development Plan (NDP) 2021 – 2030*, published by the current Government in 2021, reiterates the commitment to providing new or refurbished courthouses in regional cities and towns, where facilities remain substandard including Galway City, Wicklow Town, Portlaoise, Tralee and Roscommon Portlaoise, Tralee, Roscommon, Naas, Bray, Navan, Swords, Tallaght & Dun Laoghaire.<sup>61</sup> It also states that '[i]n some of these locations, the proposed projects will include the provision of facilities for Regional Family Law Centres'.<sup>62</sup> The Courts Service is in the process of identifying and acquiring suitable sites for such projects.<sup>63</sup>

## ► **What children and young people need next**

Reform of the Family Law System and the building of the new Family Law Courts are long overdue. It is of concern that the new Family Law System may take a number of years to implement. A clear timeline is needed for how the building works are going to progress on the new Family Law complex and how the views of children and young people will inform its development. It is welcome that pre-legislative scrutiny of the Bill was completed with input from stakeholders in 2021 and that it will inform the development of the new Family Law System. Considering the extent of the reform proposed it is welcome that the Oversight Group will consider each stage of the ongoing reform, but it is key that momentum is maintained to ensure it is delivered during the term of this Government.

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59 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 30.

60 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

61 Department of Public Expenditure and Reform, *National Development Plan 2021-2030* (Government of Ireland 2021) 153.

62 *ibid* 153.

63 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

## ➔ Recommendations

- ▶ Publish a timeline for the publication and enactment of the Family Court Bill as a matter of urgency.
- ▶ Consider including a requirement for specialist training for all professionals working in the family law courts, including solicitors and barristers, in the next iteration of the Bill.
- ▶ Consider using the reform of the system as an opportunity to house key ancillary services and agencies under one roof and to develop a new model that will promote an interdisciplinary system to ensure effective communication between all disciplines.
- ▶ Ensure the views of children are heard and given due weight in the reform of the Family Law System and in the design of the new Family Law Complex.
- ▶ Ensure that the reforms of the Family Law System and the design of the new Family Law Complex are informed by the Council of Europe's *Guidelines on Child Friendly Justice*.

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Founded in 1995, the Children's Rights Alliance unites over 100 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.

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