

Report Card 2023

Is Government keeping its promises to children?

**CHILDREN'S
RIGHTS
ALLIANCE**

Uniting Voices For Children

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Foreword

Report Card 2023 is the third 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 2022. Our independent panel of experts have once again closely examined 16 promises made to children and young people and have rated the Government on its efforts.

This year's Report Card marks the fifteenth in the series. In some areas, we have seen progressive change in those years but for other areas of children's rights, we need to see serious improvements. The Report Card is an important tool for us as advocates to take pause and analyse the commitments made to children and young people and put forward recommendations that ensure societal systems and services are developed in a way that meets the needs of children.

The Covid-19 pandemic across 2020 and 2021 had a monumental impact on the lives of children and young people which was evident in the Report Cards published during this time. School closures, reduced availability of services and the absence of the activities that make up a normal childhood. As we grapple with the lasting impact of the pandemic, 2022 brought new challenges with the war in Ukraine and an accelerating cost of living crisis in Ireland.

Despite the pressures on Government, 2022 saw the single biggest investment in our early years sector with Budget 2023 measures totalling €1 billion five



As we grapple with the lasting impact of the pandemic, 2022 brought new challenges with the war in Ukraine and an accelerating cost of living crisis in Ireland



years ahead of the commitment in First 5. Government received a 'B+' grade for its consistent work towards the end goal of affordable and accessible childcare for all children. The Government received a similar high grade its effort to address the cost of education, receiving a 'B' grade for the provision of free schoolbooks for all primary school children.

Significant progress was made in the area of children's safety online with the Online Safety and Media regulation Act signed into law in December 2022. The Government received an 'A' grade for their work in this area – a significant increase from last year's grade. The new Act provides for an Online Safety Commissioner within the new Media commission and critically, includes provisions for an individual complaints mechanism which will enable children and young people to raise a complaint if online platforms fail to adequately address harmful content on their sites. This is one of two 'A' grades in this year's Report Card, the second awarded to continued progress on the Harassment and Harmful Communications Bill.

The launch of Report Card 2023 comes just six weeks after the UN Committee on the Rights of the Child published its recommendations for Ireland on how the State can better protect, promote and uphold the rights of children and young people. The Committee raised serious concern at Ireland's record in the areas of mental health, education and child poverty. Our recommendations take the observations into consideration on how each commitment can be progressed.

Things were less stellar at the other end of the spectrum with an 'E' grade given to work on mental health – the lowest in Report Card 2023 and no positive impact reported on this commitment to children for the second year in a row. If anything, we are heading in the wrong direction when it comes to the provision of mental health care and supports for our children and young people. This 'E' grade is awarded for the continued practice of admitting children to adult psychiatric units. A practice that has recently been condemned by the UN Committee on the Rights of the Child and one we believe is a retrograde step by Government. We are talking about some of the most vulnerable young people in our society, sometimes at their lowest point, being admitted to a ward and an environment that is simply not appropriate.

Report Card 2023 delivers four 'D' grades to Government reflecting less than acceptable performances across a number of areas including; Traveller and Roma Education ('D+'), the Public Health Obesity Act ('D'), Children in Direct Provision ('D') and Family Homelessness ('D-').

It is disheartening to see such a significant decrease in the Government's performance on its commitments to children and young people in direct provision, dropping from a 'B-' last year to a 'D' grade this year. The fall reflects the sharp deterioration in standards for children and young people seeking asylum and the lack of progress in the implementation of the White Paper which has nearly ground to a halt. The temporary accommodation being used is an unsuitable and unsustainable way to provide accommodation for children, with some centres not inspected by HIQA who can provide a level of oversight to ensure children are not placed in inappropriate accommodation. Government again failed to deliver the International Payment for children living in Direct Provision that was promised in the White Paper and further to this, children and families in direct provision have been cast aside in Budget 2023 with no increase in their Direct Provision payment to help them cope with the pressures of the cost-of-living crisis.

Traveller and Roma and children in Ireland face enormous barriers when accessing and exercising their rights, be that in health, housing or in this case education. With three consecutive 'D' grades in the last three years, Government has made little to no progress when it comes to eliminating these barriers for Traveller and Roma children. It is not right that in our society, children from ethnic minority communities are pushed to the margins and left behind their peers. In 2022, we did see minimal improvements from the previous year with the commencement of the evaluation of four pilot education projects and the publication of baseline research on these pilots which provided much needed insights into the provision of educational resources for Traveller and Roma children. Government must now move to progress the evaluation without delay and put the other commitments in the *National Traveller and Roma Inclusion Strategy* into action.

Homelessness remains a serious concern for us and each year the Report Card highlights the toll Ireland's housing crisis is having on children, young people and families. The Government fulfilled its promise of developing and publishing a Youth Homelessness Strategy earning a 'B' grade. However, the

number of children and young people experiencing homelessness continues to rise with the pressure on housing supply and standards of accommodation deteriorating. The number of people homeless in Ireland increased every single month of 2022. The year ended with 3,442 children homeless for Christmas. Interim measures in response to the cost-of-living crisis have seen a reintroduction of the eviction ban brought in during the Covid-19 pandemic. This has steadied the numbers entering homelessness, but the fact that we are still seeing a rise overall and thousands of families essentially stuck in limbo with these measures set to end this Spring, the situation is one of deep concern.

Responses to addressing increased living costs must be child poverty proofed and ensure that families experiencing disadvantage are protected. We also need a deliberate shift to long-term thinking and solutions from Government to address the systemic issues facing children. Government is also primed to do this with a new children's strategy expected to be published this year. This year also marks one of the biggest shifts in Government action with the landmark announcement of a new unit at the Department of Taoiseach focused on Child Poverty and Wellbeing. The move puts ending child poverty top of the political agenda and the with adequate staffing and resources, the unit can be a gamechanger in turning the tide on child poverty and intergenerational poverty we are now seeing. It presents Government with an opportunity to deliver real change for children, particularly those who need it most.

Children's Rights Alliance Members

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

- Accompaniment Support Service for Children (A.S.S.C.)
- Alcohol Action Ireland
- Amnesty International Ireland
- An Cosán
- Anew
- Aoibhneas
- Archways
- AsIAm
- Association of Occupational Therapists of Ireland (AOTI)
- Association of Secondary Teachers Ireland (ASTI)
- ATD Fourth World – Ireland Ltd
- Atheist Ireland
- Barnardos
- Barretstown Camp
- Bedford Row Family Project
- BeLonG To Youth Services
- Bodywhys
- Catholic Guides of Ireland
- Child Law Project
- Childhood Development Initiative
- Children in Hospital Ireland
- Children's Books Ireland
- Children's Grief Centre
- Clarecare
- COPE Galway
- Cork Life Centre
- Cork Migrant Centre
- Crann Centre
- Crosscare
- CyberSafeKids
- Cycle Against Suicide
- Dalkey School Project National School
- Daughters of Charity Child and Family Service
- Dental Health Foundation of Ireland
- Department of Occupational Science and Occupational Therapy, UCC
- Disability Federation of Ireland
- Doras
- Down Syndrome Ireland
- Dublin Rape Crisis Centre
- Dyslexia Association of Ireland
- Dyspraxia/DCD Ireland
- Early Childhood Ireland
- Early Learning Initiative (National College of Ireland)
- Educate Together
- EPIC
- Equality for Children
- Extern Ireland
- FamiliBase
- Féach
- Focus Ireland
- Foróige
- Gaelscoileanna Teo
- Galway Traveller Movement
- Good Shepherd Cork
- Grow It Yourself
- Helium Arts
- Immigrant Council of Ireland
- Inclusion Ireland
- Institute of Guidance Counsellors
- Irish Aftercare Network
- Irish Association for Infant Mental Health
- Irish Association of Social Workers
- Irish Congress of Trade Unions (ICTU)
- Irish Council for Civil Liberties (ICCL)
- Irish Foster Care Association
- Irish Girl Guides
- Irish Heart Foundation
- Irish National Teachers Organisation (INTO)
- Irish Penal Reform Trust
- Irish Primary Principals' Network
- Irish Refugee Council
- Irish Second Level Students' Union (ISSU)
- Irish Society for the Prevention of Cruelty to Children
- Irish Traveller Movement
- Irish Youth Foundation
- iScoil
- Jack and Jill Children's Foundation
- Jigsaw
- Katharine Howard Foundation
- Kerry Diocesan Youth Service
- Kids' Own Publishing Partnership
- Kinship Care
- Leap Ireland
- Let's Grow Together! Infant and Childhood Partnerships CLG.
- LGBT Ireland
- Mecpaths
- Mental Health Reform
- Mercy Law Resource Centre
- Migrant Rights Centre Ireland
- Mothers' Union
- My Mind
- My Project Minding You
- Museum of Childhood Ireland
- Music Generation
- New Directions
- National Childhood Network
- National Council for the Blind of Ireland
- National Forum of Family Resource Centres
- National Parents Council Post Primary
- National Parents Council Primary
- National Youth Council of Ireland
- Novas
- One Family
- One in Four
- Parents Plus
- Pavee Point

- Peter McVerry Trust
- Prevention and Early Intervention Network
- Psychological Society of Ireland
- Rainbow Club Cork
- Rainbows Ireland
- Rape Crisis Network Ireland (RCNI)
- Realt Beag/Ballyfermot Star
- Respond Housing
- SAFE Ireland
- Saoirse Housing Association
- SAOL Beag Children's Centre
- Scouting Ireland
- School of Education UCD
- Sexual Violence Centre Cork
- SIPTU
- Simon Communities of Ireland
- Social Care Ireland
- Society of St. Vincent de Paul
- SPHE Network
- SpunOut.ie
- St. Nicholas Montessori College
- St. Nicholas Montessori Teachers' Association
- St. Patrick's Mental Health Services
- TASC
- Teachers' Union of Ireland
- Terenure College Rugby Football Club
- Transgender Equality Network Ireland
- The Anne Sullivan Foundation
- The Ark, A Cultural Centre for Children
- The Irish Red Cross
- The UNESCO Child and Family Research Centre, NUI Galway
- Traveller Visibility Group Ltd
- Treoir
- UNICEF Ireland
- Variety – the Children's Charity of Ireland
- Women's Aid
- Youngballymun
- Young Social Innovators
- Youth Advocate Programme Ireland (YAP)
- Youth Work Ireland



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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:

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- 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:

- CyberSafeKids
- Dublin Rape Crisis Centre
- Early Learning Initiative
- Educate Together
- Foróige
- Irish Penal Reform Trust
- Irish Refugee Council
- Irish Traveller Movement
- Irish National Teachers' Organisation
- Mental Health Reform
- Migrant Rights Centre of Ireland
- One Family

- Pavee Point
- Rape Crisis Network Ireland
- Safe Ireland
- St. Patrick's Mental Health Services
- Women's Aid

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.
- 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, Lecturer, University of Limerick, Human Rights Defender and Member of President Michael D Higgins' Council of State
- Dr Aisling Parkes, Senior Lecturer, School of Law, University College Cork
- Aoife Quinn, Policy and Research Executive, Chambers Ireland
- Seamus Boland, Chief Executive Officer, Irish Rural Link

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

Report Card 2023 is the third analysis of the progress for children under the current *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 2022, 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 2022. Details of panel membership are contained in the acknowledgements section.

Grades Table

Government Commitment, June 2020	2022	2023
Reform the childcare system	B-	B+
Establish a central agency, Childcare Ireland	D	C
Commence a free school books pilot	D-	B
Introduce national monitoring of reduced school days	B-	B-
Ensure each child with a special educational need has an appropriate school place	C-	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	E	E
Address food poverty in children	C+	C+
Introduce a Public Health Obesity Act	D	D
Reduce the number of homeless families	E	D-
Develop a National Youth Homelessness Strategy	D	B
End the Direct Provision system and replace it with a not-for-profit accommodation model	B-	D
Create new pathways for long-term undocumented people and their children	B	B+
Enact the Harassment and Harmful Communications Bill	A	A
Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner	C-	A
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

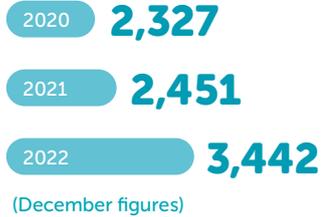
N/A: Not applicable, due to vague nature of Government commitment

Key Facts & Statistics

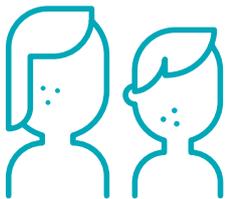


4,100

children waiting on a CAMHS appointment (September 2022)

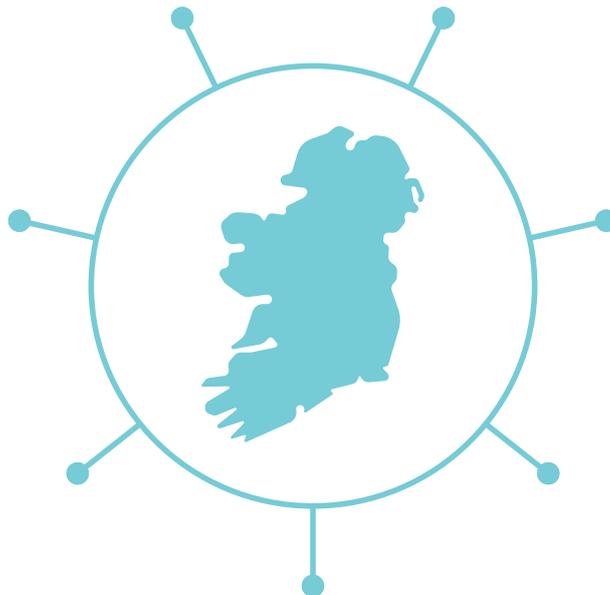


Children homeless in Ireland



1,387

number of 18-24 year olds who are homeless (December 2022)



Over half a million

primary school students to benefit from free school books



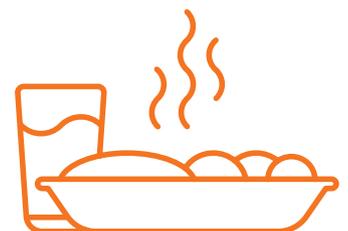
95%

of 8 to 12 year-olds own their own smart device



3,580

children and young people in Direct Provision (November, 2022)



228,007

children benefitted from the School Meals Programme 2021/22

1

Reform of the Early Childhood Education and Care System

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, is focused on children's rights and quality outcomes, reduces inequalities, supports staff retention, and substantially reduces costs to parents. We will do so in consultation with providers, staff and parents.

▶ Progress: **Steady**

'Reform of Early Childhood Education and Care system' receives a 'B+' an increase on last year's grade of a 'B-'. In 2022 the Government continued to make steady progress in reforming the childcare system. Building on the publication of a number of key reports in 2021, the advancement of key recommendations has seen substantial action in the areas of quality outcomes, supporting staff retention and reducing costs for parents. The commitment to invest €1bn in Budget 2023, five years ahead of schedule, is a significant milestone given that Ireland has lagged internationally in this area. However, further focus is needed to unlock the potential that early years services have in addressing child poverty and disadvantage. This should be in a key focus in 2023 and in the next implementation plan for *First Five*.

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 in their own right.¹ While Article 5 recognises parents and carers as primary caregivers, Article 18 imposes a duty on States to provide assistance, including quality childcare services.² 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 6.³ 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 organisations'.⁴ 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.⁵

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 2023. In its Concluding Observations, the Committee called for increased access to affordable childcare for parents engaged in the labour market, and especially those experiencing disadvantage. The Committee also recommended that the Irish government increase the level of funding allocated to childcare and move towards a publicly funded model of

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.

childcare.⁶ In relation to children with disabilities the Committee calls for inclusive education in early childhood by adapting curricula, training specialised teachers and ensuring reasonable accommodation within school infrastructure and for transportation.⁷

► 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 experience 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.⁸ No other stage of life depends more on the external environment for growth and development.⁹ Early Childhood Education and Care (ECEC) is defined as non-parental care provided to children before they enter the formal education system. Historically, Ireland's comparative expenditure on ECEC has lagged behind other countries. Data from the Organisation on Economic Co-operation and Development (OECD) shows, up to a few years ago, Ireland's public spending in this area was second lowest.¹⁰ The OECD is clear that if ECEC is not sufficiently subsidised, fewer children from disadvantaged backgrounds participate in it.¹¹ 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.¹²

In 2019, the Government pledged to continue increasing investment in the early years sector in order to bring Ireland in line with OECD averages.¹³ As part

6 UNCRRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 26.

7 UNCRRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 37.

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

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

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

13 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.

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, drawing on international evidence.¹⁴

Notably, the Terms of Reference for the Group state that it was not to propose changes to the current model of delivery (i.e. privately operated provision) but that it should seek to further achieve the policy objectives of quality, affordability, accessibility and contributing to addressing disadvantage in a privately-operated market through increased public funding and public management.¹⁵

Six months after the establishment of the Expert Group, the *Programme for Government* was published. Contained in the document was a commitment to build on the work undertaken to date and to bring together the best of private and community provision. Notably, the document calls for a focus on children's rights as well as committing to deliver progress in four key domains; quality outcomes; inequalities; staff retention; and cost to parents. To facilitate auditing of progress against each of these aspects, this section considers the context for these four related areas separately.

Quality Outcomes

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.¹⁶ 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 that all children can achieve their full developmental potential in line with their rights under UNCRC, it is vital that all those in the ecosystem of early childhood education and care – parents or carers, wider family, and early years

14 *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.

15 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.

16 Harvard Centre for the Developing Child, 'What Is Early Childhood Development? A Guide to the Science' <<https://bit.ly/2U9jVlc>> accessed 15 February 2023.

professionals – are equipped with the requisite knowledge and skills to foster these pivotal relationships.

Early childhood institutions, services and facilities must conform to quality standards as outlined by the UN Committee on the Rights of the Child.¹⁷

This means that:

- ✓ Staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained;
- ✓ 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.¹⁸

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.¹⁹ 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.²⁰

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

18 *ibid* para 23.

19 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.

20 *ibid*.

Inequalities

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. High-quality early childhood education and care is beneficial for all children, but it can be of particular value to more disadvantaged children by helping to redress inter-familial inequalities,²¹ thereby 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 their life cycle.²² One of the longest 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.²³ 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.

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.²⁴ 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 leaving family support. European Commission research found that in Ireland, the participation rate of children from low-income families in formal

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

22 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.

23 *ibid.*

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

childcare was less than a quarter of that of their high-income peers.²⁵ *First 5* has committed to developing a Delivering Equality of Opportunity in Schools (DEIS) type model for early childhood education and care.²⁶

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.²⁷ 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.

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.²⁸ Average annual turnover is approximately 19 per cent, with this rising to a high of 43 per cent in Leitrim and a low of 9 per cent in Cavan.²⁹ Staff retention rates are highest in private services, 59 per cent retained all of their staff (down from 66 per cent the previous year) and in rural based services, 61 per cent retained all of their staff (down from 67 per cent the previous year) over the previous 12 months.³⁰

25 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.

26 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.

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

28 Pobal, *Annual Early Years Sector Profile Report 2020/2021* (Pobal 2022).

29 *ibid.*

30 *ibid.*

A survey with early years professionals conducted in December 2020 showed that 76 per cent of educators and practitioners earned 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.³¹ Research highlights that poor pay and conditions, coupled with perceived lack of respect for skills and expertise cause many to leave the profession.³² 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.³³

Cost to Parents

The National Childcare Scheme (NCS) has been in operation since November 2019 and is the primary scheme aimed at supporting parents with childcare costs.³⁴ The NCS streamlined and simplified the various subsidy schemes and helps 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.³⁵ Under NCS parents with the least income receive the highest subsidy rate in line with the principle of progressive universalism.³⁶

Two types of childcare subsidies are available under the scheme:

- ▶ A universal subsidy for children under fifteen years. Children over three who have not yet qualified for the Early Childhood Care and Education Programme (ECCE) are also eligible.

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

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

33 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.

34 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.

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

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

- ▶ An income-assessed subsidy for children up to fifteen years old. This is means tested.³⁷

In addition, the NCS has a sponsor referral where special arrangements are made for vulnerable children and families, a referral is required from a sponsor body for a sponsor referral. The sponsor referral addressed instances where childcare is needed on child welfare, child protection, family support or other specified grounds. There are strict criteria applicable for a referral to be made. The need for a referral is determined by the relevant sponsor body and their decision is based on the particular need of the child in line with their defined criteria.

The NCS represented the first step towards reform in the sector by streamlining all subsidies, except the ECCE programme, into a more accessible and parent-friendly claim process. It provides financial support to parents for childcare costs and is a progressive universal model for early childhood education and care.

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

Since the publication of the *Programme for Government* in mid-2020, there has been substantial progress made on reforming the Early Childhood Education and Care System and school-age care. In 2021, two key reports were published - *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare*³⁸ and *Nurturing Skills: The Workforce Plan for Early Learning and Care and School-Age Childcare 2022-2028*. Both of these reports set out an important roadmap for the sector in terms of funding and the development of the workforce. Other significant developments in 2021 included the establishment of a Joint Labour Committee and the publication of the *National Action Plan on Childminding*. With a significant commitment to increase investment in the sector announced in Budget 2022, there is substantial momentum in terms of reform.³⁹

³⁷ Government of Ireland, 'National Childcare Scheme: Types of Subsidy' <<https://bit.ly/3rM6E0U>> accessed 14 February 2022.

³⁸ 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).

³⁹ Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

This section tracks progress across the four domains identified in the *Programme for Government*. Before examining these domains separately, it is important to acknowledge the cross-cutting nature of the Expert Group's final report. In December 2021, the report, *Partnership for the Public Good: A New Funding Model for Early Learning and Care and School-Age Childcare*⁴⁰, was published and the Minister for Children, Equality, Disability, Integration and Youth confirmed that the Government has accepted the recommendations contained within it and that they would be implemented through a partnership approach between the state and providers.⁴¹

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. Budget 2022 saw an increased allocation for ECEC, bringing the total allocation to a record €716 million investment for 2022. The vast majority of the increased resources allocated - €69 million – went towards this new funding stream. While initially Budget 2022 committed to €207 million for year 1 of Core Funding this grew to €221 million in early 2022, in response to cost pressures and to €259 million in September 2022 based on capacity growth in the sector.⁴² The funding is linked to quality improvement and requiring a freeze in parents' fees. More than 94 per cent of services have signed up to Core Funding to date.⁴³ Providers are also required to offer the NCS, which has led to a significant expansion of the number of providers offering access to the scheme.⁴⁴ From the period January 2022 to January 2023 the number of children in receipt of NCS subsidies has increased by 100 per cent and currently 111,000 are in receipt of support.⁴⁵

40 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).

41 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.

42 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

43 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

44 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

45 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

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.⁴⁶ The next phase of the *First 5 Implementation Plan (2023-2025)* is being developed. It is anticipated this will include detailed milestones on the roll out of these recommendations.⁴⁷ The report's recommendations will be implemented on a multi-annual basis with funding available incrementally.⁴⁸

Quality Outcomes

Given the 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. The commitment to investing in quality is evident in *Partnership for Public Good* with a central recommendation to introduce Core Funding. This funding seeks to address supply-side issues including supporting improved staff pay and the employment of graduates (see section on staff retention for further discussion on this).

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.⁴⁹ The report, *Nurturing Skills: The Workforce Plan for Early Learning and Care and School Age Childcare 2002-2028*, was published in December 2021. *Nurturing Skills* places an emphasis on developing a 'well-qualified, skilled' and graduate-led workforce with career progressions routes. It is envisioned that the development of the workforce will be 'centred on children's rights, needs and potential'.⁵⁰

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

47 *ibid.*

48 *ibid.*

49 Department of Children Equality, Disability, Integration and Youth 'Minister O'Gorman launches Nurturing Skills: The Workforce 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.

50 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), 4.

This Plan seeks to move to a graduate-led workforce by 2028, in line with the *First 5* target.⁵¹ 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*.

In July 2022 a Monitoring Committee was established by the Department of Children, Equality, Disability, Integration and Youth to oversee the implementation of Nurturing Skills.⁵² Membership of the Committee includes representatives of Department of Children, Equality, Disability, Integration and Youth (Chair), Department of Education, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, Better Start, Quality and Qualifications Ireland (QQI) and two stakeholder groups.⁵³ The scope of the Committee's work will include developing a set of indicators to capture progress and submitting an annual progress report for publication to the Minister for Children, Equality, Disability, Integration and Youth.⁵⁴

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

52 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

53 *ibid.*

54 *ibid.*

Childminding

Further improvements to quality, outside of centre-based care, are also outlined in the *National Action Plan for Childminding* published in April 2021.⁵⁵ The purpose of the plan is to 'improve access to high quality and affordable early learning and care and school-age childcare through childminding'.⁵⁶ This sector currently comprises an estimated 15,000 childminders, however, only 77 of these were registered with Tusla in 2021.⁵⁷ 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 of a number of actions, 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 in 2028.⁵⁸ Regulations specific to childminders will come into effect within the first three years of the Plan.⁵⁹

The development of bespoke training is one of the actions in the *National Action Plan for Childminding 2021-2028*. The central aspect of the Plan is to improve access to high quality and affordable early learning and care and school-age childcare through childminding.⁶⁰ The Plan proposes the development of an initial Foundation Training Programme, in phase one, which must be completed as a pre-requisite for Tusla registration and to access the NCS.⁶¹ Following this initial phase, a Quality Development Programme will be developed, resulting in a 'special purpose award at Level 5 on the NFQ, significantly smaller in scale than a major Level 5 award'.⁶² The Plan states new entrants may still have access to 'phased training requirements' at the end of

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

56 *ibid* 9.

57 *ibid*.

58 *ibid* 14.

59 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

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

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

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

phase three. The Plan notes that the Workforce Development Steering Group also proposed that the training requirement for childminders 'should be less onerous than the full Level 5 NFO requirement for centre-based practitioners'. 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 National Early Childhood Care and Education (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.⁶³

To oversee the implementation of the National Action Plan on Childminding, a Steering Group was established in September 2021. To date there has been substantial progress made on a wide range of issues including the development of childminder specific regulations and foundation training. To support the report's implementation, funding of €1.16 million was allocated in Budget 2022 and this increased to €1.6 million in Budget 2023. This allocation of funding has helped to support the recruitment of Childminding Development Officers to support the work of City/County Childcare Committees.⁶⁴ Funding provided under Budget 2023 will also support a national communications strategy and training programme.⁶⁵

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

64 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

65 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.



The average weekly childcare fee of €186.84 in 2020/21 was just €0.72 higher than the previous year. Prior to this, costs rose for four consecutive years.

In 2023, work will continue on developing appropriate regulations and pre-registration training programme and post-registration quality development. A review of funding supports for childminders as well as changes to the Childminding Development Grant will be undertaken by the Funding and Financial Supports Advisory Group.⁶⁶

Systems and operations

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 inspection, audit and mentoring functions.⁶⁷ First 5 commits to undertaking reform of regulatory and inspection systems in the sector. A review of the inspectorate system will be informed by the OECD Country Policy Review. This review recommended:

"In the short-term, deepen collaborative working between Tusla EYI and the DE Inspectorate. In the longer-term, consider bringing their functions within a single body that provides integrated care and education inspections."⁶⁸

In 2022, two working groups replaced the OSAG. An Inspection Streamlining and Coordination Working Group which will bring the Department and the two inspectorates together to enhance collaboration and support alignment between the two inspectorates.⁶⁹ A Quality Assurance and Improvement Working Group will align the inspection and quality support services, leading to the enhancement of the quality assurance and improvement system.⁷⁰ 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

66 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

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

68 OECD, *Strengthening Early Childhood Education and Care in Ireland: Review on Sector Quality*, (OECD, 2021).

69 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth on 11 January 2023.

70 *ibid*

emphasis on the importance of regulation of staff and services who interact with young children.

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.

Inequalities

The recommendations of the Citizens' Assembly on Gender Equality and the adoption of the European Child Guarantee, both occurring in June 2021, are two important policy levers relevant to addressing the issue of inequalities in early years.

There is 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.⁷¹ The European Child Guarantee aims to prevent and combat child poverty and social exclusion by supporting EU Member States to make efforts to guarantee access to quality key services for children in need, including free access to early childhood education and care.⁷²

Partnership for the Public Good addresses the *First 5* commitment to develop a DEIS type model for the early years by recommending the introduction of a new funding stream to tackle socio-economic disadvantage.⁷³ The report proposes two funding strands, universal and targeted, to tackle disadvantage.

Work on the development of the targeted model of early years is currently underway. This new strand of funding – currently known as Equal Participation Model – will provide a mix of universal and targeted supports through services accessed by children and families experiencing disadvantage.⁷⁴ Traveller and

71 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.

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

73 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.

74 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

Roma children are key cohorts in this model.⁷⁵ A scoping phase has already been completed and the DCEDIY are currently undertaking consultations and engagement following a presentation of the model at the Early Learning and Care Stakeholder in December. Proposals will be brought to the Minister for Children, Equality, Disability, Integration and Youth in 2023.⁷⁶ Complementary to this a pilot scheme to provide hot meals in ELC services was announced in November and a policy on the provision of meals in ELC and SAC will be developed. This will also contribute to the objective of addressing disadvantage.⁷⁷

Partnership for the Public Good recognised that it would take time to put in place a dedicated funding stream to tackle disadvantage based on additional data to identify early years settings with 'high concentrations of disadvantaged children'.⁷⁸ The introduction of changes to NCS eligibility in Budget 2022 were one 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...'.⁷⁹ In Budget 2022 an additional €9 million was allocated to extend the NCS to children under 15 years of age. The practice of deducting hours spent in education (including pre-school) was removed from Spring 2022.⁸⁰ 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.⁸¹ Further investment in the NCS in Budget 2023 has focused on the universal aspect of the scheme.⁸²

75 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 24 February 2023.

76 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

77 *ibid*

78 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) 130.

79 *ibid* 132.

80 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).

81 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 meant that parents retained an entitlement to 20 hours subsidised childcare all year round. These changes were said to be particularly beneficial to one parent families and those experiencing disadvantage. 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/3GWE8m8D>> accessed 19 December 2021

82 Government of Ireland, *Budget 2023 Expenditure Report* (DPER 2022)

Under *First 5*, the Government committed to undertake an evaluation of AIM. The evaluation was completed in 2022 and is expected to be published in Q1 2023.⁸³ The findings will inform the future development of the programme under *First 5*.⁸⁴ The Department are also currently conducting a review of the ECCE programme and as part of this review harder to reach groups, such as Traveller and Roma families will be consulted. This is to understand why the uptake is lower amongst these groups and to identify barriers which can be addressed through policy. The report is due for completion in Q4 2023.⁸⁵

Staff Retention

The Covid-19 pandemic rapidly changed the landscape in relation to terms and conditions of staff in the early years sector. The introduction of the Wage Subsidy Scheme and the subsequent Employment Wage Subsidy Scheme were welcome developments which effectively saw the state take over the payment of the wages of early childhood education and care providers. These measures 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.

It could be argued that, this subsidy was a first step towards the development a public system of early childhood education and care which recognised it as a public good that is reflected through a secure and stable wage for educators as part of a new social contract. Since 2020, a number of critical phases to establishing an agreed wage for the sector have been completed.

83 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

84 *ibid*

85 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 24 February 2023.

- December 2020** ▶ In December 2020 Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, commenced discussions with IBEC and SIPTU to advance a Joint Labour Committee (JLC) for childcare.⁸⁶
- June 2021** ▶ 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 to support the development of the Employment Regulatory Orders (EROs) for the sector.⁸⁷
- September 2022** ▶ On 7 September 2022 the Minister of State for Business, Employment and Retail, Damien English TD, accepted proposals for EROs for the sector.
- ▶ The new EROs came into effect on the 15 September 2022.

The EROs established an hourly minimum rate of pay for:

- ▶ Early Years Educators / School-Age Childcare practitioners;
- ▶ Early Years Lead Educators/ School-Age Childcare Coordinators;
- ▶ Graduate Early Years Lead Educators/ School-Age Childcare coordinators;
- ▶ Deputy Managers;
- ▶ Managers, and;
- ▶ Graduate Managers.

86 SIPTU, ‘SIPTU to discuss childcare professionals’ pay with Minister for Children and IBEC’ (Press Release 10 December 2020) < <https://bit.ly/3g4FKhL> > accessed 14 November 2022.

87 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.

The introduction of Core Funding was contingent on EROs being in effect.⁸⁸ A month prior to the introduction of the EROs a survey found that three-quarters (73 per cent) of managers and owners of early years services believe the EROs will have a positive effect on recruitment and retention, however, of this percentage 60 per cent indicated this would be dependent on future increases.⁸⁹ Over half of workers, 55 per cent, have indicated they would stay in the sector if there are agreed rates of pay with potential increases.⁹⁰ Thus indicating that the EROs represent an important starting point to improve retention and recruitment in the sector.

Organisation of Structures and Systems

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 has been reconfigured.⁹¹ The Division encompasses six units: Scheme Oversight, Communication and Co-ordination; Finance and Compliance; Governance and Systems Development; Quality; Access and Inclusion; Sector Development.⁹² In addition, the Early Years Education Policy Unit is co-located between the division and the Department of Education.

Continued ICT enhancement and development have been ongoing between the Department and Pobal. This has allowed for the development of new procedures, allocation calculations, funding disbursements and reporting as well as providing impact monitoring data on key indicators such as workforce pay, qualifications, turnover rates and non-contact time.⁹³

Priorities for 2023 include continued improvement to the Early Years Platform and the development of a single contracting process for various schemes, a portal for sponsor organisations and a data warehouse to support reporting.⁹⁴ Pillar Four of the new Workforce Development Plan focuses on the recruitment,

88 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman publishes funding agreement for new €221 million Core Funding scheme', Press Release, (28 June 2022).

89 SIPTU Big Start Campaign, *Early Years Staffing and Pay Survey*, (SIPTU 2022).

90 SIPTU Big Start Campaign, *Early Years Staffing and Pay Survey*, (SIPTU 2022).

91 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022 and 11 January 2023.

92 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

93 *ibid.*

94 *ibid.*

retention and diversity of staff in the early learning and care and school aged childcare workforce.⁹⁵ Actions identified to support this include a 'one-stop shop' on training and career opportunities along with the active promotion of careers in these sectors.⁹⁶ However, the plan acknowledges that a key enabler of retaining staff is the improvement in pay and employment conditions.⁹⁷

Cost to Parents

Childcare costs marginally increased for the year 2020/21 when compared to 2019/20. The average weekly fee of €186.84 in 2020/21 was just €0.72 higher than the previous year. Prior to this, costs rose for four consecutive years.⁹⁸ Geographically, average fees are higher in urban areas and on the east coast and in private rather than community services.⁹⁹

An additional allocation to the NCS means that from January 2023 families will receive a minimum universal subsidy of €1.40 per hour, an increase of €0.90 on the previous rate of €0.50.¹⁰⁰

In December 2021, the Department published a 12-month review of the NCS.¹⁰¹ Preceding the review's publication a number of changes to the NCS were introduced in Budget 2022. As noted in the section on inequalities these changes expanded the scope of the scheme as well as amending the deduction of hours spent in pre-school or school from the subsidised hours. 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 higher threshold for sponsorship support under NCS compared to previous schemes was particularly noted.

95 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

96 *ibid*

97 *ibid*

98 Pobal, *Annual Early Years Sector Profile Report 2020/2021* (Pobal 2022).

99 *ibid*.

100 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman secures €1 billion investment in early learning and childcare', Press Release 28 September 2022.

101 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

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 its 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.¹⁰²

In 2022, there was substantial progress on actions arising from the review. This has included providing compensation for administration work undertaken by providers under Core Funding, the establishment of user forums and additional tools to reduce the administration burden on providers as well as a commitment to develop portal for Sponsor organisations. Changes to the scheme have been promoted through awareness campaigns and at a local level City and County Childcare Committees are supporting local community organisations to help families who have experienced barriers to engaging with the scheme.

In 2023 an end of three-year evaluation will be commissioned.¹⁰³ The review will examine how effectively the NCS is operating and whether it is meeting the policy objectives.¹⁰⁴ It will identify the impact of recent changes to the scheme and assess the status of issues raised in the year one review.¹⁰⁵ It will consider whether the current mix of universal and targeted subsidies delivers on the objective of providing a system of progressive financial support towards the cost of ECEC which incorporates equity in access, efficiency and

102 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.

103 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 11 January 2023.

104 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

105 *ibid.*

responsiveness, parental choice and good governance.¹⁰⁶ The review should also consider whether the scheme delivers the best outcomes for children and takes into account their best interests.

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

The government continues to make progress on reforming early childhood education and care. The realisation of the goal to invest €1 billion in the sector in 2023, five years ahead of schedule is proof of the commitment to ensure all children get the best start in life. Building on this commitment it is critical that a number of key areas are prioritised in 2023 and in the development of the next *First 5* implementation plan.

In Budget 2023, the increase to the universal element of the NCS has meant that the cost of childcare has reduced for all parents. However, it is critical that targeted supports are provided to parents on low incomes to support participation in the labour market. The OECD emphasises that if ECEC is not sufficiently subsidised, fewer children from disadvantaged backgrounds participate in it.¹⁰⁷ 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.¹⁰⁸ An analysis of OECD data indicates that supporting parents from low-income families to participate in full-time employment is a critical objective in terms of significantly reducing child poverty.¹⁰⁹ Notwithstanding this, challenges exist in relation to accessing work with decent pay and conditions and a substantial number of households continue to experience in-work poverty.¹¹⁰

The State needs to provide free (or nearly free access to ECEC, for example, a small contribution of no more than €10 for people on the lowest incomes) for parents living in consistent poverty. This would include those currently

106 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

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

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

109 Daly, M. *Fighting Child Poverty: The Child Guarantee* (European Parliament 2019), 5

110 Social Justice Ireland 'Substantial portion of workers cannot achieve a socially acceptable standard of living' <https://bit.ly/2X8w78p> accessed 13 October 2021.

on welfare payments or in low paid jobs. This is the single most important measure in addressing child poverty based on the evidence that what works is providing quality employment alongside quality childcare.¹¹¹

In parallel to reducing the cost of childcare for low-income families, the government must prioritise the development of the DEIS-type model of early years. It is welcome to see this work commenced but it must be a central focus in 2023 with a clear commitment set out in Budget 2024 to resource its implementation.

The UN Committee is clear that to ensure quality in ECEC, the workforce must be socially valued and properly paid. The establishment of the EROs for the sector is a milestone event which will make an important contribution towards staff retention and recruitment. It is critical that this is recognised as a starting point which can be built on further to ensure that pay and conditions continue to improve. The supports outlined in the Workforce Development 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. In order to maintain momentum on the development of graduate-led workforce, work on a mechanism to support staff to undertake programmes at levels 6,7 and 8 should be prioritised.¹¹²

111 Daly, M. *Fighting Child Poverty: The Child Guarantee* (European Parliament 2019), 5

112 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), 94.

➔ Recommendations:

- ▶ In advance of the new funding model being developed and implemented and the new funding stream to tackle child poverty and disadvantage being introduced, provide free access (or nearly free access) to childcare for families on the lowest incomes by providing higher levels of subsidisation under the National Childcare Scheme for all families in receipt of the Medical Card.¹¹³ This can be achieved by amending the current IT system to include an additional field for Medical Card holders.
- ▶ The Early Years JLC is the only effective means of addressing pay and conditions for Early Years Professionals. As such all stakeholders, DCEDIY, employers and unions, should continue to engage in the JLC process to ensure that improvements to the pay and conditions of workers is prioritised and adequate resources ringfenced for this purpose.
- ▶ 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
- ▶ When developing 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.

¹¹³ The State could choose an alternative measure to control the cost of fees. For example, through contract, the State could require that only a certain fee is charged to parents in particular income brackets.

➔ Recommendations Continued:

- ▶ 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 further 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.
- ▶ Develop a mechanism to allow workers to access funding to participate in programmes that provide them with a higher qualification.
- ▶ The review of the National Childcare Scheme should consider whether the NCS delivers the best outcomes for children and takes into account their best interests.

2

**Childcare
Ireland
Agency**

Section Grade:

C



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.

▶ Progress: **Steady**

The establishment of Childcare Ireland receives a 'C' grade an improvement on the 'D' grade it received last year. The publication of the review of the Early Learning and Care (ELC) and the School Aged Childcare (SAC) operating model is an important foundational step towards establishing what shape a new agency will take. However, as the report highlights, the establishment of a new statutory agency will take time, both in terms of the development of legislation and the transfer of existing functions from other bodies. Therefore, momentum ought to be maintained for the second half of the lifetime of the programme for government.

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.¹ While Article 5 recognises parents and carers as primary caregivers, States have a duty to provide assistance, including quality childcare services under Article 18.² 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 6.³ Children's best interests are always the starting point for service planning and provision,⁴ 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.⁵ 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.⁶

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. Ireland was last examined by the Committee on the Rights of the Child in 2023. In its Concluding Observations, the Committee called for increased access to affordable childcare for parents engaged in the labour market, and especially those experiencing disadvantage. The Committee also recommended that the Irish government increase in the level of funding allocated to childcare and a move towards a publicly funded model as recommended by the Citizens Assembly.⁷ In relation to

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.*

7 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 26.

children with disabilities the Committee calls for inclusive education in early childhood by adapting curricula, training specialised teachers and ensuring reasonable accommodation within school infrastructure and for transportation.⁸

► What is the context for this commitment?

The commitment to establish Childcare Ireland is welcome as there is an urgent need to align policy, practice and inspection in the Early Childhood Education and Care (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 care⁹ meaning that there may not be a consistent approach to ECEC employed in all settings.

At present, oversight and governance of early childhood education and care is spread across several different bodies operating at city, county and national level.¹⁰ 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 and Care (ELC) and School Age Care (SAC) is a precursor to establishment of a stand-alone agency.¹¹ This review included an analysis of the evidence base to inform the establishment of the agency. 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.¹²

8 *ibid*, para 37.

9 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.

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 the Department of Children, Equality, Disability, Integration and Youth, 18 January 2022.

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



**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.**

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

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.¹³ While both ECEC and SAC will likely fall under the remit of the proposed Agency,¹⁴ Report Card focuses specifically on the impact that a central agency could have for ECEC.

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'.¹⁵ In this regard, Childcare Ireland could 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.¹⁶

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.¹⁷

As a precursor to the establishment of Childcare Ireland, the Department of Children, Equality, Disability, Integration and Youth embarked on a

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

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

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

16 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'. UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 39.

17 *ibid* para 23.

comprehensive review of the operating system that administers all ELC and SAC schemes and initiatives.¹⁸ The commitment to undertake this review was outlined in *First 5*.¹⁹

A final report on this review was published in March 2022. The objectives of the review set out in the report were to:

- ▶ analyse the current operating model;
- ▶ consider alternative models in light of the emerging needs;
- ▶ identify and undertake an analysis of options for reform to the operating model.²⁰

The report maps out the current operating model and the functions carried out by Pobal, the City/County Childcare Committees and funded National Voluntary Childcare Organisation, as well as operational functions performed by the DCEDIY.²¹ An international comparison highlighted a range of approaches adopted by comparable countries in relation to ELC and SAC. Consultations with stakeholders identified the strengths and weaknesses of the current operating model in Ireland. Through a combination of governance requirements and 'fit for purpose' principles (identified through the national and international analysis), the report develops key components that should be part of a future operating model. Based on the foregoing analysis the report proposed seven options for change.

In assessing the seven options, the report recommends that the establishment of a new statutory agency as the optimal way forward in terms of future development of the ELC and SAC model. Upon publication of the report, the Minister for Children, Equality, Disability, Integration and Youth indicated that the Government had accepted its findings and that a project team has been established to undertake further 'detailed analysis, planning, consultation and

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

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

20 Indecon, *Review of Early Learning and Care ('ELC') and School Age Childcare ('SAC') Operating Model in Ireland*, (DCEDIY 2022), p. iii.

21 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 23 February 2023.

engagement with key stakeholders to assess how this recommendation can best be implemented'.²²

In setting out the preference to establish a new agency, the report cautions that this option will require legislation which will take time to develop.²³ Furthermore, there are key costs involved in the initial outlay, particularly in relation to staffing, office and IT infrastructure. However, it is envisaged that there will be efficiencies in terms of HR and administration in the future.²⁴ The work currently being undertaken by the project team will provide crucial insights as to how the recommendation could be actioned.

Establishing a central body provides the State with the opportunity to underpin the training and professional development of early years educators in 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*.²⁵ 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.²⁶

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

With the publication of the report on the review of the ELC and SAC operating models, there is a clear evidence base for the establishment of a new statutory agency focused on childcare. Momentum ought to be maintained to develop further analysis of how this standalone agency would operate. All work should be informed by the standards set out under the UNCRC on rights in early childhood.

22 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman launches findings from review that recommends dedicated State Agency for Early Learning and Care and School-Age Childcare'. Press Release, 29 March 2022.

23 Indecon, *Review of Early Learning and Care ('ELC') and School Age Childcare ('SAC') Operating Model in Ireland*, (DCEDIY 2022), p. iii.

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.*

The Department should also continue to engage with Tusla EYI and DE Inspectorate to better coordinate and streamline inspections and to consider how best to implement the OECD's recommendation to bring these functions within a single body.

Recommendations:

- ▶ Publish an interim or progress report on how the preparatory work to consider how Childcare Ireland could be established in 2023.

3

Free School Books

Section Grade:

B



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.

▶ Progress: **Good**

'Free school books' receives a 'B' grade, up from a 'D-' in Report Card 2022. The commitment to roll-out free school books to primary schools from September 2023 is a significant milestone in terms of addressing school costs.

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.¹ To give effect to this right, states should 'take appropriate measures such as the introduction of free education and offering financial assistance in case of need.'²

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'.³ 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'.⁴

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. Ireland was last examined by the Committee on the Rights of the Child in 2023. The issue of education is identified in the Concluding Observations of the Committee as one of six areas where urgent measures should be taken. The Committee called on the Irish State to strengthen measures to ensure all children in disadvantaged groups have equal access to education including providing 'support to cover hidden costs of education'.⁵

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 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, paras 4 and 37.

► What is the context for this commitment?

Ensuring access to free school books has long been debated in Ireland and provided for in the scope of the 1918 Macpherson Education Bill as well as proposals contained in the policy documents of the Labour Party,⁶ the Irish National Teachers Organisation (INTO) and later of Fine Gael.⁷

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.'⁸ The Courts have interpreted this as placing no obligation on the State to educate children directly, rather the State discharges this obligation by providing financial assistance including paying teachers, providing buildings, providing school transport and prescription of minimum standards.⁹ In the case of *Sinnott v. Minister for Education* the Supreme Court held that this right is confined to children under the age of 18.¹⁰ The Education Act 1998 sets out that children should receive 'a level and quality of education appropriate to meeting the needs and abilities of that person';¹¹ and guarantees 'to promote equality of access to and participation in education and to promote the means whereby students may benefit from education'.¹² 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'.¹³

Education has the power to transform lives, lift people out of poverty and break down cycles of disadvantage.¹⁴ In Ireland, a person's socio-economic background remains a strong determining factor of their level of educational

6 Labour Party, *Education - Socialist Principles in Education Policy* (1985).

7 Fine Gael, *Towards a Just Society* (1965).

8 Irish Constitution, Article 42.4.

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

10 [2001] 4 I.R. 545.

11 Education Act 1998, s6(b).

12 *ibid* s6(c).

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

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

attainment.¹⁵ 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.¹⁶ Living on a low income can also prevent children and young people from participating fully in education.¹⁷ The European Union (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'.¹⁸ It further recommends that the State take measures to address barriers which hinder children attending school, including financial barriers, by providing targeted educational aid.¹⁹

In June 2021, building on the *Investing in Children Recommendation*, the *European Child Guarantee* was adopted by the EU.²⁰ 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.²¹ Under the *European Child Guarantee*, each Member State is required to identify and address financial barriers to participation along with ensuring provision of educational materials.²² In June 2022, Ireland's National Action Plan on the *EU Child Guarantee* was published.²³ The plan restates the current services, programmes and supports in place across relevant government departments within the scope of the Guarantee including the targeted supports available for children experiencing educational disadvantage.²⁴

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

16 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.

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

18 European Commission, *Commission Recommendation: Investing in children: breaking the cycle of disadvantage* (Brussels 20.2.2013 C(2013) 778) 5.

19 *ibid* 7.

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

21 *Ibid*.

22 *ibid* 7.

23 Government of Ireland, *EU Child Guarantee Ireland's National Action Plan* (DCEDIY 2022).

24 *Ibid* 12.

In the 2021/22 school year, there were 3,106 Primary Schools and 730 Post Primary schools in the State, of which 687 Primary and 197 Post-Primary were categorised as being part of the Delivering Equality of Opportunity in Schools (DEIS) Programme.²⁵ In the academic year 2022/23 there was an additional 230 primary and 38 post-primary schools categorised as DEIS.²⁶ This increase followed the announcement in Budget 2022 of an additional €18 million in funding to support the expansion of the scheme. This increase means more children in disadvantaged areas will benefit from the increased supports and programmes provided by DEIS schools. Research published in 2015, indicated that a large proportion (up to 50 per cent) of disadvantaged students attend non-DEIS schools.²⁷ With the expansion of the DEIS programme to more schools since then, further research to update this data is needed.

Cost of Education:

In 2022, parents of children in 4th class in primary school spent an average of €424 on back-to-school costs, with books being €124, making up almost a third of the total cost.²⁸ At post-primary level, school books represent the biggest outlay for parents of 1st and 5th year students costing €237 and €221 respectively and accounting for a similar proportion of overall costs as those parents with a 4th class child.²⁹



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

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

27 Emer Smyth, Selina McCoy and Gillian Kingston, *Learning from the evaluation of DEIS* (ESRI 2015) 79.

28 Barnardos, 'Back to School 2022' (Barnardos 2022) 2.

29 *ibid*

Costs for parents 2022	4th Class	1st Year	5th Year
Uniforms	€122	€199	€199
Books	€124	€237	€221
Digital	€50	€182	€104
Classroom resources	€46	€75	€66
Voluntary contributions	€82	€121	€132
Total	€424	€814	€722

Source: Barnardos, *Back to School Survey 2022*, (Barnardos 2022), 7.

The cost-of-living crisis has put increased pressure on families preparing their children to return to school with almost half of all parents stating it was having an impact on their ability to meet the cost of sending their children back to school in September 2022.³⁰ A small minority reported it was having no impact.³¹ Over two-thirds of parents of primary school children and three-quarters of those with children in secondary school reported being worried about meeting back-to-school costs.³² Just over one-fifth of primary school parents and over one-third of secondary school parents stated they would have to pay for back-to-school costs by getting a professional loan, using a credit card or by borrowing from friends and family.³³

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.'³⁴ The UK model has been in place since the 1940s.³⁵ The Department of Education provides a grant to schools to provide assistance for books which includes school book rental schemes. In 2017, it issued a circular to management boards to take measures to reduce school

³⁰ *ibid* 2.

³¹ *ibid*

³² *ibid*

³³ *ibid*.

³⁴ Joint Committee on Education and Social Protection, *Report on Tackling Back to School Costs* (Houses of the Oireachtas 2013) 20.

³⁵ Education Act 1944.

costs including the setting up of book rental schemes.³⁶ The Department views the schemes as being cost effective and estimates that parents can save up to 80 per cent on book costs. One key issue is that funding is allocated towards the purchase of books, however this does not take into account the necessary staff time to administer the scheme.³⁷

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

Budget 2020 marked an initial step in providing free school books by allocating €1 million for the development of a new pilot scheme to be administered by 102 primary schools for the school year 2020/21.³⁸ 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.³⁹

In Budget 2023, a commitment to provide 'funding for free school books for all pupils in primary schools within the Free Education Scheme from September' was announced.⁴⁰ The scheme, which will also provide free access to workbooks, will eliminate school book costs for the families of all children in primary schools.⁴¹ This scheme is predicted to benefit approximately 540,000 students in 3,239 schools, including 135 special education schools.⁴² The exact number of pupils to benefit will be determined by the enrolment numbers on 30 September 2022.⁴³

36 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).

37 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.

38 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.

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

40 Minister for Public Expenditure and Reform, 'Statement by Minister McGrath on Budget 2023', Speech, 27 September 2022 (Houses of the Oireachtas).

41 Communication received by the Children's Rights Alliance from the Department of Education on 16 November 2022.

42 *ibid.*

43 *ibid.*

A central aspect of the new scheme is that a grant will be paid directly to schools and there will be no need to apply for the funding.⁴⁴ Through this funding, schools can purchase school books and resources for their classrooms.⁴⁵ The Department intends to engage with all education partners and stakeholders on the rollout of the scheme and the intention is that it will build on the pilot measure introduced in Budget 2020 and on the existing book rental scheme, whereby schools purchase books directly from school book suppliers.⁴⁶ As part of the Department's engagement process, guidance on the procurement of books will be developed to ensure the achievement of value for money.⁴⁷ Information on the rate of funding per pupil will be made available as early as possible.⁴⁸

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

The UNCRC is clear that children have a right to education on the basis of equal opportunity and that the State has an obligation to offer financial assistance in the case of need.⁴⁹ The *Programme for Government* commitment on providing free school books, through the expansion of an initial pilot scheme to all primary schools makes a significant contribution towards this commitment. While the initial pilot scheme, introduced in September 2020 was quite limited, Budget 2023 has delivered a historic commitment to tackle the financial costs of going to school for over half a million children. While every child attending primary school will benefit from this measure it is particularly welcome for those children and families experiencing educational disadvantage.

It is critical that the momentum to address school costs is maintained. As a next step, the government should develop a roadmap for the introduction of free schoolbooks for young people attending secondary school. Mirroring the rollout of the primary school scheme, the government could initiate a pilot scheme for secondary schools which would inform further rollout.

44 *ibid.*

45 *ibid.*

46 *ibid.*

47 *ibid.*

48 *ibid.*

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

➔ **Recommendations**

- ▶ Develop a monitoring and evaluation framework to capture data and feedback on the rollout of the free primary school books scheme. Such information could usefully inform the development of the introduction of free school books at second level, as well as ensuring the benefits of the primary school scheme are maximised and promote best practice and value for money.
- ▶ Commit to a roadmap for the introduction of free school books at second level.

4

Reduced School Days

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.

▶ Progress: **Steady**

'Reduced School Days' receives a 'B-' grade, the same grade awarded last year. The Guidelines on the use of school days came into force on 1 January 2022 with schools now required to notify Tusla Education Support Service when a child is placed on a reduced school day and to capture certain data outlined by the Department of Education. In May 2022 the Department of Education published its review of out-of-school educational provision which included 6 key recommendations to inform future policy in the area. An implementation group has been put in place to oversee the process and ensure each recommendation is progressed to completion.

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.¹

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.'²

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.³

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.⁴

Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.⁵

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.

5 *ibid* Para 11.

Ireland was last examined by the Committee on the Rights of the Child in 2023. The issue of education is identified in the Concluding Observations of the Committee as one of six areas where urgent measures should be taken.⁶

The Committee calls for the Irish State to collect and analyse disaggregated data in relation to education, including the use of reduced timetables.⁷ This data should include information on ethnicity, socioeconomic background and residence status and it should help to inform the development of policies to ensure equal access to quality education.⁸ The Committee also recommended that the implementation of the reduced timetable guidelines should be effective and measures should be developed to address their overuse particularly amongst Traveller children and children with disabilities.⁹

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 learning, exploration and limit testing'.¹⁰ 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."¹¹

6 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 4.

7 *ibid*, para 37.

8 *ibid*.

9 *ibid*.

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

11 *ibid* Art 28.

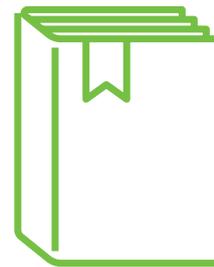
► What is the context for this commitment?

The Department of Education defines reduced school days 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.¹²

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.¹³

A 2020 study revealed that approximately a quarter of national schools reported children being placed on reduced hours.¹⁴ In recent years, there has been growing unease that schools' use of reduced days is infringing the education rights of children, with this practice disproportionately affecting children with special educational needs and disabilities; children of Traveller and Roma heritage; and children who are experiencing trauma or adversity.¹⁵



1 in 4

**children with a disability
have been put on a
short school day**

¹² 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.

¹³ 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 10 February 2023.

¹⁴ Dymrna Devine et al. *Children's School Lives: An Introduction, Report No.1*, (University College Dublin 2020) 17.

¹⁵ 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).

Research conducted with almost 400 parents found that one in four children with a disability have been put on short school days.¹⁶ In 2023 the number of teaching and SNA posts in our schools will increase with an additional 686 teachers and a further 1,194 special needs assistants in schools, meaning there will be over 19,000 teachers working in the area of special education and over 20,000 Special needs assistants.¹⁷

While there has been a welcome increase in educational psychologists employed in Irish schools over the past five years, current provision is just 224.5 posts¹⁸ to support students in almost 4,000 primary and secondary schools.¹⁹ This is an increase of only 3.5 posts since January 2022.²⁰ It is welcome in this regard that, in Budget 2023, the Government committed that the National Educational Psychological Service (NEPS) would expand their service into special schools and will receive funding for additional psychologists in special schools and special classes²¹ and that an additional €750,000 has been allocated for counselling and psychology training places in a new HSE initiative.²²

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,²³ existing evidence suggests that schools are using reduced days as a behaviour management mechanism²⁴ with little recognition that challenging behaviour or poor emotional regulation can be an indicator that a

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

17 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

18 Communication received by the Children's Rights Alliance from the Department of Education on 01 December 2022.

19 Oireachtas Library and Research Services, 'Education in Ireland Statistical snapshot' <<https://bit.ly/2LZzIWh>> accessed 10 February 2023.

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

21 Department of Education, 'Ministers Foley and Madigan announce details of €9.6 billion education funding in Budget 2023' (28 September 2022) <<https://bit.ly/40EUBID>> accessed on 10 February 2023.

22 Department of Health, 'Minister for Mental Health and Older People announces unprecedented €72.8 million in Mental Health funding in Budget 2023' (27 September 2022) <<https://bit.ly/3YnvKkl>> accessed 10 February 2023.

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

24 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); AslAm, *Invisible Children: A Survey on School Absence and Withdrawal in Ireland's Autism Community* (AslAm 2019); The Irish National Teachers Organisation (INTO), *The use of reduced timetables/reduced days in schools; INTO comment on draft guidelines* (INTO 2019).

child is experiencing toxic stress and has unmet needs.²⁵ Reduced school days can have a long lasting impact on a child's life and it reduces their opportunities to build relationships with their peers and fulfil their full potential.²⁶ However, if used appropriately, in a narrow set of particular circumstances, reduced days may be helpful to enable the integration or reintegration of children into school life depending on their needs, for example, in certain medical situations.²⁷ Further to the receipt of policy advice from the National Council for Special Education (NCSE), the Department of Education established an Expert Working Group to develop guidelines for schools on the prevention and management of challenging behaviours (including the use of physical interventions) where such behaviour is considered as likely to present a serious risk of physical harm to the student concerned and/ or others within the school environment.²⁸ This work is nearing finalisation.²⁹

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.³⁰ The UNCPRD 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.³¹

25 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 10 February 2023.

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

27 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.

28 Communication received by the Children's Rights Alliance from the Department of Education on 23 February 2023.

29 *ibid.*

30 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.

31 *ibid* para 12 and 10.



Reduced school days can have a long lasting impact on a child's life and it reduces their opportunities to build relationships with their peers and fulfil their full potential.

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

Guidelines on Appropriate Use of Reduced School Days

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.³² Where reduced days are used, schools must put the best interests of the child first.³³ The Guidelines came into effect on 1 January 2022. They 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.³⁴ 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.³⁵

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. Some of the requirements include that schools must engage with relevant professionals; provide reasons for considering a reduced day; notify Tusla Education Support Service (TESS) of the decision to place a student on a reduced school day; and engage in reviews and keep records of all instances where reduced school days are used.³⁶ 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.³⁷ 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

32 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.

33 *ibid* 3.

34 *ibid* 2.

35 *ibid* 3.

36 *ibid* 4.

37 *ibid* 7.

Education Act 1998.³⁸ 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.³⁹

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 days and if the practice followed by a school is in line with the guidelines issued by the Department. This is the first time that reduced days have featured in a circular and will form part of School Inspections.⁴⁰

Robust Data Collection

The 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.⁴¹ 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.⁴² This notification system allows 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.⁴³ 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.⁴⁴

38 Education Act 1998 s29.

39 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.

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

41 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.

42 *ibid* 4.

43 *ibid* 5.

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

The notification form, published in December 2021, sets out the specific information and data that school authorities are required to pass on to TESS.⁴⁵ It is welcome that this includes the rationale for use of reduced day; 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.⁴⁶

In June 2022, the Minister for Education expressed her intention to publish data on the use of reduced school days.⁴⁷ In December 2022, the Department of Education stated that it will shortly publish a composite report on the data compiled and that it is intended to provide reports on a periodic basis, however there are no dates available for when this will happen.⁴⁸

► **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 discrimination⁴⁹ but inappropriate use of a reduced timetable potentially breaches this right, and the evidence presented in 2019 to the Joint Oireachtas Committee on 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.⁵⁰

While the publication of the guidelines on the use of reduced school days is a welcomed first step, it is key that these guidelines are implemented consistently across all schools. It must also be ensured that there are enough

45 Department of Education, 'Reduced School Day Notification Forum' <<https://bit.ly/3G8Uzqs>> accessed 10 February 2023.

46 *ibid.*

47 Minister for Education, Norma Foley TD, Dáil Debates, Written Answers, Education Welfare Service, 21 June 2022 [32818/22].

48 Communication received by the Children's Rights Alliance from the Department of Education, 01 December 2022.

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

50 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).

staff in place to enforce these guidelines and schools should be given adequate resources and support services to assist them in implementation to 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.

The Government's publication of an information note for parents and guardians on reduced days in early 2022 is to be commended.⁵¹ However, it is also important for children and young people to be educated about their rights when they are placed on a reduced school day. To aid this, it would be a positive start to make sure that children and young people are aware of their rights by publishing a child-friendly version of the Guidelines. While it is welcome that the notification form has been published, and that schools have been required to adhere to the guidance since 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 days 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 school day usage.

The Department of Education's initiative in the composing of an awareness raising video for Traveller parents/guardians about the use of reduced hours in the first quarter of 2022 is an encouraged development.⁵² This was developed in collaboration with three National Traveller organisations, including Pavee Point.⁵³ However, the video is still not published and awareness raising with the communities has not commenced.⁵⁴

51 Department of Education, 'The Use of Reduced School Days: Information for Parents and Guardians' <<https://bit.ly/3jGsUzb>> accessed 10 February 2023.

52 Communication received by the Children's Rights Alliance from Pavee Point, 21 October 2022.

53 *ibid.*

54 *ibid.*

It should also be acknowledged that the mainstream education system does not suit the needs of all children. Some children who experience reduced days end up in Alternative Education settings. 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.⁵⁵



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

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It is welcomed that, in May 2022, the Department of Education published its Review of out-of-school educational provision.⁵⁶ The Review found that despite Ireland having a high retention rate to Leaving Certificate, there is a small group of students who find it difficult to engage in mainstream education.⁵⁷ Factors that may contribute to this include the young person's own needs and personal situation and/or their relationship with school and their learning. The Review notes that countries with higher retention rates than Ireland place more of an emphasis on vocational education pathways.⁵⁸ The Review also found that 'no clear tracking system exists for students who become disengaged or are at risk of becoming disengaged from mainstream

55 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.

56 Social Inclusion Unit Department of Education, *Review of Out-of-School Education Provision, Version 2 – October 2022*.

57 *ibid* 10.

58 *ibid* 10.

education.⁵⁹ This means that it is not possible to determine an accurate number of children and young people aged 15 and under who are not receiving any education or who are attending out-of-school settings. Further, the structure of support for students at risk of becoming disengaged from education, and how it is provided, is not currently standardised.⁶⁰

The findings of the review suggest that out-of-school education settings are providing an 'educational and holistic service' to the cohort of students who have become disengaged from mainstream education settings.⁶¹ Out-of-school education settings were found to have the ability to provide 'flexible, individual education plans with prolonged support on a one-to-one basis to students.'⁶² The out-of-school model adopts a wrap-around approach to meeting student needs, using supports from local community services, Government Departments, and agencies.⁶³ However, the review notes that there is no consistent approach applied with regard to education curriculum, certification and education pathways across the sector.⁶⁴

The unstructured nature of the provision of out-of-school education was highlighted by the Review group as the governance approach adopted varies from provider to provider.⁶⁵ The Review notes that strengthened governance arrangements would allow for a more 'sustainable and responsive model of support' for children and young people disengaged from mainstream settings.⁶⁶ The Review noted that there were little to no out of school education provision in the west and northwest regions and that settings were primarily focused in the main urban areas in Dublin, Cork and Limerick.⁶⁷ However, this does not mean there is no requirement for out of school education provision in the west and northwest regions. In some circumstances, Youthreach Centres accommodated a small number of

59 *ibid* 10 and 22.

60 *ibid* 10 and 83.

61 *ibid* 11.

62 *ibid*.

63 *ibid*

64 *ibid*.

65 *ibid*.

66 *ibid*

67 *ibid* 11-12.

students under the age of 15 if no other provision was available.⁶⁸ The Review found a 'data-based approach, in consultation with Tusla, would need to be considered to identify where out-of-school education provision was required to meet the needs of students who had become disengaged from mainstream education with more prompt reporting and recording at school level required to identify those students most at risk.'⁶⁹

The Review recommended:

- ▶ **1.** A framework of support for students who are at risk of becoming disengaged from education should be developed which incorporates the current Department of Education three tier Continuum of Support model and considers the provision of out-of school education as a support for students, who following full documented intervention through the continuum of support model, remain at risk of disengaging from education.
- ▶ **2.** In order to formalise the governance approach in the out-of-school education sector, this report recommends the development of an overarching framework for out-of-school education provision.
- ▶ **3.** Development of a referral framework to provide clear structure, guidelines and accountability for the referral process through the continuum of support for the retention of students in education and training.
- ▶ **4.** Improvement is required in the current level of the data recording and tracking of students who are expelled or referred to educational welfare officers (EWO) due to chronic absenteeism. Additional research on the needs, supports, outcomes and attendance of students who ultimately avail of out of school provision is warranted.
- ▶ **5.** Consideration should be given to the location and accessibility of short term and long term out-of-school education provision, to prevent the early leaving of students from education and training.
- ▶ **6.** A mapping of all support services available to schools should be completed to support the educational and personal development of students to include all cross departmental, agency and community services.⁷⁰

68 ibid 11-12.

69 ibid.

70 ibid 12.

An implementation group has been established to oversee the fulfilment of the recommendations of the Review. It is important that in the implementation of the Review that children over the age of 16 are not excluded from alternative education settings. Many children attending alternative education settings are currently over the age of sixteen and are supported to reach a leaving certificate qualification. 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'.⁷¹

The UN Committee on the Rights of the Child's 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 capitalise on their capacity for learning, motivation to work with peers, and focus on experiential learning, exploration and limit testing'.⁷² Although it is encouraging that there is an emphasis on short-term and in-school interventions, it is crucial that children and young people who cannot remain in mainstream education may easily access a more long-term intervention if necessary. The work of the Implementation Group provides an opportunity to consider the availability of alternative forms of education provision for students who are identified as being at risk of disengagement from mainstream education and early school leaving. It is essential that alternative forms of education provision are adequately funded and available throughout the country to ensure every child has the opportunity to continue with an education that can help them realise their full potential.

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

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

➔ Recommendations

- ▶ Publish data in relation to the use of reduced school days as a matter of urgency.
- ▶ Publish a child-friendly version of the Guidelines on Reduced School Days.
- ▶ Ensure that schools have the necessary resources to avoid an extra administrative burden the new notification process places on staff members.
- ▶ Ensure that there are enough staff in place in TESS to enforce the Guidelines on Reduced School Days.
- ▶ 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 up to completion of second level education.

5

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

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.

▶ Progress: **Some**

'Constitutional Right to Education for Children with Special Educational Needs' receives a 'C' grade, a slight increase on the 'C-' grade awarded last year. In May 2022, there were issues for children with special education needs ('SEN') in accessing appropriate school places in Dublin, however, efforts made by the government over the past year to remedy the lack of appropriate school places through fast tracked legislation, as well as increased investment in a variety of school supports, pilot programmes, and SEN staffing levels is to be commended.

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.¹

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.²

Ireland was last examined on progress against the UN Convention on the Rights of the Child (UNCRC) in January 2023. The issue of education is identified in the Concluding Observations of the Committee as one of six areas where urgent measures should be taken.³ The Committee raised concerns about the establishment of special classes for children with a disability.⁴ Furthermore the Committee recommended that Ireland:

(a) Review relevant legislation, including the Equality Acts, Disability Act and Education for Persons with Special Education Needs Act, to bring them in line with a human rights-based approach to disability, particularly with regard to the definition of disability and with due regard to the needs of Roma and Traveller children;

(b) Revise the standard operating procedure for Assessments of Need by the Health Service Executive to include diagnoses, in line with the Disability Act; and decrease the waiting time for such assessments and diagnoses, with a view to ensuring their prompt access to the necessary services and support, including by urgently addressing the shortage of staff and qualified experts;

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' (2023) UN Doc CRC/C/IRL/CO/5-6, para 4.

4 *ibid* para 36.

(c) Strengthen support for the social integration and individual development of children with disabilities, including by ensuring their access to early detection and early intervention programmes; providing capacity-building to child protection professionals on the rights and specific needs of children with disabilities; ensuring their personal assistance, rehabilitation and assistive devices; and allocating sufficient resources for the implementation of the Irish Sign Language Act;

(d) Ensure the right of children with disabilities to be heard in all decisions that affect them;

(e) Undertake awareness-raising campaigns to combat discrimination against children with disabilities and promote a positive image of them as rightsholders.⁵

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 education system. In considering the features of inclusive education,⁶ 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.

5 *ibid* para 29.

6 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.

► 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 cent⁷ of students are considered to have a 'special need'.⁸ Currently, it is estimated that 25 per cent of the school going population have special educational needs and of these, two per cent – approximately 19,504 students – are supported in special classes and schools.⁹ This suggests that the remainder of students with special educational needs are supported in mainstream classes.¹⁰

In October 2022, the Economic and Social Research Institute found that children with SEN were five per cent less likely to be in school than those without such needs, and that students identified with SEN age nine were twice as likely to leave school early.¹¹

The commitment in the *Programme for Government* focuses on the constitutional right of children to education which is contained under Article 42 and requires the State to 'provide for free primary education'.¹² 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.¹³ The Education Act 1998 provides for 'a level and quality of education appropriate to meeting the needs and abilities of that person'¹⁴ and 'to promote equality of access to, and participation in, education and to promote the means whereby students may benefit from education'.¹⁵

7 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.

8 *ibid* 38.

9 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

10 *ibid*.

11 Economic and Social Research Institute, 'Cumulative disadvantage in post-school plans and pathways among those identified with special educational needs in Irish primary schools' (26 October 2022) <<http://bit.ly/3loGUah>> accessed 14 November 2022.

12 Irish Constitution, Article 42.4.

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

14 Education Act 1998 s6(b).

15 *ibid* s6(c).

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,¹⁶ although the scope of this right is limited to those under the age of 18 – rather than the developmental stage of the child.¹⁷ 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 Constitution¹⁸ and that parents are not entitled to choose the exact type of care their child receives in the school setting.¹⁹ 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.²⁰ 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.²¹ While seeking to ensure compliance with the Constitutional right, the Department of Education has noted that it seeks to go beyond this interpretation and is 'committed to delivering an education system that is of the highest quality and where every child and young person feels valued and is actively supported and nurtured to reach their full potential' and 'strives to ensure that every child has access to an educational experience that is appropriate to their needs'.²²

Crucially, a key piece of legislation, the Education for Persons with Special Educational Needs (EPSEN) Act 2004 remains only partially commenced.²³

16 O'Donoghue v Minister for Health [1993] IEHC 2

17 Sinnott v. Minister for Education [2001] IESC 63.

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

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

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

21 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.

22 Communication received by the Children's Rights Alliance from the Department of Education on 21 February 2023.

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

The EPSEN Act 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.²⁴ However, the provision to prepare a tailored, annually-reviewed, individual Education Plan for a pupil following assessment of need is not yet operational,²⁵ nor has the Special Education Appeals Board – the independent mechanism for review and redress – been established.²⁶ While there is currently no legislative entitlement to an individual education plan, the Department of Education note that all students have access to a student support plan.²⁷ A 2022 survey by AslAm, found that at least 112 children are currently awaiting an appropriate school placement between 1-6 years.²⁸ Further, 241 survey respondents stated they did not anticipate receiving an appropriate school offer in September 2022.²⁹ The State have commenced a review of the EPSEN Act, due to be completed by early 2023.³⁰ 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 education system and a separate special education system is not compatible with its view of inclusion, but recognises that significant change takes time to implement.³¹ Considering this, and the large increase in the number of special classes in mainstream schools predominantly for children with autism,³² the NCSE has been undertaking an extensive policy consultation on the education provision that should be in place for students with special

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

25 *ibid* s9-13.

26 *ibid* s36 and s37.

27 Communication received by the Children's Rights Alliance from the Department of Education on 21 February 2023.

28 AslAm, 'Appropriate School Place' Survey Results (2022) < <https://bit.ly/40J1yly>> accessed 9 February 2023.

29 *ibid*.

30 Minister for Special Education, Josepha Madigan T.D. Dáil Debates, Written Answers, Legislative Reviews, 21 June 2022 [32817/22].

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

32 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

educational needs, with a view to making recommendations around the continued use of special schools and classes.³³ The policy advice was to be made available in 2020 however the Department of Education asked the NCSE 'to further consider the greater parental demand for special school and class places post Covid-19.'³⁴ This policy advice remains unpublished.³⁵

► 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'.³⁶

Budget

The Government has significantly increased investment in special educational needs support over the last decade. The 2022 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 2011.³⁷ Budget 2023 increased the funding for special education by almost ten per cent, with a total spend on supporting students with special educational needs of over €2.6 billion,³⁸ amounting to 27 per cent of the Department of Education's total budget allocation. Under the Budget, an additional €12 million is pledged for additional teachers supporting students with special educational needs, to support 686 new teacher posts; as well as 1,194 additional SNAs.³⁹

33 *ibid*; Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

34 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

35 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

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

37 Communication received by the Children's Rights Alliance from the Department of Education on 17 December 2021. This included an allocation of €16 million for 980 special education teachers comprising 620 posts for children in mainstream classes and 360 posts which allowed 287 new special classes to open. A further €12 million was allocated for 1,165 additional Special Needs Assistants (SNA) bringing the total number to 19,200. This marked an increase of 81 per cent on the 2011 number of SNAs.

38 Department of Education, 'Ministers Foley and Madigan announce details of €9.6 billion education funding in Budget 2023' (28 September 2022) < <http://bit.ly/3xadSOD> > accessed 9 February 2023.

39 *ibid*.

Of the 686 new teachers, 206 will provide additional support for children attending mainstream classes, including new and expanding schools; whereas 480 will facilitate the opening of a further 370 new special classes, providing over 2,200 new places in 2023 and 250 new special school places.⁴⁰ Of the 1,194 SNAs, 735 will support students in new special classes, whilst 124 will support students in new special schools; and 335 will support students in mainstream classes.⁴¹ Through this, the number of special classes will increase to 2,900.⁴² Budget 2023 further guaranteed additional psychology supports for special schools and special classes, as well as additional funding for assistive technology.⁴³ An additional €13 million in funding was provided for the expansion of the National Council for Special Education by 50 per cent.⁴⁴ This funding will provide an additional 161 staff, including 40 new staff for an Irish sign language scheme and over 70 staff who will have direct engagement with children and schools.⁴⁵ For the first time, there will be over 19,000 teachers working in the area of special education and over 20,000 SNAs.⁴⁶ This marks a total of almost 40,000 professionals working exclusively on supporting students with special educational needs.⁴⁷

In the last three years, over 600 new special classes have been sanctioned at primary level, 300 new special classes at post-primary level and five new special schools have been established.⁴⁸ There are a total of 2,544 special classes opened nationwide and for 2023 at least a further 370 special classes will open, taking the total number of special classes to over 2,900 in 2023.⁴⁹

The Special Education Teacher (SET) 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

40 *ibid.*

41 *ibid.*

42 *ibid.*

43 *ibid.*

44 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

45 *ibid.*

46 *ibid.*

47 *ibid.*

48 *ibid.*

49 *ibid.*

identified through school profile data.⁵⁰ Allocations are reviewed at regular intervals to ensure schools are receiving the appropriate amount.⁵¹ This marks a welcome shift away from a medicalised assessment-based system of resource allocation where a diagnosis is a requirement to access supports. The model allows schools to allocate supports according to the level of education need as it arises in the school across the continuum of support. This process is informed by regular reviews of progress (in consultation with parents and students).⁵² The current mechanism for monitoring how schools use their allocations is the School Inspections Process,⁵³ however, this happens on a cyclical basis with whole school inspections usually taking place every five years.⁵⁴

In 2022, €40 million was provided for summer programmes, with over 41,000 students and over 1,000 schools taking part, more than ever before.⁵⁵ In October 2022, Minister Foley announced that this programme will take place again in 2023, with €40 million set aside for the programme.⁵⁶ There is one scheme at post primary level and there are two in-school schemes at mainstream primary level:

- ▶ the Primary School Scheme for pupils in primary mainstream schools, which provides one cohesive scheme combining the Inclusion programme and special classes from last year
- ▶ the DEIS expanded literacy and numeracy summer camp/campa samhraidh for pupils in DEIS schools. This is available to all schools in the DEIS scheme, including those that received their new DEIS status in September 2022.⁵⁷

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

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

52 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

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

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

55 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

56 Department of Education, 'Ministers Foley and Madigan announce €40 million Summer Programme 2023 alongside a review of the programme' (17 October 2022) <<http://bit.ly/3HNWWBV>> accessed 14 November 2022.

57 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

Through the review process, the Inspectorate in the Department has visited schools, including special schools, and liaised with staff, parents and children who took part in the summer programmes.⁵⁸ It is welcome that the review is taking account of lived experience in this way. The review of the 2021 school-based summer programme, described its impact as 'life altering' for some students and their families.⁵⁹ It is therefore an extremely welcome step that this year's summer programme will introduce a new Special School Programme as a pilot initiative.⁶⁰ The pilot programme has been designed 'to ensure supports are targeted to enhance the availability of a school-based programme for pupils in special schools.'⁶¹

The State has also committed to invest in research and practice innovation through the roll-out of the School Inclusion Model (SIM) pilot across 75 schools nationwide which continued in 2020/21.⁶² This model trials enhanced support in the form of standardised training and support for SNAs, 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.⁶³ Although the Pilot recommenced in November 2021, the lack of availability of therapists has posed a substantial challenge to roll out.⁶⁴ For this reason the extension of the pilot will not happen as planned in 2023⁶⁵ however the SIM process is continuing in the existing areas and is being evaluated.⁶⁶

58 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

59 Department of Education Inspectorate, A Review of the 2021 School-Based Summer Programme for Primary, Post-Primary and Special Schools (Inspectorate May 2022) 38.

60 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

61 *ibid.*

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

63 Minister for Special Education and Inclusion, Josepha Madigan TD, Dáil Debates, Written Answers, 26 April 2022 [19268/22].

64 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

65 *ibid.*

66 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

EPSEN Act 2004

In December 2021, the Minister of State for Special Education and Inclusion, Josepha Madigan TD announced that a full review of the Act would commence in January 2022.⁶⁷ The purpose of the review is to ensure that legislation on education for students with SEN is up-to-date, fully operational, and reflective of the lived experiences of students and families.⁶⁸ Significant engagement and consultation is taking place as part of the review with a Steering Group, Working Group and Advisory Group having been established for the review and consultations have been carried out in the groups.⁶⁹ The review will consider recent reforms and the provision of increased investment in supports and the development of new allocation models.⁷⁰ The online public consultation phase was launched by the Department on 30 November 2022.⁷¹ As of 15 February, over 13,500 replies have been received.⁷² The review of the EPSEN Act is due to be completed by Q3 2023.⁷³

The Government now needs to ensure that the review of the EPSEN Act, a twenty-year-old piece of legislation that was never fully commenced, is comprehensive and significantly broad to encapsulate provisions in the UNCRRPD 2018 and is fully compliant with the UNCRC.

Education (Provision in Respect of Children with Special Educational Needs) Act 2022

New legislation, the Education (Provision in respect of children with special educational needs) Act 2022 was commenced in July 2022.⁷⁴ The Act provides

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

68 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

69 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

70 Communication received by the Children's Rights Alliance from the Department of Education on 17 December 2021.

71 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

72 *ibid.* The survey remains open until 3 March 2023.

73 *ibid.*

74 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

for a more streamlined section 37A process.⁷⁵ It envisages that a Minister could issue a direction within a period of 6 to 8 weeks of receiving a detailed report from the NCSE advising a lack of school provision in a certain area.⁷⁶ The new legislation also amended section 67 of the Education Act 1998 and provides for the Tusla Education Support Service (TESS) or the NCSE to designate a school place which should be of particular benefit by increasing the level of support to parents seeking a school place for a child with special educational needs.⁷⁷ The provisions in the Education Act 1998 which permitted a school to appeal a decision to designate a school place to an appeals committee and which allowed a parent to appeal a decision not to designate a school place to an appeals committee have been removed.⁷⁸ The Department of Education have also confirmed that 'a new provision is being made to allow a school to make representations to Tusla or the NCSE in relation to a notice of a designation of a school place and for these representations to be considered by Tusla or the NCSE before a direction is served to admit a child.'⁷⁹

Other Educational Developments

As a result of the rapid increase in school enrolments due to the war in Ukraine, the Department of Education has allocated temporary additional support in schools with at least 10 additional Ukrainian enrolments for students with SEN which also benefit all students in those schools.⁸⁰

Alongside this provision has been made that where a school has International Protection Accommodation Services (IPAS) student enrolments of a similar scale (greater than 10), the school can contact their local Special Education Needs Organiser (SENO) so that the NCSE can review and amend their special education needs resources if required.⁸¹

75 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

76 *ibid.*

77 *ibid.*

78 *ibid.*

79 *ibid.*

80 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

81 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

A new enhanced scheme to support students whose primary language is Irish Sign Language (ISL) was announced in March 2022.⁸² In Phase 1, the enhanced scheme will be introduced initially to support students attending mainstream school whose primary means of communication is ISL and who meet additional specific criteria.⁸³ As part of the expansion of the NCSE that was announced in Budget 2023, 40 dedicated new staff are being allocated for this first phase of the ISL scheme.⁸⁴

In December 2021 the Consultative Forum for Special Education was established to provide an opportunity for parents of children with special educational needs to contribute to and raise concerns over the ongoing reform of special education policy provision.⁸⁵ The initial membership of the forum comprised parent representatives from groups including AslAm, Inclusion Ireland, Down Syndrome Ireland, Family Carers Ireland and Open Special Schools and Classes.⁸⁶

In March 2022, an Autism Good Practice Guidance for Schools was published.⁸⁷ These guidelines form a welcome an important tool which will enable teaching staff to better support autistic students across mainstream, special classes and special-school settings.⁸⁸ To support students with special educational needs and their parents in navigating the various transition stages in and from education, the NCSE has published transition guidelines between all stages of education that are designed to assist parents to support their children to make successful transitions.⁸⁹ A Transitions Programme Steering Group, has been established under the Comprehensive Employment Strategy is working to oversee development of a Transition Programme that aims to provide access to all school leavers requiring specialist supports to an appropriate transition programme.⁹⁰

82 Department of Education, Ministers Foley and Madigan announce implementation of the first phase of ISL Scheme, Press Release 14 November 2022 <<https://bit.ly/3ILmrpl>> accessed 23 February 2023.

83 *ibid.* The specific criteria are as follows: the first is that the child has absent, hypoplastic or poorly functioning bilateral auditory nerves; the second is medical confirmation that hearing aids and/or cochlear implants are not a viable option to help hearing due to what medical professionals refer to as the anatomical structure of the cochlea.

84 *ibid.*

85 *ibid.*

86 *ibid.*

87 Department of Education, 'Autism Good Practice Guidance for Schools – Supporting Children and Young People' (30 March 2022) < <http://bit.ly/3kkHc1E> > accessed 22 February 2023.

88 *ibid.*

89 National Council for Special Education, '*Transitions*' < <https://bit.ly/3kkOltm> > accessed 23 February 2023.

90 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

A National Nursing Programme Pilot for children with complex healthcare needs was launched in October 2022.⁹¹ The pilot will extend the Paediatric Home Care Package (PHCP) for eligible students from their home into the school setting.⁹² This will allow an agency nurse to attend school with the student for an agreed number of hours per week, and travel to and from the school with them if necessary.⁹³

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.⁹⁴ 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.⁹⁵ 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.⁹⁶

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.⁹⁷ 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.⁹⁸ At the start of June 2022 there were 1,464 AONs overdue for completion.⁹⁹

91 *ibid.*

92 *ibid.*

93 *ibid.*

94 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).

95 *ibid.*

96 *ibid.*

97 *ibid.*

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

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

In 2020, the HSE introduced a standard operating procedure for AON, which shortened the time taken to make an AON from 29 clinical hours to 90 minutes, a reduction of 99.95 per cent in clinical hours for an assessment.¹⁰⁰ In April 2022, the High Court ruled the Standard Operating Practice that the HSE applied to Assessments of Need since 2020 was non-compliant with the Disability Act 2005. As a result of this, 10,000 children received an assessment of need that is now deemed unlawful.¹⁰¹ Between June and December 2022, there was a 22 per cent increase in the number of children waiting more than 12 months for an assessment of need.¹⁰² As of December 2022, 9,836 children have been waiting more than 12 months for an assessment of need¹⁰³ and are delayed in accessing services, often resulting in missed opportunities for vital early intervention and poorer outcomes. In Budget 2023, €11.7 million is being provided specifically to improve waiting times when it comes to an assessment of need.¹⁰⁴



In October 2022, the Department of Education in an Information Note advised teaching staff that, following the High Court decision noted above, the National Council for Special Education must assist the HSE in completing the educational component of the AON process which refers to assessment of education needs.¹⁰⁵ An extensive consultation process on the educational component of the AON process is ongoing.¹⁰⁶ The NCSE and the Department of Education worked with a small number of schools on a draft of the

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

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

102 David Murphy, 'Close to 10,000 children waiting over 12 months for disability assessment – HSE' RTE (6 February 2023) < <http://bit.ly/3ldqzOv> > accessed 9 February 2023.

103 *ibid.*

104 Department of Public Expenditure and Reform, Budget 2023 Expenditure Report, 113.

105 Department of Education, Report of Education Needs for Purpose of Assessment of Need (Disability Act 2005), 27 October 2022.

106 *ibid.*

documents required as part of the AON process, with the Department extending the trial period and providing additional support.¹⁰⁷ In total 80 schools were involved in the trial that concluded in December 2022.¹⁰⁸ Feedback from the schools and stakeholders involved is being incorporated into revised guidance documents and the AON form.¹⁰⁹ It is important to note that schools are assisting on the educational component only, and that the assessment of health needs is still carried out by the HSE.¹¹⁰

An assessment of need is the crucial first step for enabling the child to receive reasonable accommodations and the supports necessary for them to achieve their full potential, and so, State failure to deliver AONs in the statutory timeframes is an interference with their rights under Irish law and could also be seen as an interference with their rights under the UNCRC and UNCRPD. While an AON is not need to unlock educational supports it can be required to access other supports such as speech and language therapy which can play a crucial role in the development a child.

Children's Disability Services

Progressing Disability Services (PDS) is a national programme to reconfigure children's disability services which aims to 'provide equitable child and family-centred services based on need rather than diagnosis'.¹¹¹ However, the PDS programme of reconfiguration has resulted in children and young people with disabilities not receiving the services they need, losing access to services, and facing lengthy waiting periods to access services.¹¹² The Minister overseeing the roll-out of the PDS reforms has acknowledged the impact of 'recruitment issues' on the programme and noted "the PDS programme has tried to do everything at once and that simply has not worked."¹¹³ In a welcome development, in Budget 2023, the Department of Health provided €2.4 billion for disability services, with additional funding for school leavers to provide a placement in adult day services

107 *ibid.*

108 *ibid.*

109 *ibid.*

110 *ibid.*

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

112 *ibid.*

113 *ibid.*

for circa 1,200 mostly young people leaving school.¹¹⁴ In September 2022, the Minister of State for Disability announced that 220 therapists would be reinstated at special schools and that €11.5 million had been secured to recruit them.¹¹⁵

Children's Disability Network Teams are currently operating at only 75 per cent staffing levels.¹¹⁶ A survey of families of children with disabilities in March 2022 found that more than 50 per cent were not in receipt of any service.¹¹⁷ The survey also found that 85 per cent said they had been waiting over a year for services and almost 20 per cent criticised the quality of services, citing high staff turnover and excessive caseloads as problems.¹¹⁸ The report found some families had waited as long as nine years for services, with five per cent reporting a wait of over six years, 16 per cent waiting four to six years and 27 per cent waiting two to four years.¹¹⁹

In May 2022, it was reported that 17,000 children across the country are waiting for their first contact from a Children's Disability Network Team to access vital services such as speech and language therapy, psychological therapy, and occupational therapy.¹²⁰ For children waiting for speech and language therapy, nearly 1,300 have been waiting in excess of a year.¹²¹ Similarly, for psychological services, as of October 2021, there were 6,029 waiting longer than six months and 4,272 waiting longer than 12 months.¹²² Children on waiting lists are being denied access to services that they need and facing delays that can result in poorer outcomes across various aspects of their development.¹²³

114 Department of Health, 'Minister Rabbitte announces disability services Budget for 2023' (28 September 2022) <<http://bit.ly/3lquBdB>> accessed 9 February 2023.

115 RTE News, 'Minister says 220 therapists will be returned to special schools' RTE (2 September 2022) <<http://bit.ly/40X1Y8f>> accessed 9 February 2023.

116 Dáil Éireann debate, 'Topical Issue Debate' (20 January 2022).

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

118 *ibid*

119 *ibid*, 14.

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

121 Neil Michael, '11-year-old Cara Darmody: Dearth of autism resources 'needs to be treated like a crisis, like Covid' The Irish Examiner (5 August 2022).

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

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

► 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.¹²⁴ More recently, the Education (Admissions to Schools) Act 2018 and the Education (Provision in respect of children with special educational needs) Act 2022 have 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.¹²⁵ The provisions in the Education Act 1998 which permitted a school to appeal a decision to designate a school place to an appeals committee and which allowed a parent to appeal a decision not to designate a school place to an appeals committee have been removed.¹²⁶

On 1 June 2022, the results of a survey conducted by AsIAM on appropriate school places found that at that point and time least 267 children with autism were without an appropriate school place for September 2022.¹²⁷ On 22 June 2022, the Minister for Special Education and Inclusion, Josepha Madigan TD stated that in May 2022 up to 80 children were without a special class place and a further 46 remained without a special school place for September 2022 in the Dublin region.¹²⁸ That number reduced to 56 by the end of June 2022.¹²⁹ Since then, the Department of Education have confirmed to the Children's Rights Alliance that 'while there was some commentary in the media during summer 2022 as to the availability of special school and class places for September 2022, the NCSE confirmed to the Department that there were sufficient special school and class places for all children known to the

124 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.

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

126 *ibid.*

127 AsIAM, 'Appropriate School Place' Survey Results (2022) <<https://bit.ly/40J1yly>> accessed 22 February 2023.

128 Minister for Special Education and Inclusion, Josepha Madigan TD, Seanad Debates, Special Educational Needs, 22 June 2022.

129 *ibid.*

NCSE.¹³⁰ While the Minister acted swiftly to address the lack of appropriate school places available for SEN students for September in summer 2022, it is clear that there needs to be an increase in departmental outreach with schools to highlight the need for children with disabilities to be accommodated in the mainstream school setting in line with their constitutional right and to better understand what schools need to allow them to achieve this. The Ombudsman for Children has noted that there is a “lack of centralised data with respect to how many children with SEN require a school placement or require a more appropriate school placement.”¹³¹ The gap of centralised data in this respect acts as a compounding factor.

➔ Recommendations

- ▶ Complete the review of the ESPEN Act 2004 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, provide a timeline for the commencement of the remaining sections of the Act.
- ▶ 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.
- ▶ 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.

130 Communication received by the Children's Rights Alliance from the Department of Education on 22 February 2023.

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

6

Traveller and Roma Education

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.

▶ Progress: **Slow**

The Government commitment in relation to Traveller and Roma Education receives a 'D+' grade, an increase from a 'D' last year. This slightly higher grade reflects the fact that the tendering of evaluations of four pilot education projects for Traveller and Roma children, initially due to commence in September 2021, finally commenced in September 2022. This evaluation will provide important findings regarding the provision of increased educational resources for Traveller and Roma children. The publication in 2022 of baseline research on these pilot projects has been a positive step, however much greater concrete action and a timeline for completion of the evaluation is urgently needed in 2023.

Ireland's duties and responsibilities in international law



Articles 28 and 29 of the UN Convention on the Rights of the Child (UNCRC) provides that all children have the right to quality education, to enable children to maximise their ability and participate fully in their society.¹

As the UN Committee on the Rights of the Child has noted, 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'.² 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 UNCRC. Therefore, the Committee has found that children from minority backgrounds require special measures to ensure they can fully enjoy their rights.³

Education is a key enabler of economic, social and cultural rights, and strengthens access to civil and political rights.⁴ Full realisation of the right to education for indigenous children is therefore considered by the UN Committee to be essential for achieving individual empowerment and self-determination of indigenous peoples.⁵ Ireland committed to promote, respect and protect children's rights when it ratified the UNCRC in 1992. Ireland was last assessed on its progress in protecting the rights contained in the UNCRC in January 2023. The issue of education is identified in the Concluding Observations of the Committee as one of six areas where urgent measures should be taken.⁶ The Committee called on the Irish State to strengthen measures to ensure

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*.

6 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 4.

Roma and Traveller children have equal access to quality education.⁷ The Committee recommend that Ireland amend school admissions legislation; introduce measures that target improving educational outcomes for Roma and Traveller children; develop the National Traveller Education Strategy.

The Committee called for the collection of disaggregated data on education, including information on ethnicity, on the use of reduced timetables.⁸ This data should help to inform the development of policies to ensure equal access to quality education.⁹ The Committee also recommended that the implementation of the reduced timetable guidelines should be effective and measures developed to address their overuse particularly amongst Traveller children.¹⁰ Ireland should adopt the Traveller Culture and History in Education Bill and set up an advisory group to remove 'racist and negative stereotypes against ethnic minority groups in textbooks and curricula and to develop educative materials that promote intercultural dialogue and foster respect for and appreciation of racial, cultural, gender and other diversities'.¹¹

The Committee urged for a timeline to be set for the next National Traveller and Roma Inclusion Strategy as well as a strengthening of the rights under UNCRC in relation to full and equal access to education as well as a clarification of the rights of Travellers as an ethnic minority.¹²

Ireland has also ratified the International Convention on Civil and Political Rights (ICCPR), and has signed up to the Universal Periodic Review process, under which the human rights record of all UN Member States is reviewed by the UN Human Rights Council every 5 to 7 years. In March 2022, Ireland accepted 221 of the 260 recommendations of the report of the Working Group to the Universal Periodic Review under

7 *ibid*, para 37.

8 *ibid*.

9 *ibid*.

10 *ibid*.

11 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 37

12 *ibid*.

the UN Human Rights Council.¹³ A number of the recommendations accepted by the Government related specifically to Traveller and Roma education including to:

- ▶ Ensure that vulnerable communities, including Travellers, Roma, migrants and refugees, have full access to and are actively informed about their rights, such as in the areas of education and employment.¹⁴

Place special emphasis, in developing the next national Traveller and Roma inclusion strategy, on ensuring access to health care and increasing participation in higher education.¹⁵

▶ 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.¹⁶ In contrast to the general population, most Travellers in Ireland are young, with 60 per cent aged under 25,¹⁷ and two thirds of Travellers are under 15 years of age.¹⁸ Census 2022 included Roma as a separate ethnic category so we should know more information when the census data is published. However, at present there is limited data available, with the best estimate suggesting there are approximately 4,200 Roma in Ireland.¹⁹

Traveller and Roma children face significant structural discrimination in Ireland.²⁰

13 UN Human Rights Council, Report of the Working Group on the Universal Periodic Review Ireland, A/HRC/49/18; Irish Traveller Movement, 'Government Urged to Intensify Its Efforts to Combat Traveller Discrimination and Implement Policy Commitments' (24 March 2022) <<https://bit.ly/3Is8ymV>> accessed 9 February 2023.

14 *ibid* para 157.

15 *ibid*.

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

17 *ibid*.

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

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

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



**Persistent
discrimination
against the Traveller
community contributes
to poorer outcomes
in health, education
and employment and
lower life expectancy.**

Persistent discrimination against the Traveller community contributes to poorer outcomes in health, education and employment and lower life expectancy.²¹ Similarly, for the Roma community, persistent poverty and inadequate standards of living jeopardise their health and wellbeing, as well as access to education.²²

The experience and attainment of Traveller and Roma children at school is of particular concern. Whilst the overall educational attainment level of Irish Travellers increased between 2011 and 2016, with more Travellers completing secondary school than before, many still do not.²³ The most recent available Census data from 2016 shows only one in two 15-19 year olds from the Traveller Community were still in education.²⁴ 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.²⁵ 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.²⁶ Indeed, at post-primary level, 48.6 per cent of Travellers were in DEIS schools.²⁷ Importantly, this means that the 51.4 per cent of Travellers that are in non-DEIS schools are not receiving DEIS supports.²⁸ Data released in June 2022 by the Department of Education Social Inclusion Unit shows that in 2020-21, 4,234 Traveller pupils were in DEIS school at primary level and 3,914 were in non-DEIS schools.²⁹ With the recent extension of the DEIS programme, announced by the Minister for Education in March 2022, the percentage of Traveller students in DEIS schools has increased to approximately 65 per cent.³⁰

21 Department of Health, *All Ireland Traveller Health Study: Our Geels* (UCD 2010).

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

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

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

25 *ibid.*

26 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020)28.

27 Pavee Point, Ten New Posts to Tackle Traveller & Roma Education Disadvantage, 7 October 2022, <<https://www.paveepoint.ie/ten-new-posts-to-tackle-traveller-roma-education-disadvantage/>> accessed 30 January 2023.

28 Pavee Point, Ten New Posts to Tackle Traveller & Roma Education Disadvantage, 7 October 2022, <<https://www.paveepoint.ie/ten-new-posts-to-tackle-traveller-roma-education-disadvantage/>> accessed 30 January 2023.

29 *ibid.*

30 Communication received by the Children's Rights Alliance from the Department of Education on 17 February 2023.

In November 2021, the Oireachtas Joint Committee on Key Issues Affecting the Traveller Community observed that 'the percentage of Travellers completing the Leaving Certificate remains low at 22 per cent.'³¹

Comprehensive data on Roma children and young people in education is lacking, however, recent analysis highlights that the number of Roma children attending mainstream and special primary school classes increased across the 2016 to 2018 period.³² 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.³³ The financial costs associated with school attendance may therefore be particularly challenging for Traveller families to meet.³⁴ 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.³⁵ Aligned to this, the marginalisation of Traveller and Roma culture within the Irish education system adversely affects young people's sense of belonging and place.³⁶ 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.³⁷

31 Oireachtas Joint Committee on Key Issues Affecting the Traveller Community, 'Oireachtas Joint Committee on Key Issues Affecting the Traveller Community to Discuss Traveller Education with Minister for Children' (18 November 2021) < <http://bit.ly/3lfa44o> > accessed 9 February 2023.

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

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

34 *ibid.*

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

36 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).

37 National Council for Curriculum and Assessment, *Traveller culture and history in the curriculum: a curriculum audit* (NCCA 2019) 68.

Schools need to 'recognise cultural diversity and implement inclusive practices in order to ensure the inclusion of Roma children and combat identity based bullying.'³⁸ In April 2022, the European Commission highlighted the disproportionate impact of school closures during the COVID-19 pandemic on Traveller and Roma children.³⁹ These adverse impacts included Traveller and Roma households having a 'lack of wi-fi/devices/electricity supply to enable participation in online learning; lack of study space due to overcrowding; lack of access to school-based mentoring, support, and homework clubs; lack of access to local community facilities with internet connectivity and study space; and parents being unable to assist with homework due to literacy and/or language barriers.'⁴⁰

The Commission also found many Roma children missed out on one of their daily meals as a result of no longer having access to the free food schemes operating in primary schools during this period.⁴¹

The Department of Children, Equality, Disability, Integration and Youth (DCEDIY) sought proposals for the evaluation of three equality strategies including the *National Traveller and Roma Inclusion Strategy 2017-2021* (NTRIS).⁴² The review is underway, and the NTRIS Steering Committee is continuing to meet and maintain its oversight role with regard to actions under the current Strategy.⁴³ The outcome of the review along with other key inputs such as the Joint Oireachtas Committee Report on Key Issues Affecting the Traveller Community,⁴⁴ will inform the development of the new iteration of NTRIS in the first half of 2023, with publication expected later this year.⁴⁵

38 Pavee Point & Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 53.

39 European Commission, *Civil society monitoring report: Lessons learnt from implementation of the National Traveller and Roma Inclusion Strategy 2017-2021, and recommendations for the post-2022 strategy in Ireland*, April 2022, 13.

40 *ibid*, 14.

41 *ibid*.

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

43 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, on 22 November 2022.

44 Joint Committee on Key Issues Affecting the Traveller Community, *Final Report of the Joint Committee on Key Issues Affecting the Traveller Community*, November 2021.

45 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, on 22 November 2022.

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

A key commitment under the NTRIS is that access, participation and outcomes for Travellers and Roma in education should be improved to achieve outcomes equal to those for the majority population.⁴⁶ 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.⁴⁷ On foot of these, a number of actions have been commenced to better understand and address the barriers that Traveller and Roma children face in education, including a pilot project aimed at improving Traveller and Roma attendance, participation and retention in education.⁴⁸ This 'STAR' pilot began in September 2019 with three sites – Galway, Wexford and Dublin, with a fourth site in Cork joining in 2020.⁴⁹ The specific areas the pilot covered are Tuam, Bunclody/Enniscorthy, Finglas/Ballymun/Coolock and Cork. The project has been extended for a further two years to June 2024.⁵⁰ The Department of Education has stated that the pilot project had an original cost of circa €2.2 million for the first two years.⁵¹ It was then extended for a third year, and it is anticipated that annual funding will remain at a similar level for the next two years.⁵²

Originally, this pilot was 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.⁵³ However, with the change in department remits under the current Government, the pilot is now a partnership between the Department of Education, Tusla and the

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

47 *ibid.*

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

49 *ibid.*

50 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

51 Communication received by the Children's Rights Alliance from the Department of Education on 17 February 2023.

52 *ibid.*

53 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.

DCEDIY.⁵⁴ Each pilot area is being provided with an additional Educational Welfare Officer funded by the Department of Education via Tusla Education Support Services (TESS), an additional Home School Liaison co-ordinator, funded by the Department of Education, and two additional Traveller and Roma education workers, funded by the DCEDIY.⁵⁵ 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.⁵⁶ With all sites operational, the pilot is currently available in around 59 schools, to over 1,300 children.⁵⁷ Given the disproportionate effect school closures had on young people from the Traveller and Roma communities noted above, it is welcome that one of the areas intended to be covered by the independent evaluation of the pilot project is the impact of COVID-19 on the project.⁵⁸

The *Programme for Government* commits the Government to undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education.⁵⁹ A desk review of the Report and Recommendations for a Traveller Education Strategy 2006 was carried out and completed in 2020 which is intended to provide a framework for developing the current Traveller Education Strategy.⁶⁰ Whilst the completion of this review, belatedly gives effect to the commitment in the NTRIS for such a review to be completed in 2017, the review has still not been published. Work currently underway includes the work of the National Council for Curriculum and Assessment (NCCA) to support the teaching and learning of Traveller culture and history with the appointment of a full-time Education Officer to support this work, and the creation of a new post in the Professional Development Service for Teachers with a dual role in overseeing and developing CPD in

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

55 *ibid.*

56 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.

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

58 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

59 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020), 77.

60 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

diversity/social inclusion and in DEIS.⁶¹ The DCEDIY has responsibility for the development and implementation of the baseline research data into these pilots and contracted Dr Maria Quinlan to carry out this research.⁶² 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 2021.⁶³ This study explored the lived experience of parents and students from the Traveller and Roma communities, and teachers, principals, education welfare officers, home school community liaison co-ordinators (HSCL), and other members of the school communities across the four NTRIS pilot sites.⁶⁴ The focus was on exploring their thoughts, feelings, and experiences with regard to school attendance, engagement, participation, and retention.⁶⁵

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 they had.⁶⁶ Parents noted that increased supports at primary school level had a positive impact on their children but the transition to secondary school is challenging as the same level of support was not available.⁶⁷ In the absence of parents' direct experience or 'legacy knowledge' of secondary school, the study observed parents found it difficult to support their children in this transition.⁶⁸ 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.⁶⁹ 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.⁷⁰

61 *ibid.*

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

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

64 *ibid* 3. 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.

65 *ibid.*

66 *ibid* 14.

67 *ibid.*

68 *ibid.*

69 *ibid.*

70 *ibid* 47.

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.⁷¹

The impact of systemic racism and discrimination on the retention of Traveller students was identified in one of the four pilot sites.⁷² The participants at this pilot site identified a general lack of additional supports needed to address the impact of these structural issues and therefore Traveller students were failing to reap the same benefits from education as their settled peers.⁷³ At the same time, young people from this pilot reported a lower incidence of negative experiences compared to other areas, whilst greater participation in parent teacher meetings by Traveller parents was also observed. In contrast to this, other members of the school community perceived schools as inclusive to Traveller families and considered it up to the Traveller community to address the poor attendance and participation of children at school.⁷⁴

A wide range of initiatives were developed, trialled, or continued by the pilot project in 2022. The pilot teams have undertaken a number of initiatives to address participation and retention in education.⁷⁵ 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.⁷⁶ 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 to support them in accessing remote learning platforms.⁷⁷

71 *ibid* 37.

72 *Ibid* 49.

73 *ibid* 46.

74 *ibid* 40.

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

76 *ibid*.

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

A new STAR Ambassador programme was established in 2021 to promote the pilot project.⁷⁸ Ambassadors are teachers from STAR pilot schools and their role is to promote inclusion and help develop Traveller and Roma student leaders.⁷⁹ A STAR Ambassador community of practice was established in 2022 to allow for the sharing of best practice.⁸⁰ A working group on STAR resources and initiatives has been working since the start of 2022 to facilitate the sharing of successful initiatives and best practice from across the pilot sites.⁸¹

Additionally, pilot schools have been offered training in effective interventions for struggling readers both at primary and post primary level, introduction to the PPAD-E Post-Primary Assessment and Diagnosis (which is a new standardised test of literacy in English for post primary schools), and balanced approach to literary development in the early years.⁸² Three out of the four pilot sites also completed action research with teachers involving the implementation of evidence based interventions with pupils and monitoring their progress.⁸³

The DCEDIY has confirmed that the second phase of its baseline research into the pilot programme will involve an evaluation of the actual pilots under the responsibility of the Department of Education.⁸⁴ In September 2022, the Minister for Education announced the long-awaited opening of a tender process to undertake this evaluation.⁸⁵ The deadline for applications was October 2022, and preparations are ongoing to finalize the process.⁸⁶ Members of the NTRIS Education Sub-Committee and members of the Oversight Group for the NTRIS pilot were given the opportunity to feed into the request for tender.⁸⁷ The Department of Education has confirmed that a Research Advisory Board will 'provide support for the successful tenderers and there will be Traveller representation on the Board.'⁸⁸

78 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

79 *ibid.*

80 *ibid.*

81 *ibid.*

82 *ibid.*

83 *ibid.*

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

85 Communication received by the Children's Rights Alliance from the Department of Education on 29 November 2022.

86 *ibid.*

87 *ibid.*

88 *ibid.*

In March 2022, DCU's Anti-Bullying Centre published research on the effectiveness of the Department's anti-bullying procedures on Traveller and Roma experiences in the school system, which was commissioned by the Department of Education.⁸⁹ It is important to qualify the results of the research at the outset by acknowledging that the study was not a prevalence study and that due to the size of the sampling used, any prevalence statistics should be interpreted with caution.⁹⁰ Of the 71 Traveller and Roma students who were surveyed in this research, 15 per cent reported that they had been bullied in the past year with 'name calling, racist name calling, exclusion, and bullying by teachers being cited as the most frequent types of bullying that they experienced.'⁹¹ Bullying by peers typically took place on the playground, whereas bullying by teachers took place in the classroom.⁹² Traveller pupils described teacher behavior that was 'demeaning and made them feel unwanted and excluded.'⁹³

Additionally, the research found that reports of bullying were not always investigated. Ample evidence was found of discrimination, including being left out by peers and teachers, being called names and teachers having low expectations.⁹⁴ There was also evidence that being bullied influenced students' attendance and their decision to leave school.⁹⁵ In some cases parents were reluctant to report bullying due to fears that their child would be blamed, and the belief that the school would not do anything to stop the bullying and in fact that their child would be suspended.⁹⁶ With regard to anti-bullying policies making specific reference to membership of the Traveller and Roma communities, only 52 per cent of the schools surveyed referenced Travellers and 10 per cent referenced Roma.⁹⁷

89 *ibid.*

90 Dublin City University, *A study into the effectiveness of Anti-Bullying Procedures on Traveller and Roma pupils' experiences in the school system* (2022) 56.

91 Dublin City University, *A study into the effectiveness of Anti-Bullying Procedures on Traveller and Roma pupils' experiences in the school system* (2022) 54.

92 *ibid.*

93 *ibid.*

94 *ibid.*

95 *ibid.*

96 *ibid.*

97 *ibid.*

Minister Norma Foley announced in October 2022 that the €400,000 received by the Department of Education under the 2022 Dormant Accounts Fund Action to tackle education disadvantage for Traveller and Roma communities and to support attendance, participation and retention among Traveller and Roma children would be used to fund 10 new home-school community liaison (HSCL) coordinator posts in 14 non-DEIS post primary schools supporting Traveller and Roma students.⁹⁸ The HSCL will have access to funding to implement and run initiatives to encourage attendance, retention, and progression for Traveller and Roma pupils.⁹⁹ A further €100,000 was received by the Department under the Dormant Accounts Fund to support Traveller and Roma students to transition from early learning and care settings to primary , and from primary to post-primary education and onwards.¹⁰⁰

The DCEDIY also secured €400,000 in Dormant Accounts Funding in 2022, which is being used for the employment of dedicated Education Community Development Workers (ECDWs) who work in co-operation with local Traveller and Roma communities, primary and post-primary schools, and any other service providers that can contribute to improving educational outcomes for children and young people from the Traveller and Roma communities.¹⁰¹ Currently six local Traveller partnerships coming within the membership of the National Traveller Partnership are being provided with funding under this initiative and a further €400,000 Dormant Accounts Funding for the same purpose has been secured for 2023.¹⁰²

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

Whilst it is positive to see that the tender process to undertake an independent evaluation of the pilot project has been opened, 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

98 *ibid.*

99 *ibid.*

100 *ibid.*

101 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 23 February 2023.

102 *ibid.*

marginalised communities, yet little is known as to what impact it is having. It is crucial that the independent evaluation progress without further delay and that the learnings from the pilot project can be implemented and extended to more regions.

➔ **Recommendations**

- ▶ The Department of Education needs to conclude the tender process and begin 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 by the communities.

7

Children in Adult Psychiatric Facilities

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.

▶ Progress: **None**

'Children in adult psychiatric facilities' receives an 'E' grade, the same grade as last year. While the number of children admitted to adult psychiatric units in 2022 has decreased to 19 up to the end of October, more than 4,100 children and young people were waiting on a first appointment with Child and Adolescent Mental Health Services in September 2022. 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.¹ 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.'² 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.³

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.⁴ 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.⁵

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 2023. In its Concluding Observations the Committee expressed serious concerns relating to

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- 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.

mental health policy for children and young people and identified the issue of mental health as one of six areas where urgent measures should be taken.⁶

The Committee raised concerns about insufficient and inadequate services; the long waiting lists; the placement of children in adult psychiatric wards and the impact that racism and discrimination is having on the mental health of children from ethnic minorities and the slow progress in developing a mental health action plan for Traveller and Roma children.⁷

The Committee recommended that Ireland make revisions to the Mental Health Act and Assisted Decision-Making (Capacity) Act to ensure 'an explicit prohibition of the practice of placing children with mental health issues in adult psychiatric units'.⁸ The Committee urged the Irish State to increase its resources in this area as well as ensuring that the number of mental health professionals meet the needs of children.⁹ The Committee also called for the allocation of resources to expand the children's mental health advocacy and information service.¹⁰

► **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.¹¹ While mental health problems are

6 UNCRRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 4.

7 *ibid*, para 31.

8 *ibid*, para 32.

9 *ibid*.

10 *ibid*.

11 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.

not selective, certain groups of children are at greater risk of poor mental health, including children who have experienced abuse or neglect,¹² including domestic abuse,¹³ children living in poverty,¹⁴ children who have experienced discrimination, including homophobia or transphobia,¹⁵ and children with chronic physical health conditions.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹

The Covid-19 pandemic has had a negative impact on the health and wellbeing of young people, particularly those experiencing disadvantage.²⁰ Young people have reported feelings of loneliness and isolation, missing friends and

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- 12 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.
- 13 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).
- 14 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).
- 15 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).
- 16 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).
- 17 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.
- 18 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.
- 19 Communication received by the Children's Rights Alliance from the Department of Health on 7 January 2022.
- 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).

relatives and a reduction in access to services due to the pandemic.²¹ During the first eight weeks of the pandemic there was an increase in mental health emergency department attendance by children aged 16 and 18.²² 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, worry, anxiety, depression and a sense of utter hopelessness.²³ 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 2020.²⁴ 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.²⁵

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.²⁶ However, the increased need being placed on an overstretched Child and Adolescent Mental Health Services (CAMHS), means that there were 4,127 children on a waiting list for CAMHS services in 2022.²⁷ This is a concerning increase on the figures from the previous two years of 3,556 in 2021 and 2,755 in



21 *ibid.*

22 T McDonnell et al, *Increased Mental Health Presentations by Children Aged 5-15 at Emergency Departments during the first 12 months of COVID-19* (2021) 144 *Irish Medical Journal* (5) 356.

23 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).

24 T McDonnell et al, *Increased Mental Health Presentations by Children Aged 5-15 at Emergency Departments during the first 12 months of COVID-19* (2021) 144 *Irish Medical Journal* (5) 356.

25 *ibid.*

26 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).

27 HSE reply to Donnchadh O Laoghaire T.D. 16 September 2022 [42660/22] <<http://bit.ly/3GvF3cn>> accessed 14 November 2022.

2020.²⁸ Research in the United Kingdom exploring young adults' experiences of waiting lists within mental health services found that all participants expressed in some form an inability to function sufficiently and the emergence of negative beliefs, emotions and thoughts while waiting to access mental health services.²⁹ Ensuring that all children under 18 years have equitable and timely access to age-appropriate, quality mental health treatment and services is key to avoiding such negative outcomes.

Children Awaiting CAMHS Services 2020 to 2022

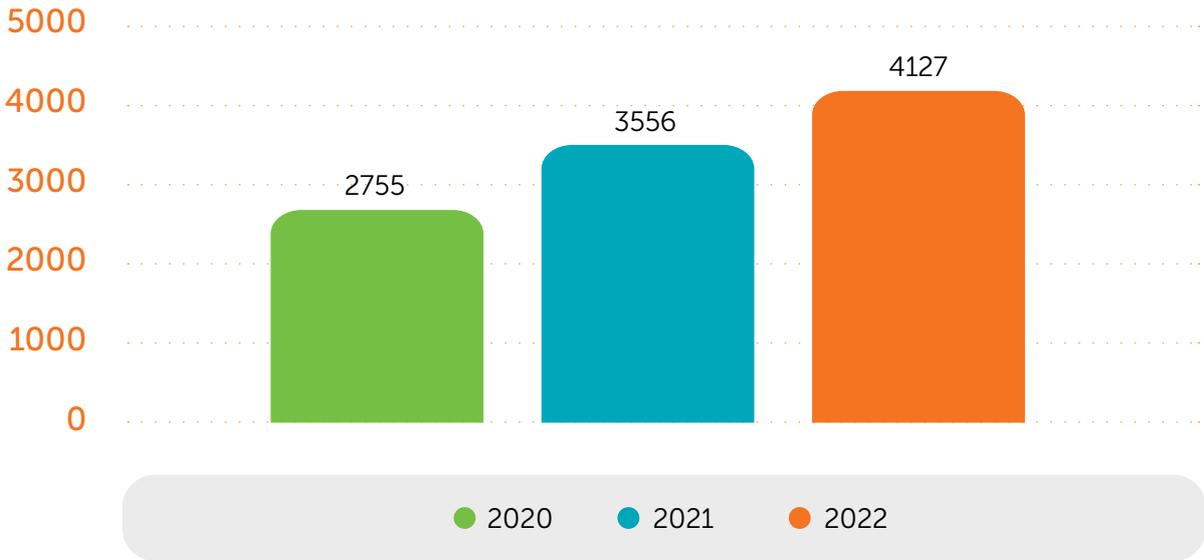


Fig 1. Statistics are taken from HSE reply to Donnchadh O Laoghaire T.D. 16 September 2022 [42660/22] and Minister for Mental Health and Older People, Mary Butler TD, Seanad Debates, Mental Health Services, 13 December 2022.

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.³⁰ Childhood and adolescence are critical periods 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.

28 Minister for Mental Health and Older People, Mary Butler TD, Seanad Debates, Mental Health Services, 13 December 2022.

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

30 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).

Despite a robust evidence base showing the value in safeguarding and promoting mental health in childhood, several 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 and differences in availability and consistency of services across the country,³¹ combined with poor investment³² and workforce recruitment and retention issues.³³

Crucial to this government commitment, specialist inpatient provision is also under-resourced. In June 2022, there were 72 in-patient beds in four public child inpatient units in Galway, Cork and Dublin, however only 53 beds were operational.³⁴ In 2021, there were 32 child admissions to adult units,³⁵ which marks an increase from 2020 though still in line with the welcome downward trajectory over the past 5 years.³⁶ There were 19 child admissions to adult units up until the end of October 2022.³⁷ While young people have described this experience of being placed in an adult psychiatric ward as "traumatic,"³⁸ thirty-one per cent of child admissions to adult approved centres in 2021 occurred when there was no bed available in a CAMHS unit.³⁹

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

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

33 *ibid.*

34 HSE reply to Mark Ward T.D. 16 June 2022 [27229/22] <<http://bit.ly/3UPZPaoh><http://bit.ly/3GvF3cn>> accessed 14 November 2022.

35 Mental Health Commission, *Annual Report 2021* (MHC 2022) 32.

36 *ibid.* 34.

37 Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022.

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

39 Mental Health Commission, *Annual Report 2021* (MHC 2022) 33.

Child Admissions to Adult Units 2017-2022

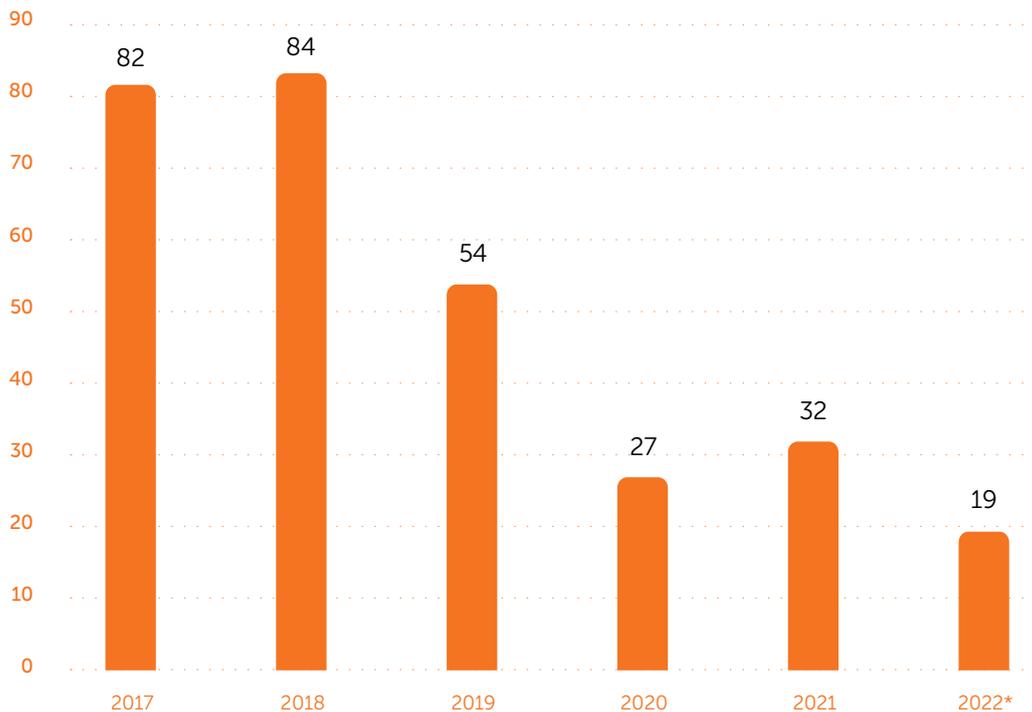


Fig.2 Data Source: Mental Health Commission Annual Report 2021 (MHC 2022) 34 and *The figure for 2022 is provided from a Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022 and covers the period up to October 2022.

Official Health Service Executive (HSE) policy is that children should only be placed in adult units when 'all alternative options have been exhausted'.⁴⁰ 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.⁴¹ This is despite the HSE Clinical Guidelines stating that all four public units take out-of-hours referrals.⁴²

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

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

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



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 and 75 per cent of CAMHS psychiatrists indicated they were experiencing burnout.

Currently, most children and young people can only access out-of-hours mental health treatment through hospital emergency departments as most CAMHS do not offer this support.⁴³ In 2019, the Health Service Executive Service Plan included a commitment to develop a seven day per week CAMHS service, but this commitment remains unfulfilled.⁴⁴ For the last two years the Mental Health Commission has noted its concern that there was zero per cent compliance with the code of practice on the admission of children to approved centres,⁴⁵ as services did not provide age-appropriate facilities and programmes of activities to children admitted to adult units.⁴⁶

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'.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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 2022.⁵⁰

43 Note: In July 2021 the Oireachtas Sub-Committee on Mental Health called for the State to develop access to critical mental health services and a 24/7 emergency mental health service "as a matter of priority"; see Oireachtas Sub-Committee on Mental Health, 'Interim Report on Covid-19 and its effect on Mental Health Services in the Community' (2021) 11, 13 <<https://bit.ly/3Ad3dVs>> accessed 7 January 2022.

44 Children's Rights Alliance, Report Card 2020, 68.

45 Mental Health Commission, *Annual Report 2021 (MHC 2022)* 21; Mental Health Commission, *Annual Report 2020 (MHC 2021)* 20. See also 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)*.

46 Mental Health Commission, *Annual Report 2021 (MHC 2022)* 21.

47 Mental Health Commission, *Annual Report 2020 (MHC 2021)* 5.

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

49 Conor Gallagher 'UK mental health facility accommodating Irish children faces closure' The Irish Times (8 June 2019).

50 Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022.

► 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 2011,⁵¹ yet over a decade later, significant issues persist, and some children continue to be placed in age-inappropriate facilities. In 2022 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.⁵² Moreover, children and young people were not provided access to age-appropriate advocacy services, an explanation of their rights nor information about the ward in language they could understand.⁵³

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.⁵⁴ *Sharing the Vision* acknowledges that adult inpatient units are not appropriate environments for children and states that where 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'.⁵⁵ *Sharing the Vision* also commits to a 'comprehensive specialist mental health out-of-hours response' for children and young people 'in all geographical

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

52 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.

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

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

55 *ibid* 47.

areas' and 'in addition to current ED services'.⁵⁶ To this end, a further €1 million in ring-fenced funding was announced for ED services in March 2022.⁵⁷ The recent *Sharing the Vision Implementation Plan* has committed to a complete national evaluation of the CAMHS inpatient code of governance by the end of 2024.⁵⁸

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 2011.⁵⁹ Furthermore, *Sharing the Vision* recognises that there should be an out-of-hours service for young people in significant distress across all geographical areas⁶⁰ and includes a core commitment to trauma-informed care delivery.⁶¹ These are welcome developments and strengthen the case for ensuring children are supported in age-appropriate and accessible facilities in line with human rights standards⁶² and principles of person-centred care.⁶³

The Department of Health has confirmed that once opened in 2023, the National Children's Hospital, will have an additional 20 inpatient CAMHS beds.⁶⁴ The National Forensic Mental Health Hospital, opened officially in November 2022 with an additional 10 inpatient beds for children.⁶⁵ These additions will bring the total number of child inpatient beds to 104.⁶⁶ However, broader staffing issues are affecting the ability of units to open beds. A lack of psychiatric nurses has been impacting the Linn Dara CAMHS inpatient facility since May, and it has closed 13 of its 24 beds as a result.⁶⁷

56 *ibid.*

57 Department of Health, 'Minister Butler announces ring-fenced funding for eating disorder supports' (March 2022) <<http://bit.ly/3HWyyym>> accessed 9 February 2023.

58 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone Implementation Plan 2022 – 2024* (DOH 2022) 66.

59 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.

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

61 *ibid.* 17.

62 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.

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

64 Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022.

65 *ibid.*

66 Department of Health, 'Health Ministers Donnelly, Butler and Feighan officially open new National Forensic Mental Health Service' (4 November 2022) < <http://bit.ly/3RLsBJ1>> accessed 9 February 2023.

67 Eilish O'Regan, 'Children in psychiatric distress are missing out on mental health care due to staff shortages' *The Independent* (25 November 2022).

A Psychiatric Nurses Association Survey found that there are 700 mental health nurse staff vacancies across the country while 25 such vacancies already exist in the newly opened National Forensic Mental Health Hospital in Portrane.⁶⁸ Some children with conditions such as severe depression are being placed in acute hospitals with young patients with physical illnesses because of a lack of specialist psychiatric facilities.⁶⁹

The total allocation in Budget 2023 for mental health services is over €1.2 billion which provides €72.8 million in additional funding (comprising of €14 million for new services and €43.8 million to support provision of existing levels of services).⁷⁰ Part of this investment will allow for the further development of two Child and Adolescent Mental Health Hubs.⁷¹ Additional supports include €10 million in mental health capital funding and €4 million for 'improving regulatory compliance in mental health in-patient services'⁷² and the creation of a Youth Mental Health Lead post within the HSE.⁷³ Additionally, in February 2022, further investment in primary care psychology and mental health was announced as part of the government 2022 Waiting List Action Plan.⁷⁴ This included €5.5 million to reduce the number of children and young people under 18 on waiting lists.⁷⁵

In January 2022, the *Maskey Report* into South Kerry CAMHS found that the care received by 240 young people did not meet the required standards, with serious clinical and governance failings resulting in unreliable diagnoses; inappropriate and over prescription of medication; the poor

68 *ibid.*

69 *ibid.*

70 Department of Health, 'Minister for Mental Health and Older People announces an unprecedented €72.8 million in Mental Health Funding in Budget 2023' (27 September 2022) < <http://bit.ly/3YCojpi>> accessed 9 February 2023.

71 *ibid.*

72 Department of Health, 'Minister for Mental Health and Older People announces an unprecedented €72.8 million in Mental Health Funding in Budget 2023' (27 September 2022) < <http://bit.ly/3YCojpi>> accessed 9 February 2023.

73 Minister of State with responsibility for Mental Health and Older People, 'Statement by Minister Butler at the Department of Health Budget 2023 Press Briefing' (28 September 2022) < <http://bit.ly/3x9cfjv>> accessed 9 February 2023.

74 Department of Health, 'Minister Butler announces additional investment in primary care psychology and mental health as part of 2022 Waiting List Action Plan' (25 February 2022) < <http://bit.ly/3HRrgvG>> accessed 9 February 2023.

75 *ibid.*

monitoring of treatment; and potential adverse effects.⁷⁶ It was found that these failings caused significant harm to 46 children and young people.⁷⁷ The absence of a Consultant Clinical Lead in the affected area contributed to the failure to deliver and sustain a high-quality service.⁷⁸ There was no regular nor effective oversight of the prescribing doctor in question, and where concerns about their practice were identified, no effective action was taken to address them.⁷⁹ On foot of the *Maskey Report* the Government has requested the HSE to undertake a full national audit of prescribing practice and operational guidelines in CAMHS nationwide.⁸⁰ It is of particular concern that the national audit will explicitly exclude autistic children and young people from its remit.⁸¹ Minister Butler clarified the scope of the audit in July, confirming that an Expert Audit Group chaired by Dr. Colette Halpin has been established, with a pilot commencing in 4 CHO Areas.⁸² The prescribing audit has been completed and is expected to be published in the near future.⁸³

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

77 *ibid.*

78 *ibid* 49-51.

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

80 Minister for Mental Health and Older People, Mary Butler TD, Dáil Debates, Written Answers, Mental Health Services, 26 April 2022 [20864/22].

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

82 Department of Health, 'Minister Butler clarifies scope of CAMHS Audit' (19 July 2022) < <http://bit.ly/3lcXgyu>> accessed 9 February 2023.

83 Communication received by the Children's Rights Alliance from the Department of Health on 15 February 2023.

In April 2022, the government approved a compensation scheme for those identified as affected by the Maskey Report.⁸⁴ Children in need of assessment in CAMHS in South Kerry are 'still engaging in telemedicine with a psychiatrist in Doha, with the HSE admitting it does not expect to have a permanent consultant in the short term.'⁸⁵

In January 2023, the *Interim Report of the Independent Review of the provision of Child and Adolescent Mental Health Services (CAMHS) in the State by the Inspector of Mental Health Services* was published. It demonstrated service failings on the part of CAMHS, most notably – a lack of governance and regulation leading to deficits in service provision,⁸⁶ 140 young people lost to follow up,⁸⁷ many teams not having training to provide standard therapies,⁸⁸ a lack of emergency provision particularly outside of Dublin resulting in GPs referring young people to emergency departments,⁸⁹ and failings in the monitoring of anti-psychotic medication.⁹⁰

► **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 operational 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

84 Department of Health, 'Statement by Minister for Mental Health Mary Butler – 19 April 2022' (19 April 2022) < <http://bit.ly/3luzz8U> > accessed 9 February 2023.

85 Noel Baker, 'Kerry Children needing mental health assessment being referred to psychiatrist in Doha,' *The Irish Examiner* (19 January 2023).

86 Mental Health Commission, *Independent Review of the provision of Child and Adolescent Mental Health Services (CAMHS) in the State by the Inspector of Mental Health Services Interim Report*, January 2023, 3.

87 *ibid* 6.

88 *ibid* 5.

89 *ibid*.

90 *ibid*.

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.⁹¹ 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 2014.⁹² 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 average⁹³ and 75 per cent of CAMHS psychiatrists indicated they were experiencing burnout.⁹⁴

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	17,436	23,125

Source: Department of Health.⁹⁵

91 HSE Mental Health Service, *Delivering Specialist Mental Health Services* (HSE 2019) 45-46.

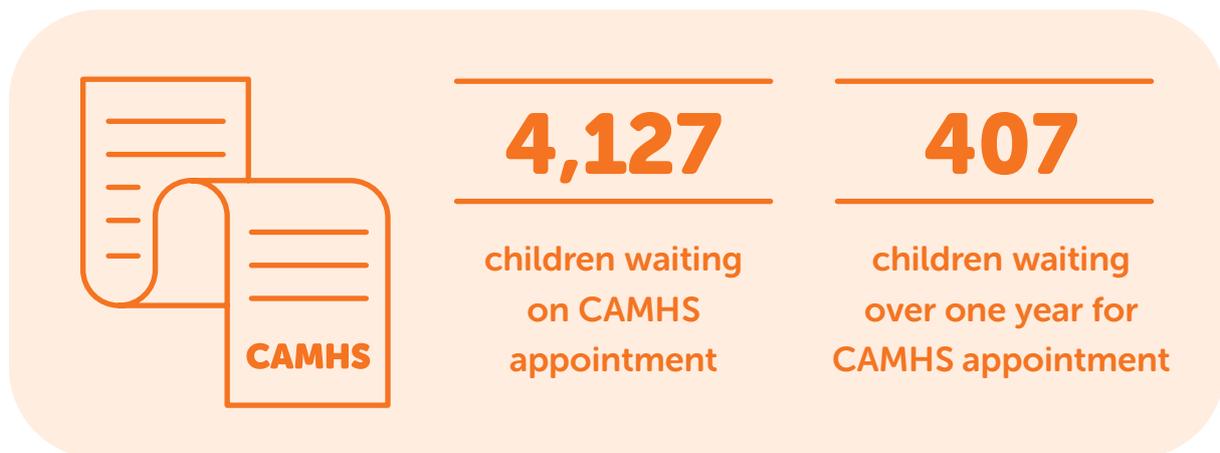
92 *ibid.*

93 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.

94 *ibid* 4.

95 Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022.

In September 2022, there were 4,127 children awaiting CAMHS services⁹⁶ with 407 of those waiting more than a year to be seen.⁹⁷



In 2019, the HSE committed to developing a seven-day CAMHS service nationwide⁹⁸ 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.⁹⁹ The 2021 HSE National Service Plan focuses on HSE investment in early intervention supports provided by non-governmental organisations.¹⁰⁰ 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.¹⁰¹ 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 a 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,¹⁰²

96 HSE reply to Donnchadh O Laoghaire TD 16 September 2022 [42660/22] <<http://bit.ly/3GvF3cn>> accessed 14 November 2022.

97 Communication received by the Children's Rights Alliance from the Department of Health on 16 December 2022.

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

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

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

101 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.

102 Mental Health Commission, *Annual Report 2019*, 27-28.

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.¹⁰³ Implementation is being progressed through the HSE's annual service plans and monitored by the Sharing the Vision Implementation Monitoring Committee.¹⁰⁴ 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.¹⁰⁵

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 existing provision is unlikely to be adequate to support an increase in child service-users, particularly given the existing backlog in access and treatment.¹⁰⁶

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

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

104 *ibid.*

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

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

decisions that concern the care or treatment of a child.¹⁰⁷ However, the guiding principle is limited by the clause 'in so far as is practicable', which, given the resource and staffing 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.¹⁰⁸ While the provision aims to incorporate the current Mental Health Commission Code of practice into law,¹⁰⁹ 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 age-appropriate settings.¹¹⁰

In its *Report on Pre-Legislative Scrutiny of the Draft Heads of Bill to Amend the Mental Health Act 2001*, the Sub-Committee on Mental Health noted that the General Scheme still allows for the admission of young people under 18 to adult facilities under Head 128, section 128 and stated that it believes that this is a 'draconian practice which needs to be phased out as a matter of urgency.'¹¹¹ The Inspector of Mental Health Services informed the Sub-Committee that there is a code of practice on the admission of children to adult units but the Committee also heard evidence that 'there is no adult unit in the country that would meet the standards in the code of practice.'¹¹² The Mental Health Commission informed the Committee that while there had been a decrease in the practice over the past few years, admission of children to adult units has occurred at weekends 'when resources and children's emergency admission units are not available.'¹¹³

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

108 *ibid* Head 128, s.108.

109 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.

110 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.

111 Sub-Committee on Mental Health, *Report on Pre-Legislative Scrutiny of the Draft Heads of Bill to Amend the Mental Health Act 2001*, October 2022, 60.

112 *ibid* 61.

113 *ibid* 62.

The Sub-Committee recommended that:

A prohibition be placed on the placement of children in adult units and that the practice be phased out as a matter of urgency. This should be acknowledged in the proposed legislation and a timeline for the implementation of this recommendation needs to be outlined by the HSE.¹¹⁴

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.¹¹⁵ 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 commenced a consultation in 2020 with CAMHS inpatient services to examine the structures and activity levels of the four child inpatient units. This consultation was to review governance, bed capacity and usage, admissions, discharges, and responsiveness to demand and referrals.¹¹⁶ There is no update on this.

To ensure that no more children are placed on adult wards 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. There also needs to be a focus on education pathways to ensure that there are enough people being trained through our third level system to work in this area. 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.

To ensure the best interests and safety of young people attending CAMHS services in the immediate term while a longer-term review and reform is ongoing, setting up an independent advocacy service, clinical reviews of all open cases, and workforce planning should be prioritised.¹¹⁷

¹¹⁴ *ibid* 62-63.

¹¹⁵ Communication received by Children's Rights Alliance from the HSE on 3 November 2020.

¹¹⁶ *ibid*.

¹¹⁷ Mental Health Commission, Independent Review of the provision of Child and Adolescent Mental Health Services (CAMHS) in the State by the Inspector of Mental Health Services Interim Report, January 2023, 23, 29.

➔ 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.
- ▶ 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.
- ▶ Prioritise setting up an independent advocacy service for CAMHS service users.
- ▶ Prioritise clinical reviews of all open cases.

8

Food Poverty

Section Grade:

C+



The Programme for Government commits to:

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

▶ Progress: **Steady**

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

▶ Progress: **Steady**

'Food poverty' receives a 'C+' grade, the same grade it received in Report Card 2022. There has been steady progress on the key work areas set out by the cross-government Working Group on Food Poverty. The publication of the mapping exercise and the commissioning of research on the drivers of food poverty makes an important contribution to the development of an evidence base on this issue. However, this evidence must lead to action to tackle food poverty. There has been a welcome expansion of availability of hot meals to the schools now included in the DEIS scheme as part of the increased investment in this programme in Budget 2022. However, a further scaling up of the scheme is dependent on the publication of the evaluation of the School Meals Programme which was undertaken in 2022. In the context of the cost-of-living crisis and the pressure this has created for families, this should be prioritised by Government.

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.¹ 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.² The Committee further recommends that this should include the training of teachers in child nutrition and healthy eating habits.³

Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development⁴ 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'.⁵

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. Ireland was last examined by the Committee on the Rights of the Child in 2023. In its Concluding Observations, the Committee called for policies which ensure all children have an adequate standard of living to be strengthened and that the school meals and programmes that provide access to nutrition are expanded.⁶

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 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 35.

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.⁷ 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'.⁸

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'.⁹

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

Food Poverty

Food poverty is defined as the inability to have an adequate or nutritious diet due to issues of affordability or accessibility.¹¹ Food poverty is multidimensional, encompassing a lack of access to a nutritionally adequate diet and how this impacts on health and social participation.¹²

The latest deprivation statistics show an increase in the number of people unable to afford basic goods and services which are considered the norm for society. The 2022 Survey of Income and Living Conditions (SILC) shows that 17.1 per cent of the population were experiencing deprivation, an increase in

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

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

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

10 *ibid.*

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

12 *ibid.*

the 2021 rate of 13.8 per cent.¹³ This rose to 20.1 per cent amongst under 18s.¹⁴ In relation to the food-related deprivation items, just 3.7 per cent of the population were unable to afford a roast once a week, this increased to 11.3 per cent in families headed by a lone parent.¹⁵

1 in 5
people under the age
of 18 were experiencing
deprivation in 2021

The most recent figures on the levels of deprivation amongst those living below the poverty line were reported in SILC 2021.¹⁶ In SILC 2021 the consistent poverty rate for the entire population was 4 per cent. Of those living in consistent poverty 27.2 per cent were unable to afford a roast once a week while 17.9 per cent were unable to afford meat, chicken or fish every other day.¹⁷ This was substantially higher than the rates for those not in consistent poverty, who reported not being able to afford such items at a rate of 2.7 and 1.0 per cent respectively.¹⁸ Based on the number of individuals experiencing one of three food deprivation indicators captured in SILC, the rate of food poverty was 8.9 per cent in 2021, down from 13.1 per cent in 2014.¹⁹ Households with children are more at risk of food poverty and this risk increases by family size.²⁰ In 2018, 19 per cent of 10 to 17 year-old children went to school or bed hungry compared to 22 per cent in 2014.²¹

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

13 Central Statistics Office, 'Survey on Income and Living Conditions (SILC): Enforced Deprivation 2022' (CSO 2022) <<https://bit.ly/3Oto5NC>> accessed 23 November 2022.

14 *ibid.*

15 *ibid.*

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

17 *ibid.*

18 *ibid.*

19 Department of Social Protection, 'Food poverty Government programmes, schemes and supports' (DSP 2022) <https://bit.ly/3TUOiqh> accessed 1 November 2022.

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

21 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'.²² 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. In June 2022, Ireland's *National Action Plan* required by the *EU Child Guarantee* was published.²³ The plan restates the current services, programmes and supports in place across relevant government departments within the scope of the Guarantee including those that promote healthy eating and the provision of meals in schools.²⁴



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.²⁵ 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.²⁶ 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 €138.²⁷

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

23 Government of Ireland, EU Child Guarantee Ireland's National Action Plan (DCEDIY 2022).

24 *ibid* 38.

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

26 *ibid*.

27 *ibid*.

This compared to €121 for the same size family living in an urban area.²⁸
The lack of access to public transport infrastructure leading to greater car dependency is a further cost that rural households need to incur.²⁹

Food poverty is one of the driving forces behind higher rates of obesity and ill-health in disadvantaged communities.³⁰ 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.³¹ 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 as a cost-effective way of meeting daily calorific requirements.³²

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.³³ Poor nutrition in children is linked to reduced development and cognitive function, delayed school enrolment, impaired concentration, increased illness, absenteeism and early school leaving.³⁴ 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.³⁵ Evidence also shows that families living on low and fixed incomes tended to cut back on food expenditure as it was easier to control than the cost of rent, utilities, or education.³⁶ Parents - and mothers in particular - within low-income households sometimes reduce their food intake in order to provide more for their children.³⁷

28 *ibid.*

29 *ibid.*

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

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

32 *ibid.*

33 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.

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

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

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

37 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).

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.³⁸ This will require coordinating activities across a number of government departments. To support this action a Food Poverty Working Group, chaired by Minister for State with responsibility for Social Inclusion, Joe O'Brien TD, was established in April 2021.

School Meals

Schools are an excellent setting to reach children, teachers, families, and the surrounding community.³⁹ They provide a social environment where children can access and enjoy food without financial constraints.⁴⁰ 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.⁴¹ 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.⁴² The message is that multi-component interventions are more effective than only providing food to children. Ireland is unusual in the European Union (EU) context in not providing a universal school meal programme.⁴³

The Department of Social Protection (DSP) funds the School Meals Programme. The programme provides funding towards the provision of food through the allocation



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

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

40 *ibid.*

41 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.

42 *ibid.*

43 *ibid.*

of a per pupil rate for breakfast, lunch and dinner. Funding provided during the 2021/2022 school year, enabled 1,257 schools and 221 organisations to participate in the scheme benefitting 228,007 children.⁴⁴ 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.⁴⁵

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

Food Poverty

The *Programme for Government* committed to 'work across government to address food poverty in children and ensure no child goes hungry'.⁴⁶ The cross-government Working Group on Food Poverty established by Minister Joe O'Brien has focused on two pieces of work. The first was a mapping exercise to establish what government initiatives currently exist to address food poverty.⁴⁷ This resulted in the publication of a report in July 2022 highlighting the various schemes, initiatives and programmes delivered across government departments to address food poverty. The report highlighted that in 2021, €89 million was provided in funding for programmes that directly address food poverty with a further €399 million allocated to schemes with a broader focus but with a food poverty aspect.⁴⁸

The second piece of work involved commissioning 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

44 Department of Social Protection, 'Food poverty Government programmes, schemes and supports' (DSP 2022) <https://bit.ly/3TUOiqh> accessed 1 November 2022.

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

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

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

48 Department of Social Protection, 'Food poverty Government programmes, schemes and supports' (DSP 2022) <https://bit.ly/3TUOiqh> accessed 1 November 2022.

these areas.⁴⁹ As part of the research an in-depth literature review of food poverty and its impact on children will be developed.⁵⁰ While children and young people will not be directly consulted as part of this research it is envisaged that individuals and organisations who do take part will capture the impact of food poverty on the household as a whole (i.e. including its impact on children and young people).⁵¹ The findings will help to inform the work of the Group and will include recommendations to assist individuals and families experiencing food poverty.⁵² This research was due to be completed by the end of 2022 but has not yet been published.⁵³

In Budget 2023, Minister O'Brien announced an allocation of €400,000 in funding to support the piloting of a case worker approach to tackling food poverty.⁵⁴ Further details on this initiative will be made available during the procurement process which will take place in quarter 1 2023.⁵⁵ A mid-term review of the *Roadmap for Social Inclusion* is currently being undertaken.⁵⁶ As part of this review a public consultation took place in 2022 with further stakeholder engagement also planned.⁵⁷ The review will assess existing goals and commitments, including those related to food poverty.

School Meals

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

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

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

51 *ibid.*

52 *ibid.*

53 *ibid.*

54 Department of Social Protection 'Minister Humphreys announces Social Protection Budget worth €2.2 billion', Press Release, 27 September 2023.

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

56 *ibid.*

57 *ibid.*

year.⁵⁸ 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.⁵⁹ The *Programme for Government* has committed to 'continue to review and expand the rollout of the Hot School Meals initiative'.⁶⁰ Since then the government has made sustained investment in expanding the provision of hot school meals:

- ▶ Budget 2020 and 2021 provided €4 million and €5.5 million respectively to provide hot school meals to an additional 35,000 children who were receiving the cold lunch option.⁶¹
- ▶ An additional €3 million in funding in Budget 2022 meant a further 16,000 students, from schools that previously expressed an interest in the scheme, would benefit from January 2022.⁶²
- ▶ In July 2022, the government announced that an additional 320 schools, that were awarded DEIS status as part of Budget 2022, would be invited to participate in the school meals programme. This extension included 284 schools who could provide hot school meals from September 2022.⁶³
- ▶ In the most recent Budget announcement, there is an allocation of €91.6 million for school meals in 2023, an increase from 2022 (€68.1 million).⁶⁴

58 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.

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

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

61 Communication received by the Children's Rights Alliance from the Department of Social Protection 16 January 2023.

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

63 Communication received by the Children's Rights Alliance from the Department of Social Protection 16 January 2023.

64 Government of Ireland *Budget 2023 Expenditure Report* (DPER 2022).

There has been an overall expansion of the scheme from an initial cohort of 37 to over 500 schools since the commencement of the pilot scheme in 2019.⁶⁵

In March 2021, the DSP published 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.⁶⁶ 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.⁶⁷ 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.⁶⁸ Two-thirds of principals and teachers indicated that universal provision within the school would be important.⁶⁹ 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.⁷⁰

Generally, the school meals programme does not provide funding to cover school holidays or for days when the school is closed. During the Covid-19 pandemic school closures in 2020 and 2021, funding under the programme was used to support participating schools that identified pupils who were unlikely to receive nutritious food while the schools were closed.⁷¹ Funding was also made available to schools to extend the school meals programme over the summer periods in 2020 and 2021.⁷² In 2021, approximately 150 schools and organisations requested additional funding to support 37,000 children.⁷³

65 Communication received by the Children's Rights Alliance from the Department of Social Protection 16 January 2023.

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

67 *ibid.*

68 *ibid.*

69 *ibid.*

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

71 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.

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

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

The current rates of funding for school meals are €0.60 for breakfast or a snack; €1.40 for a cold lunch and €1.90 for dinner. The rate for hot school meals is €2.90. In many instances, meals are prepared offsite and delivered to the school.⁷⁴ The rates payable have not changed since 2003 and recent increases in inflation have meant that providers are now struggling to continue to provide meals to schools.⁷⁵

An evaluation of the School Meals Programme, including a review of the provision of hot meals, commenced in March 2022.⁷⁶ This evaluation was due to be completed by the end of 2022.⁷⁷ As part of the evaluation process, key stakeholders such as other government Departments, service providers, school staff (principals, teachers and snas) and children have been consulted.⁷⁸

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.⁷⁹ It is positive to see some joint working between departments on the rollout of school meals through the development of nutrition standards for the Hot School Meals Scheme,⁸⁰ and the launch of the first *Healthy Eating Guidelines for 1-4 Year-Olds, Children's Food Pyramid* in October 2020.⁸¹

In November 2022, a pilot scheme to provide meals in early learning and childcare settings was announced by the Minister for Children, Equality,

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

75 Carl O'Brien, "It's at breaking point: Thousands of pupils risk losing school meals", *The Irish Times*, 21 December 2022.

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

77 *ibid.*

78 Communication received by the Children's Rights Alliance from the Department of Social Protection 11 November 2022

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

80 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.

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

Integration and Youth, Roderic O’Gorman.⁸² An allocation of €150,000, under the Dormant Accounts Funding, will help to support the scheme. The pilot scheme will focus on areas of concentrated disadvantage and those participating will also have the support of a dietician to ensure meals are nutritious.⁸³ The results of an evaluation of the pilot, which will include consultation with children, will help to inform the development of a DEIS type model for early learning and childcare settings.⁸⁴

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

A survey published in February 2022 indicated that one-quarter of parents were always or sometimes worried about being unable to provide sufficient food for their children.⁸⁵ This rose to one-third amongst those not in employment.⁸⁶ In the same survey, one-fifth of adults indicated, that in the past year, they skipped meals or reduced portions to ensure children have enough to eat.⁸⁷ These families will have been particularly impacted by the high levels of inflation recorded throughout 2022. The household budget of lower income households tends to largely comprise of necessities.⁸⁸ For instance, food has risen by 10.2 per cent overall in the 12-month period to September 2022. However, staple items such as bread (15.9 per cent), fresh whole milk (23.9 per cent) and pasta (21.8 per cent) have increased at a higher rate for example.⁸⁹

Charities working directly with children and their families are reporting an increased incidence of requests for assistance with food costs.⁹⁰

82 Department of Children, Equality, Disability, Integration and Youth, ‘Minister O’Gorman announces new scheme to pilot the provision of hot meals to children in early learning and childcare settings’, Press Release, 22 November 2022.

83 *ibid*

84 *ibid.*

85 Amarach, *Food Poverty the Impact on Vulnerable Children and Families* (Barnardos 2022) <https://bit.ly/3bo0vtO>

86 *ibid.*

87 *ibid.*

88 *ibid.*

89 Central Statistics Office, Consumer Price Index September 2022 (CSO October 2022).

90 Barnardos, *Cost Of Living Crisis Impact on Children*, (Barnardos 2022); Crosscare, ‘[Toy Show Funds for Families in need of Food Support - Crosscare](#)’, Press Release, 15 June 2022.

Long-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 response to food poverty must address accessibility, availability, affordability and awareness.⁹¹ 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.⁹² 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 which was due to be completed by the end of 2022. No further expansion of the provision of hot meals will take place until the evaluation is complete.⁹³ 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. Holiday hunger remains a serious concern for children and young people experiencing poverty who rely on school meals.⁹⁴ The evaluation could consider how meal schemes could be extended through the summer months and other holiday periods. The Department of Social Protection 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.

91 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.

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

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

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

➔ Recommendations

- ▶ Publish the evaluation of the School Meals Programme, including the hot school meals initiative.
- ▶ 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.
- ▶ In 2023, finalise and publish the research 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* 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.

9

Public Health Obesity Act

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.

▶ Progress: **Slow**

'Public Health Obesity Act' receives a 'D' grade which remains the same as the 'D' grade awarded last year. There has been no movement on the development of the legislation. The only progress has been the steps taken towards the development of a joint EU monitoring Protocol and certain provisions in the Online Safety and Media Regulation Act 2022 which permit the new online safety and media regulator to set up codes to regulate the advertisement of particular foods or beverages containing fat, trans-fatty acids, salts or sugars to children and young people.

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.¹ Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development² 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'.³

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.⁴

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.⁵ By becoming parties to international treaties, States assume obligations and duties under international law to respect, protect, and fulfil human rights. The obligation to protect requires measures to prevent third parties from interfering with the right to health of children and 'violations can come from omissions, such as the failure to regulate the activities of corporations to prevent them from violating the right to health of others, and the failure to protect

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

2 *ibid.*

3 *ibid.*

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.

consumers.⁶ 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'.⁷

► What is the context for this commitment?

One fifth of primary school children in Ireland are overweight or obese,⁸ a reduction from one quarter in the last measurement in 2012.⁹ The World Health Organisation (WHO) reported in May 2022 that not a single Member State of the European Region is currently on track to reach the target of halting the rise in obesity by 2025.¹⁰ Early studies from a number of European states indicate a rise in overweight and obesity prevalence, and/or mean BMI in children during the COVID-19 pandemic, along with associated decreases in physical activity and increases in the consumption of high fat, salt and sugar (HFSS) foods.¹¹



The experience of overweight and obesity occurs in children and adults at all levels of the socio-economic spectrum and spans all social classes.¹² However, the incidence for children is strongly related to the socio-economic status of their parents.¹³ In Ireland, while four per cent of three-year-olds from

6 Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs 27 July 2020, <<https://bit.ly/3YCqIWN>> accessed 3 February 2022.

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

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

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

10 World Health Organisation, *European Regional Obesity Report* (WHO 2022) 21.

11 *ibid* 16.

12 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.

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

professional/managerial headed households were classified as overweight and obese, this figure was more than double for the children whose parents had never worked.¹⁴

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.¹⁵ 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.¹⁶ This means they are more likely to exceed BMI thresholds, and they are more likely to experience persistent overweight or obesity. This particularly impacts girls.¹⁷ This suggests that social inequality-related overweight and obesity deepens into childhood and becomes more entrenched and more gendered. Similar findings have been reported across Europe.¹⁸

Obesity has been described as 'one of the most stigmatising and least socially acceptable conditions in childhood'.¹⁹ 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.²⁰ In 2017, 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

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

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

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

17 *ibid.*

18 World Health Organisation, *European Regional Obesity Report* (WHO 2022), 33. This 2021 cross-sectional assessment of the association between overweight and obesity prevalence and socioeconomic position among more than 120,000 children aged 6–9 years from 24 Member States in the WHO European Region found lower parental education to be a strong driver of unhealthy body weight in children, particularly in high-income countries.

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

20 *ibid.*

cent missing days from school as a result of bullying.²¹ 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.²²

In November 2022, results from an Economic & Social Research Institute (ESRI) longitudinal study tracking the changing social lives of nine year olds found that engagement in daily sport and physical exercise has decreased by almost a quarter among nine year olds between the 1998 and 2008 cohort, while there has been a threefold increase in those that never participate in such activities.²³ Additionally, there was much lower engagement among girls than boys, among children with disabilities, and children from a migrant background. Involvement was also less among children from households experiencing financial strain or living in rented accommodation.²⁴

The World Health Organisation 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.²⁵ 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.²⁶

Advertising influences how much children eat,²⁷ and can lead to them 'pestering' parents to buy unhealthy products.²⁸ At 18 months, children can recognise brands, with preschool children demonstrating preferences for

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

22 *ibid.*

23 Economic & Social Research Institute, *The Changing Social Worlds of Nine-Year Olds* (ESRI 2022) 46.

24 *ibid.*

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

26 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.

27 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.

28 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.

branded products.²⁹ 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.³⁰ The processed food industry, 'has been successful in blocking governmental and societal efforts for implementing food policies for obesity prevention', through lobbying for voluntary codes and making public commitments to which they do not adhere.³¹ This has contributed to poor global progress on obesity prevention. The UN Special Rapporteur on the Right to Health has called for front-of-package warning labelling regulations to tackle the increase in non-communicable diseases which are highly rooted in overweight, obesity and unhealthy diets.³² In line with this approach, a recent study from the ESRI has demonstrated that consumers purchased healthier snack foods when Nutri-Score labels were applied to products and also when there was a higher proportion of healthier foods to choose from. Nutritional labelling continues to have an influence on decisions even when the market changes.³³

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 an independent monitoring body to be established as a matter of priority to monitor compliance and the effectiveness of the *Voluntary Codes of Practice*.³⁴ 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

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

30 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.

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

32 Office of the High Commissioner for Human Rights, *Statement by the UN Special Rapporteur on the Right to Health on the adoption of front-of-package warning labelling to tackle NCDs*, 27 July 2020 <<https://bit.ly/3YCqIWN>> accessed 3 February 2022.

33 Economic Social & Research Institute, *Assessing the Impact of Nutri-Score Labelling and Product Availability on Consumer Choice* (ESRI 2022) ESRI Working Paper No.736, 18.

34 Houses of the Oireachtas, Joint Oireachtas Committee on Education and Skills, *Report on Tackling Childhood Obesity and the Promotion of Healthy Eating in Schools* (Houses of the Oireachtas 2018) 7.

reduce its influence on their eating habits.³⁵ This Committee also called for Advertising on school grounds to be banned.³⁶

► 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'.³⁷ The Department of Health has acknowledged that careful consideration is needed to identify what areas are best put on a legislative basis.³⁸ However, there are no set timelines in place for the drafting of the scheme of a Bill.³⁹ *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (OPAP) focuses on prevention of obesity to increase the number of people in Ireland with a healthy weight.⁴⁰ The Plan contains a commitment to 'develop, implement and evaluate a code of practice for food and beverages promotion, marketing and sponsorship'.⁴¹ The OPAP also commits to the development, implementation and evaluation of calorie posting legislation⁴² and the development and implementation of a nutrition policy and action plan.⁴³ The review of the OPAP was published in December 2022,⁴⁴ alongside an evaluation of the OPAP undertaken by the Centre for Health and Diet Research, University College Cork for the Department of Health.⁴⁵

In February 2018, the Department of Health launched the *Non-Broadcast Advertising and Marketing of Food and Non-Alcoholic Beverages, including*

35 *ibid* 16.

36 *ibid*.

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

38 Communication received by the Children's Rights Alliance from the Department of Health on 12 December 2020.

39 *ibid*.

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

41 *ibid* Action 3.2.

42 Department of Health, *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (Stationery Office 2016) Action 2.2.

43 *ibid* Action 5.2.

44 Department of Health, *Review of the Obesity Policy & Action Plan 2016-2025*, November 2022.

45 Communication received by the Children's Rights Alliance from the Department of Health on 24 November 2022.

*Sponsorship and Retail Product Placement: Voluntary Codes of Practice.*⁴⁶ 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. The challenge with voluntary codes is that they allow for self-regulation, which may not sufficiently reduce the advertising of unhealthy foods, nor reduce children's exposure to this type of advertising.⁴⁷ 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 HFSS products.⁴⁸ 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 a ban on advertising in locations primarily used by children.⁴⁹ From December 2022, commercial sponsorship of activities or events targeted towards children involving HFSS food will not be permitted.⁵⁰ 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'.⁵¹

The Online Safety and Media Regulation Act 2022 (OSMR), will dissolve the Broadcasting Authority of Ireland (BAI) and establish a new regulator, Coimisiún na Meán.⁵² An Coimisiún will be enabled to make media codes (which apply to protect the interest of the audience, in particular where communications relate to matters likely to be of direct or indirect interest to children and the general public health interests of children)⁵³ and online safety

46 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).

47 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.

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

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

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

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

52 Communication received by the Children's Rights Alliance from the Department of Health on 24 November 2022. See also Chapter 15 of this Report Card.

53 Online Safety and Media Regulation Act 2022, s46N(2)(d)i-ii.

codes (which may make provision to ensure service providers take measures to make their communications to children appropriate to protect the interests of the child).⁵⁴ The Act provides that An Coimisiún, in the context of the media codes, may prohibit or restrict communications relating to foods or beverages considered by it to be the subject of public concern in respect of the general public health interests of children, in particular foods or beverages containing fat, trans-fatty acids, salts or sugars.⁵⁵ When creating the code, An Coimisiún may consult with the relevant public health authorities.⁵⁶ In relation to online services, An Coimisiún may also prohibit or restrict communications relating to foods or beverages considered by it to be the subject of public concern in respect of the general public health interests of children, in particular foods or beverages containing fat, trans-fatty acids, salts or sugars.⁵⁷ An Coimisiún is in the process of being established and it is unclear when work on the codes will commence. It is important to also highlight that while An Coimisiún has the power to make media codes, it is not obliged to do so in the Act.⁵⁸

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'.⁵⁹ This will include the development of an EU-wide harmonised and comprehensive monitoring protocol for reducing unhealthy food marketing to children.⁶⁰ Work on this action commenced in October 2020 and will conclude in September 2023.⁶¹ As part of this work, Ireland is leading on developing guidance for an EU-wide Code of Practice to reduce marketing of unhealthy food to children and on developing, testing and adapting protocols to monitor unhealthy food marketing to children with a particular focus on digital marketing.⁶² An EU Framework for Action is due to be finalised by

54 *ibid* s139K(2)(d).

55 *ibid* s46N(7).

56 *ibid* s46N(8).

57 *ibid* s139K(5).

58 *ibid* s46N.

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

60 *ibid*.

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

62 *ibid*.

September 2023.⁶³ The framework will contain the WHO/EU harmonised Nutrient Profile Model,⁶⁴ the EU co-ordinated monitoring protocol and technical guidance to implement best practices when restricting marketing of unhealthy foods to children.⁶⁵

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

While there has been no movement in 2022 towards the introduction of a Public Health Obesity Act, other important measures have been taken which will aid in the development of the legislation.. The continued progression of the EU Framework for Action under the 'Best Re-MaP' is welcome as it will, when completed, deliver a European-wide monitoring protocol and technical guidance to implement best practices when restricting marketing of unhealthy foods to children.⁶⁶ In relation to advertising, the inclusion of measures which enable An Coimisiún to prohibit or restrict communications relating to foods or beverages considered by it to be the subject of public concern in respect of the general public health interests of children in the Online Safety and Media Regulation Act are welcome. However, the Act only enables but does not require An Coimisiún to create codes in this regard.

Priority should be given to commencing work on the development of a Public Health Obesity Bill in 2023 to ensure that this commitment is fulfilled during the government's term in office. Progress made to date has only been on advertising while the commitment is to introduce more wide-ranging legislation which includes the regulation of advertising.

➔ **Recommendations**

63 Communication received by the Children's Rights Alliance from the Department of Health on 24 November 2022.

64 The Nutrient Profile Model (NPM) is used to identify food products that should not be permitted to be marketed to children based on the content of added fats, sugars, sodium, and non-sodium sweeteners (HFSS). The new EU harmonised NPM was pilot-tested between March and June 2022 in 13 countries including Ireland, and included a total of 108,578 food products.

65 Communication received by the Children's Rights Alliance from the Department of Health on 24 November 2022.

66 *ibid.*

- ▶ **Prioritise the preparatory work and publish the proposed Public Health Obesity Bill in 2023.**

10

Family Homelessness

Section Grade:

D-



The Programme for Government commits to:

We will 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.

▶ Progress: **Poor**

'Family Homelessness' receives a 'D-' grade, a slight improvement on the 'E' grade it received last year. The number of children and families living in emergency accommodation continued to rise throughout 2022 and the continued contraction of the private rental sector has created further barriers to exiting homelessness. In the second half of 2022, increased flexibility regarding Housing Assistance Payment (HAP) limits and the introduction of a temporary eviction ban showed a commitment by the government to rethink its approach to tackling this crisis. A further commitment to increased funding for Traveller accommodation is also to be commended. However, these measures are very small steps when giant leaps are required.

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'.¹ 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.²

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.³ States then have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.⁴

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 2023. In its Concluding Observations, the Committee urged Ireland to 'address the root causes of homelessness among children'.⁵ In addition, the Committee called for the phasing out of emergency accommodation and increase the supply of long-term social housing.⁶

► What is the context for this commitment?

The human right to adequate housing is derived from the right to an adequate standard of living.⁷ The denial of a child's right to an 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 young people is associated with multiple negative physical, mental, and behavioural health outcomes, with the duration of homelessness compounding and elevating the risk of adverse outcomes.⁸ Children who experience homelessness are also more likely to have developmental and learning delays and poorer academic attainment.⁹ 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.¹⁰

There are many routes into homelessness, including lack of affordable housing, poverty, unsupported mental illness, and for women and children

5 UNCRRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 35.

6 *ibid.*

7 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.

8 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.

9 Saskia D'Sa et al, 'The psychological impact of childhood homelessness—a literature review' (2020) *Irish Journal of Medical Science*.

10 R Grotti et al, *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI 2018) ix-x.

in particular, experience of domestic abuse.¹¹ Since 2014, child and family homelessness had been rising rapidly but this trend abated somewhat towards the end of 2019 only for it to increase again and continue to rise from the end of 2021.¹² One parent families have a lower rate of homeownership, and a higher rate of occupancy in both the private rental and local authority sectors.¹³ These families are also likely to have more affordability issues and experience housing deprivation, such as an inability to heat their home.¹⁴

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 Rent Supplement or Housing Assistance Payment (HAP). While Rent Supplement and HAP are important supports in terms of affordability, many prospective and current tenants face discrimination from landlords who refuse to accept them as a means of rent payment.¹⁵ Discrimination based on the use of these supports is prohibited under the Equal Status Acts¹⁶ and the Workplace Relations Commission (WRC) and between 2017 and 2020, 329 complaints were received from tenants who say they have experienced such discrimination.¹⁷ Rent limits for both Rent Supplement and HAP have not kept pace with market value and the limits for each had not been reviewed since 2016 and 2017 respectively until July 2022.¹⁸ 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 authority.¹⁹

11 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.

12 See Department of Housing, Local Government and Heritage, *Homelessness Data* <https://bit.ly/3GErals> and Focus Ireland, *Knowledge Hub: Latest Figures*, <https://bit.ly/3Z7s33f>, accessed 7 February 2023.

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

14 *ibid.*

15 Threshold, *HAP and Rent Supplement Discrimination* (Threshold 2021).

16 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/3rr3rnz>> accessed 4 February 2022.

17 Threshold, *HAP and Rent Supplement Discrimination* (Threshold 2021).

18 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.

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

Much still needs to be done to redress the barriers that marginalised communities face in accessing their fundamental right to housing. Evidence highlights that people of minority ethnicities in Ireland experience significant discrimination in accessing housing, with Black Irish people three and a half times more likely to experience discrimination than white Irish people and more likely to be represented among the homeless population.²⁰ Ethnic groups such as Travellers, Asian and Black minorities are more likely to live in overcrowded accommodation compared to other groups.²¹ Migrant groups are also likely to have housing affordability issues.²² Given the housing crisis, those with refugee status and people granted leave to remain have found it difficult to leave Direct Provision.²³

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 remain in place that ensure HAP recipients, should they so choose, can avail of a move to other forms of social housing support through a transfer list.²⁴ Recipients should get full credit for the time they spent on the waiting list and be placed on the transfer list with no less favourable terms than if they had remained on the main social housing waiting list.²⁵

Researchers who have conducted rights-based policy analysis have highlighted that as long as the HAP remains the primary mechanism to access housing support, with construction of social housing being, in their view, a secondary objective, families experiencing homelessness will continue to be structurally excluded and liable to experience competition, discrimination,

20 R Grotti et al, *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI 2018) 72-73.

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

22 *ibid.*

23 M Ni 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.

24 Communication received from the Department of Housing, Local Government and Heritage on 8 December 2022.

25 *ibid*

and exclusion within the private rental market.²⁶ A review of the international evidence suggests affordable rents and legal protections for tenancy rights are key components of effective homelessness prevention strategies.²⁷

Traveller families face significant barriers to accessing their right to housing and are at greater risk of experiencing homelessness than settled families.²⁸ 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.²⁹ In one 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.³⁰

Under international human rights law, States have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.³¹ To date, meaningful delivery against this right has been limited, and the central issues of scarce housing stock, high market rents and the insufficiency 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.³²

26 R Hearne & M Murphy, 'An absence of rights: Homeless families and social housing marketisation in Ireland' (2018) *Administration* 66(2) 27-28.

27 Niall Pleace, *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

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

29 *ibid.*

30 A Long et al, *Family Homelessness in Dublin: Causes, Housing Histories, and Finding a Home* (Focus Ireland 2019) 24.

31 UN & Habitat, *The Right to Adequate Housing*, Factsheet No 21/Rev. 1 (Office of the High Commissioner for Human Rights, 2014) 34.

32 Focus Ireland, 'Review of 7 years of spending on homelessness shows it's time to change' <<https://bit.ly/2YgRQaX>> accessed 4 February 2022.

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

Prior to the publication of the *Programme for Government* in June 2020, a number of measures were introduced in response to the Covid-19 pandemic. The purpose of the Emergency Measures in the Public Interest (Covid-19) Act 2020, enacted on 27 March 2020, was to help restrict the movement of people. The provisions of this Act included restrictions around the serving of notice of terminations by landlords.³³ The impact of these measures saw a significant decrease in the number of children living in emergency accommodation by the end of 2020, and this trend continued into 2021.³⁴ However, as the numbers began to increase once again, homeless organisations linked this trend reversal to the discontinuation of the pandemic measures, along with an inability to tackle the structural causes of the homelessness.³⁵

Each month the Department of Housing, Local Government and Heritage publish a report on the number of people living in emergency accommodation. The report includes a breakdown of the number of children and families (including the proportion of one parent families) in this type of accommodation. In 2022, the number of children living in emergency accommodation increased almost every month and 3,442 were recorded as living in such accommodation by the end of the year.³⁶

33 Emergency Measures in the Public Interest (Covid-19) Act 2020, S.5.

34 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.

35 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' (28 August 2020) <<https://bit.ly/2DWsqZV>> accessed 4 February 2022.

36 Department of Housing, Local Government and Heritage, *Homeless Report December 2022* (2022 DHLGH).

Number of children living in Emergency Accommodation (2020 to 2022)

	2020	2021	2022
January	3,574	2,326	2,563
April	3,073	2,193	2,944
June	2,653	2,167	3,071
September	2,583	2,344	3,342
December	2,327	2,451	3,442

Source: Department of Housing, Local Government and Heritage *Homelessness data* (2020, 2021 and 2022).³⁷

At the end of 2022 there were 1,594 families living in emergency accommodation.³⁸ This was an increase of 517 families compared to December 2021 and just 184 fewer than the highest number recorded in July 2018.³⁹

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 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*.⁴⁰ Specific targeted measures are included for those with complex needs.⁴¹ However, aside from two actions (3.16 and 3.18), there is little specific focus on children and in particular, there is a lack of a dedicated plan or actions to tackle family homelessness. 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.⁴²

37 Department of Housing, Local Government and Heritage, 'Homelessness Data' <<https://bit.ly/3op7UCh>> accessed 1 February 2022.

38 Department of Housing, Local Government and Heritage, *Homeless Report December 2022* (2022 DHLGH).

39 Department of Housing, Local Government and Heritage, *Homeless Quarterly Progress Report Quarter 3 2022* (2022 DHLGH).

40 Department of Housing, Local Government and Heritage, *Housing for All* (Government of Ireland 2021) <<https://bit.ly/3CyJoXq>> accessed 4 February 2022, 51.

41 *ibid.*

42 *ibid.*



At the end of 2022 there were 1,594 families living in emergency accommodation. This was an increase of 517 families compared to December 2021.

Housing for All also contains a strong commitment to prevent entry into homelessness and to help those who are homeless to exit into sustained tenancies.⁴³ Data on the number of families prevented from entering homelessness, as well as those exiting emergency accommodation is reported on a quarterly basis and published by the Department. At the end of Q3 2022, a total of 1,119 families presented for emergency accommodation in Dublin.⁴⁴ Of this number, 39 per cent were prevented from entering such accommodation through the creation of a new tenancy.⁴⁵ Furthermore, a total of 300 families had exited emergency accommodation by the end of the quarter.⁴⁶ Despite these positive initiatives, at the end of Q3 2022, 30 per cent of families living in emergency accommodation in Dublin were there for more than 12 months.⁴⁷

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.⁴⁸ 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 or people who have been granted asylum or some other form of protection but cannot find accommodation outside the Direct Provision system. While these figures are collected and monitored by other agencies, they are not included in the monthly reported data published by the Department.

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. Some insight on the numbers staying with families is provided for in the Social Housing Assessment. There were 59,247 households on the social housing waiting list in November 2021, 36 per cent of which were living with their parents, relatives and/or friends.⁴⁹

43 *ibid.*

44 Department of Housing, Local Government and Heritage, *Homeless Quarterly Progress Report Quarter 3 2022* (2022 DHLGH).

45 *ibid.*

46 *ibid.*

47 *ibid.*

48 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).

49 Housing Agency, *Summary of Social Housing Assessments 2021* (Government of Ireland 2022).

Reducing the number of homeless families

As the number of families experiencing homelessness continued to increase throughout 2022, the Government has attempted to address the challenge through the introduction of a number of new measures.

To address the insufficiency of the HAP limits, local authorities previously had the discretion to increase the standard rent limits by 20 per cent in order to secure accommodation. From July 2022, this was increased to 35 per cent.⁵⁰ This was introduced following the completion of an analytical exercise to examine the level of discretion available to local authorities needed to maintain adequate levels of HAP support.⁵¹ However, prior to the introduction of this increase, evidence indicated that not all households who would benefit from accessing a higher rate of HAP are actually receiving it.⁵² In September 2022, there were no properties available to rent within the standard HAP limits for any household type and there were just 35 available within the new discretionary rates.⁵³ Separately, a review of the discretion (up to 50 per cent) applied to Homeless HAP tenancies in Dublin is being undertaken.⁵⁴

The quarterly data on exits from emergency accommodation and the numbers prevented from entering such accommodation through the creation of a tenancy provides important insights on overall trends.⁵⁵ By the end of Q3 2021, there was a total of 4,043 exits and preventions of which 72 per cent were to the private rented sector. In the same period in 2022, there were 3,782 preventions and exits. However, the proportion exiting to the private rental market had fallen to 58 per cent.⁵⁶ In the Dublin region the Dublin Region Homeless Executive (DRHE) recorded six exits to HAP tenancies in October

50 Housing Assistance Payment (Amendment) Regulations 2022, S.I. No. 342 of 2022.

51 Communication received from the Department Children, Equality, Disability, Integration and Youth on 8 December 2022.

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

53 Simon Communities of Ireland *Locked Out of the Market* (Simon Communities 2022).

54 Communications received from the Department of Housing, Local Government and Heritage on 8 December 2022.

55 The data does not disaggregate what situations this referred to. Threshold provides further details regarding its homeless prevention work on a quarterly basis which may provide further insight into such situations. See for example, Threshold, *Quarterly Impact Report, Q4 2022* (Threshold 2023).

56 Department of Housing, Local Government and Heritage, *Homeless Quarterly Progress Report for Q3 2022* (DHLGH 2022).

2022 noting that this was the lowest number in five years at least.⁵⁷ This is perhaps indicative of the contraction of the private rental market as there are considerably fewer properties available to rent, with just 1,087 homes available nationwide on 1 November 2022.⁵⁸ In comparison, there were 4,150 properties available two years previously in November 2020, the highest number since 2011.⁵⁹

At the end of October 2022, the government introduced legislation that would allow for a temporary ban on no fault evictions. Under the Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022, 'no fault' tenancy terminations will be deferred until after the 31 March 2023.⁶⁰

Work with local authorities and housing agencies to support families into long-term sustainable accommodation

Policy on family homelessness has focussed 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 December 2022, there were 36 family hubs in operation nationally providing 870 units of family accommodation.⁶¹ While family hubs are an important first response and research with children and parents living in family hubs suggests several problems, including a lack of space and privacy.⁶² Families who are placed in this type of accommodation are provided with access to a support team whose main aim is to exit them from homelessness into appropriate accommodation as soon as possible.⁶³

57 Dublin Regional Homeless Executive, *Monthly Report to Dublin City Councillors on Homelessness* (DRHE January 2023).

58 Daft.ie, *The Daft.ie Rental Price Report* (Daft.ie 2021).

59 Ronan Lyons, 'The Daft.ie Rental Price Report: An analysis of recent trends in the Irish rental market 2020 Q3' <<https://bit.ly/2YkA86l>> accessed 4 February, 19.

60 Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022.

61 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government Heritage on 8 December 2022.

62 Ombudsman for Children's Office, *No Place Like Home: Children's views and experiences of living in Family Hubs* (OCO 2019) 14.

63 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government Heritage on 22 February 2023.

In recognition of the scale of the housing crisis in Ireland, Budget 2023 committed over €4 billion to capital housing funding; €215 million to support exits from homelessness⁶⁴ and an additional €40 million for health supports.⁶⁵ The Government has also signalled its commitment to durable solutions by financing the development of over 4,000 affordable homes and adding 11,830 new social homes through build, acquisition and leasing programmes.⁶⁶ An additional 8,800 tenancies will also be provided under HAP.⁶⁷

Budget 2023 introduced a new Rent Tax Credit to support private renters. This will be available from 2022 to 2025 and is for 20 per cent of yearly rent payment up to a maximum of €500 for an individual or €1,000 for a jointly assessed couple.⁶⁸ However, as families availing of the HAP are in receipt of a social housing support, they will not be eligible to claim this. This is a real concern given that HAP tenancies are the most common pathway out of homelessness.

The previous Government published a *Traveller Accommodation Expert Review* report in 2019⁶⁹ and a Programme Board was subsequently established to oversee its implementation.⁷⁰ Among the recommendations progressed by the Programme Board is research on the issue of homelessness amongst the Traveller and Roma communities.⁷¹ There are some signs of progress, with 2020 being the first year since 2014 that the €14.5 million funding provided for

64 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 22 February 2023.

65 Department of Public Expenditure and Reform and Department of Finance, *Budget 2023: Expenditure Report* (Government of Ireland 2022).

66 *ibid.*

67 *ibid.*

68 Citizens Information, 'Rent Tax Credit' <https://bit.ly/3XjhjMZ> accessed 7 February 2022.

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

70 Communication received by the Children's Rights Alliance Department of Housing, Local Government and Heritage on 28 January 2022 and 8 December 2022. 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). The Board has met on a total of ten occasions.

71 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 28 January 2022.

Traveller-specific accommodation was fully drawn down by local authorities,⁷² although €4.4 million of this was spent on Covid-19 measures.⁷³ The budget allocation has continued to rise with the full capital expenditure of €15.5 million spent in 2021 and a €2.5 million increase allocated in 2022. The budget allocation of €18 million for 2022 was spent in full as well as an additional €2.6 million.⁷⁴ A further increase in 2023 will see the budget rise to €20 million.⁷⁵ However, the Expert Review recommends a review to consider restoring funding to levels prior to 2008, when the yearly Traveller accommodation budget was €40 million.⁷⁶

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 the PASS (Pathway Accommodation and Support System) and this has exacerbated with time.⁷⁷ Furthermore, one of the qualifying criteria for the allocation of social housing is employment,⁷⁸ but given that national needs assessments suggest that just 17 per cent of Roma are employed,⁷⁹ most Roma will be ineligible for social housing support.

In May 2021, the Ombudsman for Children's Office (OCO) published an investigative 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 OCO highlighted the abject failure of the local authority to consider the best interests of children, living on the site, including those with additional needs.⁸⁰

72 *ibid*; Kitty Holland, 'Almost €15m spent on Traveller housing, the largest annual spend in decades' *The Irish Times*, 23 December 2020.

73 Communication received by the Children's Rights Alliance from the Irish Traveller Movement on 12 November 2022.

74 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 23 February 2023.

75 *ibid*.

76 Communication received by the Children's Rights Alliance from the Irish Traveller Movement on 12 November 2022.

77 Communication received by the Children's Rights Alliance from Pavee Point on 16 October 2020.

78 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.

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

80 Ombudsman for Children, *No End in Site* (OCO 2021).

The Department of Housing, Local Government and Heritage continues to meet on a monthly basis with the local authority concerned, to progress the recommendations set out by the OCO.⁸¹ In December 2022, an update published by the OCO found that overall living conditions have improved for many children and significant work has taken place to implement the report's recommendations.⁸² However, work remains to be done on continuing to make improvements to the site, continuing to build relationships and trust between the local authority, residents and advocacy groups and ensuring that children and young people can be involved in this work.⁸³

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

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.⁸⁴ 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.

In November 2021, the Minister for Housing, Local Government and Heritage published the terms of reference and a call for expressions of interest for a Commission on Housing.⁸⁵ The Commission has been tasked with a wide range of functions including examining the issue of a referendum on housing which would be undertaken by a sub-group of the Commission.⁸⁶ In January 2022, the membership of the Commission was announced and work on the Housing Referendum took place throughout the year.⁸⁷ In January 2023, it was reported that the exact wording for the Referendum would be available later in

81 Communication from the Department of Housing, Local Government and Heritage on 28 January 2022.

82 Ombudsman for Children, *No End in Site: One Year On* (OCO 2022).

83 *ibid.*

84 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 121.1.

85 Department of Housing, Local Government and Heritage, Minister O'Brien Calls for Expressions of Interest for Membership of Commission on Housing', Press Release (23 November 2021).

86 Government of Ireland, *Expressions of interest sought re appointment as Member of the Commission on Housing*, (Government of Ireland 2022).

87 Department of Housing, Local Government and Heritage, 'Public Consultations from the Commission on Housing' <https://bit.ly/3X5zt5g> accessed 6 January 2022.

the month,⁸⁸ however work remains ongoing with a final timeline yet to be agreed.⁸⁹

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.⁹⁰ The availability of a sufficient supply of adequate and affordable housing with security of tenure is critical in responding to homelessness. Without the availability of this, preventative actions and other responses will have limited or no impact.⁹¹

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,⁹² 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. It is welcome that the Government has introduced a temporary eviction ban in October 2022 outside of an emergency period.

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 progress is needed on homelessness prevention. This requires development of adequate housing supply, affordable rents backed by strong legal protections

88 Jack Horgan-Jones, 'Right-to-housing referendum: Recommendations due this month on wording of vote' *The Irish Times*, 4 January 2023.

89 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government Heritage on 22 February 2023.

90 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).

91 Baptista, Isabel, et al. *From Rebuilding Ireland to Housing for All: international and Irish lessons for tackling homelessness*. (COPE Galway, Focus Ireland, JCFJ, Mercy Law, Simon Communities of Ireland, and SVP 2022).

92 Department of Social Protection, 'Minister Humphreys announces Access to Rent Supplement for Victims of Domestic Violence to become permanent' (11 November 2021) <<https://bit.ly/3qo5bNO>> accessed 4 February 2022.

for tenants, and ancillary rapid-rehousing services for those families who have already become homeless.⁹³ 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.⁹⁴

➔ **Recommendations**

- ▶ Publish wording and commit to a date for the referendum on the right to housing.
- ▶ Extend the moratorium on evictions and continue to monitor the adequacy of HAP limits in line with market rents.
- ▶ Build on the progress that was made with the Covid-19 emergency measures, particularly in relation to the reduced number of families needing emergency accommodation. Adopt a preventive approach which prioritises development of long-term affordable and social housing stock.

93 Niall Pleace *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

94 Amy Clair, 'Housing: an Under-Explored Influence on Children's Well-Being and Becoming' (2019) *Child Indicators Research* 12:609–626.

11

Youth Homelessness

Section Grade:

B



The Programme for Government commits to:

Develop a National Youth Homelessness Strategy

▶ Progress: **Complete**

'Youth Homelessness' receives a 'B' grade up from a 'D' in 2022. The Government published the National Youth Homelessness Strategy in November 2022. A wide-ranging consultation process took place as part of its development which included the participation of young people who had experienced homelessness. Despite this positive milestone being reached, the monthly figures published by the Department of Housing, Local Government and Heritage continue to show an increase in the number of young people between the ages of 18 and 24 years living in emergency accommodation.

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 living¹ and to be safeguarded from any form of abuse.² 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.³ 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.⁴ 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.⁵

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.⁶ Authorities and decision-makers should recognise that children living on the streets, while vulnerable, can also be highly resilient,⁷ and must consider children's views.⁸

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 every five years on its progress in implementing the rights in the

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.

Convention. Ireland was last examined by the Committee on the Rights of the Child in 2023. In its Concluding Observations, the Committee calls on the Irish State to expand access to aftercare for children experiencing homelessness and provide opportunities for young people leaving care to live independently.⁹

► What is the context for this commitment?

The UN Special Rapporteur on the Right to Housing has argued that the elimination of youth homelessness is a top human rights priority.¹⁰ In responding to the issue of youth homelessness a rights-based approach should be deployed which recognises young people experiencing homelessness as equal partners and respects their views.¹¹

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'.¹² This reinforces the need for any strategy developed to tackle this issue 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 18.¹³ As such, responses to youth homelessness must also be developed in line with the guiding principle of non-discrimination, set out in Article 2 of the UNCRC and Article 2 of the ICESCR.¹⁴ At each stage, it is vital that all stakeholders are alert and responsive

9 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 27

10 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.

11 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12.

12 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).

13 Canada Without Poverty, *A Way Home, Youth Rights! Right Now! Ending Youth Homelessness: a Human Rights Guide*, (Canada Observatory on Homelessness, 2016) 11-12.

14 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.

to the particular needs of different groups of young people who may have differing routes into homelessness and unique experiences of it.

Recent Irish research into youth homelessness found that family circumstances were the main driver of homelessness amongst young people.¹⁵ 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.¹⁶ 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 engagement with macro-level drivers such as inadequate housing stock or social protection, and delays in accessing mental health and substance misuse support.¹⁷

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. This was also a main finding of the previous youth homelessness strategy evaluation.¹⁸

Evidence suggests that children and young people have a different pathway into homelessness than adults and they have their own distinct needs, and therefore prevention and responses to youth homelessness should be considered separately to broader homelessness strategies.¹⁹ Children and young people can become homeless for many different reasons, including experience of poverty, family conflict or abuse,²⁰ lack of acceptance and

15 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).

16 K Schwan et al, *Preventing youth homelessness An international review of evidence* (Wales Centre for Public Policy 2018).

17 *ibid.*

18 S Denyer et al, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

19 FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019).

20 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).

support for sexual or gender identity,²¹ or experience of leaving state care.²² 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.²³ Children and young people experiencing homelessness may therefore be subjected to multiple rights violations and marginalisation beyond the immediate issue of access to secure housing.

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.²⁴ 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'.²⁵ The independent evaluation of the 2001 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.²⁶ Building on this, 2020 research highlights that LGBTI+ young people in Ireland face similar risks of homelessness to their heterosexual and cis-gendered peers²⁷, 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.²⁸ Enhanced capacity to support the rights and diversity of LGBTI+ homeless service users was an action of the LGBTI+ Inclusion Strategy 2019-2021.²⁹

21 A Quilty et al, *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland and Belong To 2020).

22 J Dixon et al, *Futures for Careleavers: A Consultation on Outcomes and Aftercare for Young People Leaving Care in Ireland* (Focus Ireland 2018).

23 Focus Ireland, 'Young People – Ireland's 'Forgotten Homeless'' (June 2018) <<https://bit.ly/3lYhdUg>> accessed 4 February 2022.

24 Department of Health and Children, *Youth Homelessness Strategy* (DHC 2001).

25 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 55.

26 S Denyer et al, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

27 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

28 *Ibid*, 57.

29 Department of Children and Youth Affairs, *National LGBTI+ Youth Strategy 2018-2020: LGBTI+ young people: visible, valued and included* (DCYA 2018), action 13.2

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
- ▶ **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.³⁰

Section 5 of the Child Care Act 1991 provides that where a child under 18 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.³¹ In the first nine months of 2021, 28 young people (aged 16/17 years) were accommodated under Section 5, compared with 22 for all of 2020.³²

In 2021, 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 with.³³ There are two legal and practical issues which increase the risk of young vulnerable adolescents in and at the edge of care becoming homeless. First, eligibility thresholds for aftercare plans are restrictive, meaning some young people who could benefit from support

30 FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019).

31 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 7 January 2021.

32 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 12 January 2022.

33 EPIC. *Annual Report*, (EPIC 2022).

are disqualified, and second, 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.³⁴ However, only 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. 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. 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.³⁵ These issues are placing young people at increased risk of homelessness and may partially explain why many care-experienced young people are seeking assistance from EPIC to find and secure appropriate accommodation to meet their needs.³⁶

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 2019.³⁷ In 2022 the number of young people between the age of 18 and 24 years experiencing homelessness rose from 1,111 in January to 1,387 in December.³⁸ This data is solely based on those accessing emergency accommodation. More may not seek formal support. Therefore, without official records this may represent an underestimate.

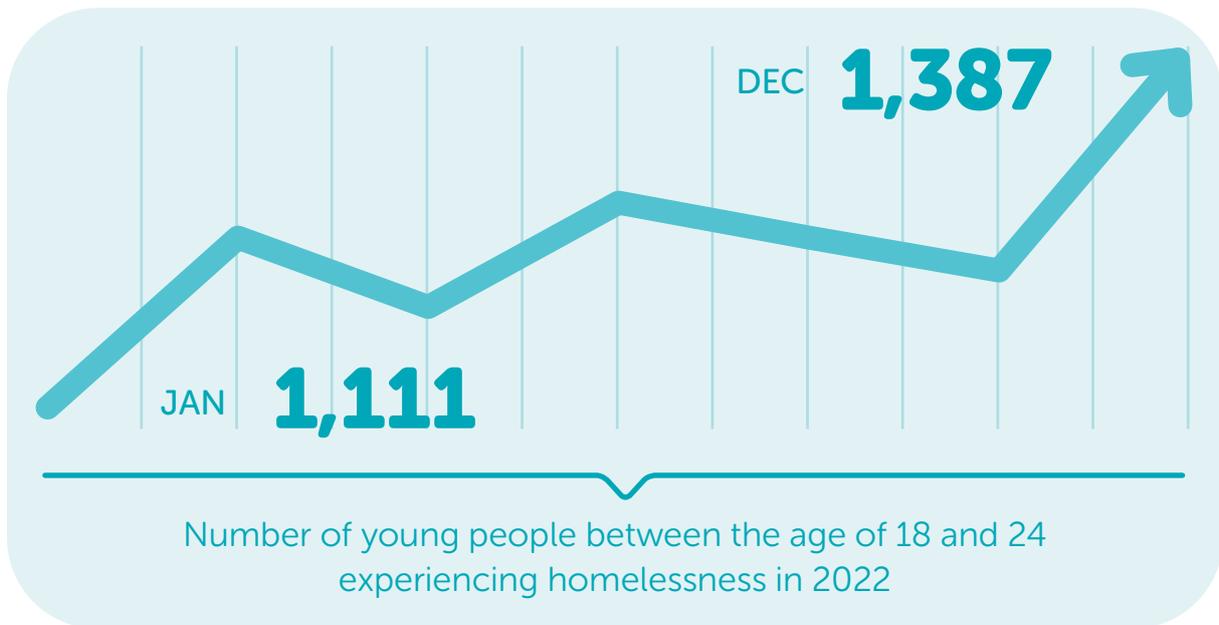
34 Communication received by Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 13 November 2020.

35 Communication received by the Children's Rights Alliance from EPIC on 13 January 2021.

36 EPIC Advocacy Report 2019-2020 (EPIC, 2021).

37 Irish Coalition to End Youth Homelessness, *Call for government action on homelessness among young adults* (Irish Coalition to End Youth Homelessness 2019).

38 Department of Housing, Local Government and Heritage, *Homeless Data* (DHLGH 2022).



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.³⁹ 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.⁴⁰ The previous Government committed to a Housing First model for tackling homelessness more broadly and this approach underpinned policy development in this area.⁴¹

39 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).

40 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.

41 Dublin Region Homeless Executive, *Housing First National Implementation Plan 2018-2021* (DRHE, September 2018).

► 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.⁴² The scope of the Taskforce included input into the new Youth Homelessness Strategy.⁴³ In September 2021, *Housing for All - A New Housing Plan for Ireland*, was published.⁴⁴ 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.⁴⁵

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 (NHAC).⁴⁶ On 9 November 2022, the Government published the *Youth Homelessness Strategy 2023-2025*. The development of the strategy included consultations with young people who have experience of homelessness.⁴⁷ A total of 25 young people, between 19 and 26 years engaged in the consultation process. Nine of those consulted were from the Traveller community.⁴⁸ Throughout the various aspects of the consultation process a number of key themes emerged. These broadly fit under three headings – causes of youth homelessness; how best to support young people experiencing homelessness; how best to support young people exiting homelessness.⁴⁹

42 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.

43 Between July 2020 and October 2021, the Taskforce met 12 times.

44 Department of Housing, Local Government and Heritage, *Housing for All* (Government of Ireland 2021).

45 *ibid.*

46 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage, 28 January 2022.

47 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 8 December 2022.

48 Government of Ireland, *Housing for All - Youth Homelessness Strategy 2023-2025* (DHLGH 2022) 84.

49 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 8 December 2022.

Drawing on the results of these consultations the Strategy seeks to address these issues across three Strategic Aims:

- ▶ **1.** Prevent Young People Entering Homelessness
- ▶ **2.** Improve the Experiences of Young People in Emergency Accommodation
- ▶ **3.** Assist Young People Exiting Homelessness

Across these three aims, 27 actions have been outlined with ownership assigned to relevant stakeholders, such as government departments, local authorities and statutory agencies. A Steering Group established under NHAC will monitor progress of the strategy's actions and report back at each quarterly NHAC meeting.⁵⁰ While it is notable that a representative of a youth organisation will sit on the oversight and implementation group, consideration should be given to the meaningful participation of young people in this process. This could include constituting a youth advisory panel as part of the oversight of the strategy.

The new Youth Homelessness Strategy identifies specific actions for target groups such as Travellers, members of the LGBTI+ community, care leavers, disabled people and individuals leaving prison services.⁵¹

The strategy outlines actions related to establishing dedicated emergency accommodation that promotes an inclusive ethos that supports young people from both the LGBTI+ and Traveller communities.⁵²

A separate action will provide training workshops to service providers to increase their understanding of LGBTI+ issues, while a further action seeks to develop privacy and safety strategies for young



50 Government of Ireland, *Housing for All - Youth Homelessness Strategy 2023-2025*(DHLGH 2022) 83.

51 Communication received by the Children's Rights Alliance from the Department of Housing, Local Government and Heritage on 8 December 2022.

52 Government of Ireland, *Housing for All - Youth Homelessness Strategy 2023-2025*(DHLGH 2022) 83.

people from this community. The latter action will be directly informed by LGBTI+ young people and implemented by service providers.⁵³

The finalisation of Tusla's Strategic Plan for Aftercare 2023-2025 is identified as a priority action.⁵⁴ A cross government response to the crises experienced by care leavers will ensure that capital funding is available for the development of accommodation options for this cohort. Another action provides for a review and update to the relevant Housing Circular which outlines the Protocol on Young People Leaving State Care.⁵⁵ This includes ensuring that the provision of dedicated units for care leavers is monitored in the Housing Delivery Action Plan.⁵⁶

Actions to support young people with disabilities include reviewing the availability of mental health supports for those in emergency accommodation under Strategic Aim 1.⁵⁷ The need for training for service providers to provide them with information on how best to support this group is also outlined.⁵⁸ There are separate actions aimed at supporting young people from the Traveller community. This includes the provision of additional supports to assist young Travellers at risk of homelessness and the inclusion of specific actions to tackle youth homelessness in Traveller Accommodation Programmes.⁵⁹

The strategy commits to piloting a housing-centred approach to addressing youth homelessness.⁶⁰ The *Supported Housing for Youth* initiative is 'a housing-centred solution' which will provide 'a flexible level of supports' for young people experiencing homelessness.⁶¹ The model draws on both international best practice and existing responses in the national context. This includes the *Housing First for Youth* model and the *Limerick Youth Housing initiative*.⁶²

53 *ibid.*

54 *ibid.*

55 *ibid.*

56 *ibid.*

57 *ibid.*

58 *ibid.*

59 *ibid.*

60 *ibid.*

61 *ibid.*

62 *ibid.*

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

There was welcome progress in 2022 under this commitment. A robust consultation process throughout 2022 has ensured that the plan has been informed by evidence and the expertise of key stakeholders. It is welcome that the Government has adopted an integrative approach to policymaking about the Strategy and that it recognises the necessity of effective cross-departmental work between the Departments of Housing, Local Government and Heritage and Children, Equality, Disability, Integration and Youth. Most critically, the participation of young people who have experienced homelessness in the development of the strategy is positive and this should be emulated in the development of other policies that impact on their lives. The value placed on the continued participation of young people in the strategy's actions is evident, particularly in relation to the development of privacy and safety strategies for young LGBTI+ people using emergency accommodation, which should be informed directly by LGBTI+ youth.

The Strategy is strongly underpinned by an understanding of the reasons why certain groups of children and young people are at heightened risk of homelessness and clearly identifies actions for particularly vulnerable groups. 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'.⁶³

63 Irish Human Rights and Equality Commission, *Implementing the Public Sector Equality and Human Rights Duty* (IHREC 2019) 2.

➔ Recommendations

- ▶ Identify ways that young people can participate in a meaningful way with the monitoring and oversight of the strategy's implementation.
- ▶ Publish an implementation plan which sets out how, when and by whom each action will be delivered. The implementation plan should outline key milestones and progress should be tracked via a published annual report.

12

Children in Direct Provision

Section Grade:

D



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.

▶ 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.

▶ Progress: **Limited**

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.

▶ Progress: **Poor**

'Children in Direct Provision' receives an 'D' this year, a significant decrease on last year's 'B-' grade. While it is acknowledged that there was an unprecedented increase in the number of people seeking refuge in both International Protection Accommodation Services (IPAS) and emergency accommodation provision as a direct result of the war in Ukraine, the sharp deterioration in standards for children and young people seeking asylum and the delay in implementing the White Paper on Ending Direct Provision requires reconsideration. Children have been placed in temporary accommodation centres which is unsuitable in some circumstances and at a time when no inspections are being carried out by HIQA to provide any level of oversight. Child Refugees were for the most part overlooked in cost of living measures in Budget 2023 with no increase to their Direct Provision payment (€29.80). The planned International Payment for children and young people that was promised in the White Paper on Ending Direct Provision has also not been introduced.

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.¹ 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.² Reception conditions for those awaiting status determination must provide adequate space and privacy for children and their families.³

Ireland's progress in meeting these Convention rights was last examined by the Committee on the Rights of the Child in January 2023. The Committee made a number of recommendations including that Ireland 'prioritise measures to phase out the direct provision system by 2024, including through clearly defined targets, timelines and sufficient resources, in line with the recommendations of the expert group on direct provision'.⁴

The Committee further recommended that child-friendly vulnerability assessments should be undertaken for all unaccompanied minors,

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 CMW/C/GC/4-CRC/C/GC/23 para 3 and para 13.

3 *ibid* para 50.

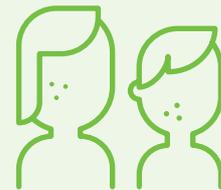
4 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 40

applications for legal residency processed efficiently and that children seeking asylum should have access to social services including social protection, education and housing.⁵

National guidelines on ensuring the rights of unaccompanied children should be developed and the Committee recommends that a review of the system of family reunification should be reviewed. ⁶In relation to an adequate standard of living the Committee calls for child rights approach in addressing poverty with a particular focus on refugee children and that an assessment is undertaken of the impact of the habitual residence condition and that social welfare payments are amended accordingly 'to ensure that policies do not have a discriminatory effect on such children'.⁷

► 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. There has been a substantial increase in the number of people seeking international protection with over 10,000 arrivals in the first three quarters of 2022 alone.⁸ Overall as of October 2022, Ireland accommodated over 50,000 people, compared with 7,000 at the same time the previous year.⁹ In November 2022, approximately one in every five people in international protection was a child, with



3,580
children

Approximately 1 in every
5 people in international
protection is a child
(November, 2022)

5 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 40

6 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 40

7 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 35

8 Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman TD, Dáil Debates, Written Answers, 13 October 2022 [50721/22] and [50732/22].

9 *ibid.*

3,580 children in the system.¹⁰ Alongside this there have been increases in those seeking protection due to the war in Ukraine. As of December 2022, 67,448 Ukrainian refugees have arrived in Ireland, with over 22,932 being children and young people.¹¹

As of November 2022, there were 128 accommodation centres nationwide.¹² 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.¹³ Hotels and guesthouses make up 75 per cent of the accommodation stock.¹⁴

The UN Committee on the Rights of the Child, as well as several other domestic bodies,¹⁵ have expressed concern that Direct Provision centres are, in the main, not suitable for children's needs and that significant changes are required. The Committee recommended that the Government ensure that facilities are appropriate for young children and families; enhance child protection services and ensure that the weekly allowance payment for asylum-seeking children is proportionately increased so that it corresponds with the cost of living in Ireland.¹⁶

Increased oversight and the provision of clear recommendations has led to accelerated reform. A single procedure for status determination was introduced in 2016, aimed at reducing the length of time applicants spend in

10 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

11 Central Statistics Office, 'Arrivals from Ukraine in Ireland Series 8' <<http://bit.ly/3YAtpmY>> accessed 31 January 2023.

12 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

13 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.

14 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

15 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 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).

16 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4, para 66.

Direct Provision;¹⁷ the extension of the right to work in 2017;¹⁸ the transposition of the EU Recast Reception Conditions Directive¹⁹ into Irish law in 2018, setting out binding minimum standards for reception conditions, including rights relating to healthcare, accommodation, employment and education;²⁰ 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;²¹ and an increase in the residents' weekly allowance to €38.80 per adult and €29.80 per child in 2019.²² Families can also access the annual Back to School Clothing and Footwear Allowance Scheme and the Exceptional Needs Payment Scheme for assistance with necessary costs, such as buggies and clothing.²³

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.²⁴ Across all areas, service providers are also obliged to act in the best interests of the child in line with the UNCRC.²⁵ 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.²⁶

17 The International Protection Act 2015 was commenced on 31 December 2015.

18 Department of Justice, 'Ministers Flanagan and Stanton announce enhanced access to the labour market for asylum seekers' (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.

19 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.

20 European Communities (Reception Conditions) Regulations 2018, SI 230/2018.

21 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (DOJE 2019).

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

23 *ibid.*

24 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.

25 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 3.

26 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*.²⁷ 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 demonstrated how the current model could be ended and replaced with a new, more cost-effective model.²⁸ This new model proposes a two-phased approach to accommodating applicants for international protection.

Phase 1:

- Vulnerability Assessments will be carried out to determine accommodation and service needs, and help define suitable supported pathways for the most vulnerable.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.³⁰

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

28 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' (21 October 2020) <<https://bit.ly/3pnMDKu>> accessed 4 February 2022.

29 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 29.

30 *ibid* 28.

- ▶ There will be a focus on identifying needs and linking applicants to appropriate services using an approach that seeks to encourage integration.³¹
- ▶ Accommodation will be State-owned and managed by not-for-profit organisations on the State's behalf.³²
- ▶ 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.³³
- ▶ Applicants will be offered a health assessment with a particular focus on the needs of children.³⁴ Applicants will also be eligible for an Irish drivers' licence.³⁵

Phase 2:

- ▶ All accommodation will be own-door and self-contained units and will be situated within the community.³⁶
- ▶ 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.³⁷
- ▶ Applicants and their families will have the right to access mainstream services, such as education and health.³⁸
- ▶ Access to further intensive English language supports will be provided.³⁹
- ▶ Applicants will receive an income support payment at a similar rate to the Supplementary Welfare Allowance, if they have not yet entered employment.

31 *ibid.*

32 *ibid* 92.

33 *ibid* 28.

34 *ibid* 29.

35 *ibid.*

36 *ibid.*

37 *ibid.*

38 *ibid* 30.

39 *Ibid* 53.

- ▶ Applicants with children will also receive a child support payment.⁴⁰
- ▶ Applicants will be entitled to access employment if they do not receive a first instance decision within six months of applying for protection.⁴¹

With 3,580 children living in Direct Provision,⁴² any plans to transform their lives must start with the system built around them. While the *White Paper* contains an emphasis in both Phase One and Phase Two on child welfare and child protection, in practice, many of the commitments centred on children and young people have either not progressed or standards have deteriorated substantially in relation to new emerging centres in 2022. The Department of Children, Equality, Disability, Integration and Youth established a Transition Team to advance the implementation of the *White Paper*, which is overseen by a Programme Board and an External Advisory Committee.⁴³ The allocation for the team implementing the *White Paper* increased by 41 per cent to €22 million, up from €15.6 million in 2022 in Budget 2023.⁴⁴

Accommodation

At the end of October 2022, 34 per cent of asylum seekers had access to own-door unit settings.⁴⁵ In total, 83 per cent have facilities to cook and shop for themselves.⁴⁶

The ownership and acquisition model was approved by the Minister Roderic O’Gorman in January 2022.⁴⁷ Thirty two properties have been purchased to date at a cost of €7.7 million.⁴⁸ All the properties purchased require an element

40 *ibid* 30.

41 *ibid*.

42 Communication received by the Children’s Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

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

44 Department of Children, Equality, Disability, Integration and Youth, ‘Minister O’Gorman secures €1 billion investment in early learning and childcare’ <<http://bit.ly/3K957f5>> accessed 16 February 2023.

45 Communication received by the Children’s Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

46 *ibid*.

47 *ibid*.

48 Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, Dáil Debates, Written Answers, 8 November 2022 [54211/22].

of upgrading to make them habitable and work is currently ongoing with the Housing Agency to develop an Approved Housing Body (AHB) funding scheme, which will put a framework in place for the upgrading, management and ongoing maintenance of the properties.⁴⁹ The AHB funding scheme is currently at tender stage. In Budget 2023, €213 million was allocated to international protection accommodation.⁵⁰

The Department of Children, Equality, Disability, Integration and Youth have stated that modular housing will be provided for people whose application for Temporary Protection has been successful.⁵¹ It is envisaged that 500 homes will be installed on a phased basis by the end of March 2023.⁵² 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 and can have a hugely positive impact on the lives of families as it prevents potential institutionalisation.⁵³

The use of emergency accommodation remains a key area of concern as outlined in the Day Report.⁵⁴ Ending the use of emergency beds was originally targeted for the end of 2022.⁵⁵ However, during the summer months the State had to rely on tents and other forms of temporary accommodation such as halls to accommodate families, with some living in these conditions for up to three weeks.⁵⁶ Due to limited capacity in existing accommodation centres, there were 24 Temporary Emergency Accommodation Centres, primarily

49 *ibid.*

50 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman secures €1 billion investment in early learning and childcare' <<http://bit.ly/3K957f5>> accessed 16 February 2023.

51 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

52 *ibid.*

53 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.

54 Government of Ireland, *Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process* (September 2020).

55 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

56 Liz Dunphy, 'We don't know where we'll be in three weeks': Ukrainians in Ireland facing uncertainty, *Irish Examiner*, 24 July 2022.

hotels, in use in December 2021,⁵⁷ with 129 children resident in five such Centres.⁵⁸ As of November 2022 the number of temporary accommodation centres in use skyrocketed to 87.⁵⁹ This is a 262.5 per cent increase in the use of emergency accommodation in one year. There are currently 1,414 children in temporary accommodation, over ten times the amount of the previous year, and the average length of stay in this accommodation for these children is 6.7 months.⁶⁰



Given that many of these sites operate on a commercial basis as hotels or guesthouses,⁶¹ not all staff have training on the needs of those seeking international protection.⁶² 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).⁶³ There have been reports of people having to sleep on chairs with lighting being controlled centrally.⁶⁴

The Government announced in January 2023 that Citywest is now closed to new arrivals as it is at capacity, though 'it will remain open for all other matters including processing of accommodation for Ukrainian beneficiaries of

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

58 *ibid.*

59 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

60 *ibid.* Please note that the average length of stay figure was calculated from the RAU stats collated by the Department of Justice which could vary by up to 10 per cent. This is due to newborn babies not being registered by their parents in these centres.

61 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.

62 *ibid.* 20.

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

64 Jack Power, Concerns raised over 'gross inadequacy' of Citywest refugee transit hub, *The Irish Times*, 17 February 2023.



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temporary protection.⁶⁵ This is the third occasion on which Citywest has closed to new arrivals, however Minister O’Gorman has stated that this closure will be for a longer period.⁶⁶ As of the 26 January, families and children are still being offered accommodation.⁶⁷

The *National Standards*,⁶⁸ in place from 2021, are now included in new or renewed contracts with accommodation providers as contractual obligations that must be met. 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.⁶⁹ In November 2021, the Department 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 assumed its monitoring role in 2022.⁷⁰ Ahead of commencing inspections of all permanent centres, HIQA will conduct a series of pilot inspections.⁷¹ No such inspection has taken place to date.⁷²

International Protection Child Payment

Children in Direct Provision receive a weekly payment of €29.80 currently.⁷³ The *White Paper* committed to the introduction of a monthly International Protection Child Payment which would be provided at the same rate

65 Jane Moore, Fears Closure of City West to new International Protection arrivals ‘clear breach’ of human rights obligations, *The Journal*, 27 January 2022.

66 *ibid.*

67 Jennifer Bray, Sarah Burns, Ronan McGreevy and Carl O’Brien, At least seven asylum seekers told there is no State accommodation available following Citywest closure, *The Irish Times*, 26 January 2022.

68 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (DOJE 2019).

69 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 66.

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

71 Communication received by the Children’s Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 22 November 2022.

72 *ibid.*

73 Citizen’s Information, Direct Provision System <<http://bit.ly/3S3dydD>> accessed 2 February 2023.

as Child Benefit,⁷⁴ as they move into phase two accommodation.⁷⁵ At phase two, parents would also be eligible to apply for a means-tested International Protection Payment, which would be aligned with the rate of the Supplementary Welfare Allowance.⁷⁶ This has yet to happen. Provisions were not made for those in the international protection system to receive a child benefit type payment as committed to in the White Paper, at a time when a double child welfare payment was introduced. They also do not qualify for the Qualified Child Increase (QCI) available to children whose parents are in receipt of social welfare payments.⁷⁷ This was the only group of children in Budget 2023 that did not receive any additional help to tackle the increased cost of living other than the Back to School Allowance. The current payment for children and young people in Direct Provision falls short of what is needed to meet the Minimum Essential Standard of Living (MESL) for children and young people as set out in the Vincentian MESL Research Centre data. Looking at the most recent data available, the current weekly child payment rate given to those living in Direct Provision leaves a shortfall of between €9.37 and €48.76 when compared with the cost needed for a child or young person to have an MESL in 2018/2019.⁷⁸

Child Protection and Welfare

Tusla, the Child and Family Agency, 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.⁷⁹ There has been a sharp increase in 2022 in the number of separated children and unaccompanied minors seeking international protection who are supported by Tusla.

74 *ibid* 64-65.

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

76 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.

77 Children's Rights Alliance, *Budget 2023 – What does it mean for Children and Young People?* (30 September 2022).

78 For a full detailed list of all components see MESL Research Centre, *2018/19 Review and Rebase*, <<https://bit.ly/3HlOGcm>> accessed 31 January 2023.

79 Prevention and Early Intervention Network, *PEIN Response to Government Plans for International Protection Reforms* (PEIN 2021) 65.

Since the beginning of 2022 to November 2022, Tusla received referrals of 560 separated children seeking international protection.⁸⁰ At the end of November 2022, 185 children were in the care of Tusla seeking international protection, with 72 of those coming from Ukraine.⁸¹ Tusla received an increased funding allocation in Budget 2023 of €37 million.⁸² This brings their total budget to €935 million in 2023.⁸³ This additional funding will address increased demand for Tusla services and the increased complexity of cases they are responding to.

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 18.⁸⁴ This will be a marked improvement to the current situation, where young people transfer into Direct Provision when they turn 18. The *White Paper* tackles the unsuitable elements of Direct Provision for children, but it must be noted that transferring to overnight accommodation from foster care or dedicated residential accommodation will be particularly challenging for young people who are in Ireland alone.

The Children and Young People's Services Committees (CYPSCs) play a key role in ensuring that children's needs remain a priority and address any disconnect that children and young people feel from the community that they live in.⁸⁵ 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.⁸⁶ 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

80 CSO, IPAS and Tusla Data, *Separated Children Seeking International Protection* (SCSIP KPI) 28 November 2022.

81 *ibid.*

82 DEPR, Budget 2023 Expenditure Report (DEPR 2022) 72.

83 *ibid.*

84 Government of Ireland, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (Government Publications 2021) 61.

85 *ibid* 60-61.

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

work of the CYPSCs.⁸⁷ In this regard it is welcome that an allocation of €76 million was provided for general Youth Services in Budget 2023 (an increase of €2.4 million).⁸⁸ A funding framework is being developed for 2023 to provide funding to the CYPSCs to further enhance and expand their support services to families in the international protection system.⁸⁹ It is proposed that each CYPSC will have the opportunity to apply for up to €50,000 in funding.⁹⁰

Education

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,⁹¹ as well as specific teacher-training,⁹² the *White Paper* does not build on this recommendation or contain commitments on education beyond existing provision.

It is welcome that the Government has extended the REALT (Regional Education and Language Teaching) programme, which sees specialised support units being set up in each region, to all refugees.⁹³ This measure will help to ensure that there is 'one clear and comprehensive system for identification of school places and assistance with supports.'⁹⁴ Despite this positive step, a major issue hampering Ukrainian refugee children in terms of access to such supports in this regard is accommodation uncertainty. Many families were placed in student accommodation over the summer months of 2022 and then had to relocate in September without knowing where they

87 Prevention and Early Intervention Network, *PEIN Response to Government Plans for International Protection Reforms* (PEIN 2021) 3.

88 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman secures €1 billion investment in early learning and childcare' <<http://bit.ly/3k957f5>> accessed 16 February 2023.

89 Information received by the Children's Rights Alliance at a Meeting of the Programme Board to End Direct Provision on 2 February 2023.

90 *ibid.*

91 Government of Ireland, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (September 2020) 80.

92 *ibid.*

93 Minister for Education, Norma Foley TD, Dáil Debates, Written Answers, 2 February 2023 [5246/23].

94 *ibid.*

would be moved to.⁹⁵ This creates an integration issue given that geographical location is a critical dependency of the services. In addition, it is largely the availability of school places that has been guiding relocation. This means that some children are experiencing challenges locating school places or are spending long periods of time travelling to get to schools.⁹⁶

► **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.⁹⁷ 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*.

Temporary Emergency Accommodation Centres are generally an unsuitable form of accommodation for asylum-seekers, particularly children. The 262.5 per cent increase in the use of this form of accommodation in the past year is appalling notwithstanding pressures mounted on the system by those seeking accommodation due to the war in Ukraine and increased numbers of international protection applicants. 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. Given the dependency on the use of emergency centres and the continued high number of people arriving to Ireland, guidelines and standards need to be put in place also be a matter of priority.

95 Justin McCarthy and Joan O’Sullivan, 3,000 Ukrainians ‘must leave’ student accommodation by the end of August, RTE News, 7 August 2022.

96 Carl O’Brien, About 3,800 recently arrived Ukrainian children may need school places, The Irish Times, 24 August 2022.

97 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.

➔ **Recommendations:**

- ▶ Introduce the International Protection Child Payment for all children living in the international protection system as a matter of urgency.
- ▶ 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.
- ▶ Commit to the permanent phasing-out of Temporary Emergency Accommodation Centres, supported by increased resources and system capacity and develop an interim set of guidelines and standards for emergency centres.
- ▶ Develop a new agency to deal with refugee accommodation with specific expertise in planning, procurement and construction, and in the interim hire experts in planning, construction, housing and procurement in to deal with refugee accommodation in DCEDIY.

13

Pathways for Undocumented Children

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.

▶ Progress: **Good**

'Pathways for Undocumented Children' receives a 'B+' grade, an increase on the 'B' grade awarded last year. The Government Scheme to regularise the status of undocumented people living in Ireland ran for a limited period from January until 31 July 2022. Applications were received in respect of 8,311 people. The scheme was an important breakthrough, and its implementation has shown significant positive results. However, the impact of this unprecedented scheme will be limited unless necessary legislation is brought forward to advance multiple, sustainable pathways for the regularisation of undocumented children.

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.¹ 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 January 2023. The Committee called for child rights approach in addressing poverty with a particular focus on children of ethnic minority groups and that an assessment is undertaken of the impact of the habitual residence condition and that social welfare payments are amended accordingly 'to ensure that policies do not have a discriminatory effect on such children.'²

► What is the context for this commitment?

As of 2021, there were an estimated 15,000 to 17,000 undocumented people living in the State including 2,000 to 3,000 children.³ 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.⁴ Of those children born outside Ireland, 78 per cent had been living here for five years or more.⁵



1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989), Art 2.

2 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 35

3 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (3 December 2021) <<https://bit.ly/3u53QNW>> accessed 10 January 2022.

4 Migrant Rights Centre Ireland 'Growing up undocumented in Ireland' <<https://bit.ly/3sSKYil>> accessed 10 December 2021.

5 ibid.

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.⁶ 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.⁷

In December 2018, states, including Ireland, adopted the UN Global Compact for Safe, Orderly and Regular Migration, the first global agreement on a common approach to international migration.⁸ 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.⁹

The Platform for International Cooperation on Undocumented Migrants has highlighted that uncertain, precarious or irregular status has negative impacts on the health and well-being of children and young people.¹⁰ In particular, they are at risk of being deported,¹¹ and their access to further education, training, employment and vital services is restricted.¹² Undocumented children are denied the opportunity to travel outside Ireland to see family or for educational opportunities, limiting their ability to plan for the future and develop. 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.¹³ 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.

6 Twenty-Seventh Amendment of the Constitution Act 2004.

7 Irish Human Rights Commission, *Observations on the Proposed Referendum on Citizenship* (IHRC 2004) 13.

8 United Nations, *Global Compact for Migration* (UN 2018).

9 *ibid* 2.

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 RTE News, 'Migrant group calls for rights for undocumented children' (3 July 2019) <<https://bit.ly/3cegEIQ>> accessed 10 December 2020.



Undocumented children are denied the opportunity to travel outside Ireland to see family or for educational opportunities, limiting their ability to plan for the future and develop.

► 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.¹⁴ In December 2021, the Government approved the scheme to regularise the status of thousands of undocumented persons living in Ireland.¹⁵ Importantly, individuals with expired student permission or those with an existing Deportation Order could apply for the scheme, provided they satisfied the minimum undocumented residence requirement.¹⁶ People with an outstanding application for international protection, who had been in the asylum process for at least two years, were also eligible to apply for the scheme.¹⁷ The scheme did not create any rights to family reunification with family members who were not already residing in Ireland.¹⁸ The scheme opened for online applications in January 2022, for a limited period closing on 31 July.¹⁹ The Department of Justice had 6,548 applications in respect of 8,311 people under the scheme.²⁰ Over one thousand (1,108) children and young people were submitted as a part of family applications.²¹ As of 22 February 2023, the total number of decisions that have issued to applicants is 5,640, of which 5,284 (94 per cent) were positive, 258 (4 per cent) were negative, and 98 (2 per cent) were withdrawn by the applicants for several reasons.²² Additionally, the International Protection strand of the Regularisation Scheme, which closed on 7 August 2022, recorded 3,193 applications up to 25 November 2022, with 1,296 (39.7 per cent) successful decisions issued and an additional 1,007 (31.5 per cent) granted an equivalent permission by the International Protection Office.²³ A further 396 applications were ineligible and 260 applications were withdrawn.²⁴

14 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020)76.

15 Department of Justice, 'Minister McEntee outlines draft scheme to regularise undocumented migrants to Cabinet' (23 April 2021) <https://bit.ly/3ALEyFQ> accessed 31 January 2022.

16 Department of Justice, 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants' (3 December 2021) < <https://bit.ly/3u53QNW> > accessed 10 January 2022.

17 *ibid.*

18 *ibid.*

19 Communication received by the Children's Rights Alliance from the Department of Justice on 07 December 2022.

20 *ibid.*

21 *ibid.*

22 Communication received by the Children's Rights Alliance on 23 February 2023.

23 *ibid.*

24 *ibid.*

The Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018 was initiated in the Seanad in 2018.²⁵ 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.²⁶ 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 contained 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 proposed that a child will need to have lived in Ireland for a period of two years²⁷ 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.²⁸

In 2019, the High Court 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.²⁹ At Dáil Committee Stage of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022 on 22 November, the Minister brought forward amendments to the Irish Nationality and Citizenship Act 1956 to provide for a clear and specific procedure that will apply where a naturalisation application is made on behalf of a minor born in the State.³⁰ This Bill is now at the third stage of the legislative process. The amendments proposed in the Bill are identical to those proposed in the Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018. Under the new section 15B of the Irish Nationality and Citizenship Act 1956, specific provision will be made for the conditions of naturalisation that will apply to minors, and the issues arising from the High Court judgment in *Iurescu*

25 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.

26 Department of Justice, 'Minister McEntee to make it easier for children to secure Irish citizenship' (23 March 2021) <<https://bit.ly/3IQKAbk>> accessed 10 January 2022.

27 Irish Nationality and Citizenship (Naturalisation of Minors Born In Ireland) Bill 2018, s2(1).

28 See generally Sarah Groarke and Róisín Dunbar, *ESRI Research Series Number 116: Pathways to citizenship through naturalisation in Ireland*, (ESRI 2020).

29 *Iurescu (a minor) v Minister for Justice and Equality* [2019] IEHC 535.

30 Courts and Civil Law (Miscellaneous Provisions) Bill 2022 s.7.

will be addressed.³¹ Under the new section 15B of the Irish Nationality and Citizenship Act 1956, specific provision will be made for the conditions of naturalisation that will apply to minors, and the issues arising from the High Court judgment in Iurescu will be addressed.³² The new section 15B provides that the Minister must be satisfied that a minor applicant for naturalisation is of good character.³³ However, for consistency with the provisions of the Children Act 2001 relating to criminal responsibility of children, the good character condition will apply to a minor under the age of 14 only in the rare cases where the minor has been charged with or convicted of murder, manslaughter, rape, or aggravated sexual assault.³⁴

Section 35(b) of the Employment Permits (Amendment) Act 2014, which is yet to be commenced, would allow for children under the age of 16 to register with the Garda National Immigration Bureau.³⁵ There are no advanced plans to introduce Irish Residence Permit cards for persons under the age of 16 or to commence section 35(b) of the Employment Permits (Amendment) Act 2014, however the Department of Justice keeps this under ongoing review.³⁶ Registration is important so that children's time spent in the State can be calculated towards their 'reckonable residency' (time spent in the country) for the purposes of immigration applications and also for child protection purposes. 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 2017-2020 *Migrant Integration Strategy*.³⁷

31 Communication received by the Children's Rights Alliance from the Department of Justice, 07 December 2022.

32 *ibid.*

33 *ibid.*

34 *ibid.*

35 The Employment Permits (Amendment) Act 2014, s35(b).

36 Communication received by the Children's Rights Alliance from the Department of Justice, 07 December 2022.

37 Department of Justice, *Migrant Integration Strategy 2017-2020*, (DOJ 2017).

► **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 2016.³⁸

While the Regularisation Scheme for Long-term Undocumented Migrants in Ireland was a very positive development which enabled 8,311 undocumented people to apply to have their status regularised, it was a once-off opportunity available for just six months. The scheme regularised only one cohort of undocumented children and young people in Ireland and contained no plans for alternative pathways to regularisation nor any permanent mechanism to address the long-term issue of other undocumented children and young people growing up in Ireland who fell 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.³⁹ 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. Additionally, ensuring children can register with the Garda National Immigration Bureau needs to be prioritised so that they may be able to effectively participate in any future regularisation schemes.

38 UNCRRC ‘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.

39 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 76.

➔ **Recommendations**

- ▶ Introduce PPSN numbers for all undocumented children and young people.
- ▶ Bring forward necessary legislation to advance multiple, sustainable pathways for the regularisation of undocumented children, and not just a once-off time bound scheme.
- ▶ Prioritise the introduction of Irish Residence Permit cards for persons under the age of 16.
- ▶ Commence section 35(b) of the Employment Permits (Amendment) Act 2014.

14

**Harassment,
Harmful
Communications
and Related
Offences Bill**

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.

▶ Progress: **Complete**

Progress on the Harassment, Harmful Communications and Related Offences Bill receives an 'A' grade, which remains the same as the 'A' grade awarded last year. The Act, which was passed into law in December 2020, was enacted in full in February 2021. The government has continued to increase investment in resourcing the Gardaí to effectively implement the legislation under the Zero Tolerance Strategy. Additionally, gaps in the legislation are being addressed by amendments through several bills currently passing through the Dáil.

Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) guarantees all children the right to be protected from abuse, neglect and sexual exploitation.¹ The UN Committee on the Rights of the Child noted in 2021 that '[t]he digital environment is becoming increasingly important across most aspects of children's lives'.² The Committee also noted that the increased importance of the digital environment 'affords new opportunities for the realisation of children's rights, but also poses the risks of their violation or abuse'.³ The Committee recommended that States should 'review, adopt and update national legislation in line with international human rights standards'.⁴

The UN Committee 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'.⁵

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 January 2023. In its Concluding Observations the Committee recommended that the State ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.⁶ Ireland signed the Optional Protocol on 7 September 2000 but has yet to ratify it and is now the only

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* para 3.

4 *ibid* para 23.

5 *ibid* para 82.

6 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 47

European Union (EU) Member State not to have ratified the Protocol.⁷ The Committee raised concerns about the high prevalence of online violence and bullying⁸ and recommended that the State take actions to protect the rights and safety of children in the digital environment through regulations and safeguarding policies and through the mandate of Online Safety Commissioner and the individual complaints mechanism.⁹ The Committee also recommended that laws on the digital environment protect children from harmful content including through the implementation of the Online Safety and Media Regulation Act.

► What is the context for this commitment?

The internet has revolutionised the modern world and in turn, the lives of children worldwide. Children make up one third of global online users.¹⁰ 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. However, whilst the Internet 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.¹¹ In Ireland, 95 per cent of children aged eight to twelve years own their own smart device



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 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 23

9 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 22

10 Unicef, *Children in the Digital World* (2017) 35

11 *ibid.*

and 87 per cent use their own social media and instant messaging accounts.¹² There is growing concern that online grooming, as well as the sharing of child exploitation material, increased online during Covid-19.¹³ Irish teenagers are the fourth highest users in the EU for sexting.¹⁴

The Council of Europe has noted 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.¹⁵ They recommend 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.¹⁶ The growing use of technology amongst peers must be recognised in any reforms, with legal progress matched by 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 and a breach of the UNCRC.¹⁷ These images effectively represent a digital crime scene, and people accessing these images directly contribute to the exploitation of child victims by creating demand and perpetuating the child's trauma. This abuse is ongoing until the image is removed. In 2021, the Internet Watch Foundation received a 64 per cent increase in reports, of which 252,194 reports were confirmed as containing child sexual abuse and exploitation material.¹⁸

12 CyberSafeKids, *Academic Year in Review 2022*, (CyberSafeKids 2022) 3. CyberSafeKids Ireland gather data from children before they visit their school or deliver a webinar. The data in the 2021 Annual Report is based on 4,408 children aged between 8-12 years. A full breakdown of the data, including gender, county and age is available in the Cyber Kids Ireland's Annual Report 2021.

13 Interpol, 'Child Sexual Exploitation and Abuse threats and trends: COVID-19 Impact' <<https://bit.ly/34unFDS>> accessed 1 February 2022.

14 Dublin City University, 'Irish Teens the Fourth Highest in the EU for Sexting' <<https://bit.ly/3qTC2HK>> accessed 6 January 2022. See also: Raymond Arthur, 'Policing Youth Sexting in Ireland' (2019) 22(3) *Irish Journal of Family Law* 66.

15 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.

16 *ibid*, 10.

17 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

18 The Internet Watch Foundation, 'IWF Annual Report 2021 – Face the Facts' <<https://www.iwf.org.uk/about-us/who-we-are/annual-report-2021/>> accessed 22 November 2022.

Similarly, Hotline.ie, the Irish national reporting centre for illegal online content, has experienced a dramatic increase in demand for its services – in 2021 it saw 29,794 reports, which was as many as the previous three years combined.¹⁹ Despite this, Irish cases involving the distribution of child abuse material are taking up to 10 years for the State to complete, with the problem accelerating in recent years, as technological and data issues impede prosecutions.²⁰ 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.²¹ 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).²²

29,794

Reports of illegal online content to Hotline.ie in 2021 - as many as previous 3 years combined

In 2016, the Law Reform Commission (LRC) published its report entitled *Harmful Communications and Digital Safety*.²³ The report contained a draft Harmful Communications and Digital Safety Bill, which proposed the consolidation and reform of criminal law on harmful communications.²⁴ 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.²⁵

19 Hotline.ie, *2021 Annual Report* (2022) 7-8.

20 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.

21 *ibid.*

22 Garda Síochána Inspectorate, *Responding to Child Sexual Abuse, A Follow Up Review from the Garda Inspectorate* (Garda Inspectorate 2017) 11.

23 Law Reform Commission, *Report on harmful communications and digital safety* (LRC 116 - 2016).

24 *ibid* Appendix A.

25 *ibid* para 19.

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

The *Programme for Government* committed to enact the Harassment and Harmful Communications Bill to outlaw image-based sexual abuse and to prevent abusive sharing of intimate images online.²⁶ 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 2020.²⁷ The Act introduces new offences concerned with recording and distributing intimate images without consent²⁸ and publishing or sending threatening messages or grossly offensive communication.²⁹ 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, any nudity or any sexual activity in which a person is engaged.³⁰

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.³¹ 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.³² Children who display harmful sexual behaviours are more likely to have histories of maltreatment, and so, it is important that other responses are considered including child

26 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 87.

27 President of Ireland, 'President Higgins signs Harassment, Harmful Communications and Related Offences Bill 2017' <<https://bit.ly/3pxcboN>> accessed 1 February 2022.

28 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.

29 *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'.

30 *ibid* s1.

31 *ibid* s8.

32 Law Reform Commission, *Report on harmful communications and digital safety* (LRC 116 - 2016) para 19.

protection and welfare, particularly in cases where younger children are viewing and sharing the images.³³ Every child has the right to be protected against the distribution of images of a sexual or intimate nature.³⁴ 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 did 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.³⁵ The Act also does not include stalking as a specific offence. In July 2021, Senator Lisa Chambers introduced a Private Members Bill, the Non-Fatal Offences Against the Person (Amendment)(Stalking) Bill 2021 to make stalking a stand-alone offence.³⁶ This Bill is currently at second stage in the Dáil. Additionally, the Criminal Justice (Miscellaneous Provisions) Bill 2022, which is currently awaiting report stage in the Dáil, establishes a standalone offence of stalking in Irish law.³⁷ It also puts forward proposals to enable courts to issue civil restraining orders against stalkers.³⁸ These orders would not require a criminal prosecution and would be easier for victims to obtain, as they target stalking at an earlier stage before it progresses to the level of seriousness seen in criminal convictions.³⁹ These orders would go further than what is possible under current domestic violence legislation insofar as orders would be available against stalkers generally, not just for close relationships; and it would prohibit stalking even by a single act without the need for persistence or repetition.⁴⁰ The Bill also expands the offence of harassment to cover any persistent conduct that seriously interferes with a person's peace or privacy, or causes alarm, distress or harm.⁴¹

33 Simon Hackett, 'Children and young people with harmful sexual behaviour' (Research in Practice 2014) <<https://bit.ly/3qQme8u>> accessed 1 February 2022.

34 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

35 Harassment, Harmful Communications and Related Offences Bill 2017 (as initiated) s13.

36 Non-Fatal Offences Against the Person (Amendment)(Stalking) Bill 2021, s1.

37 Communication received by the Children's Rights Alliance from the Department of Justice on 23 February 2023.

38 Criminal Justice (Miscellaneous Provisions) Bill 2022, Part 5.

39 Department of Justice, 'New system of court orders to restrain stalking behaviour and protect victims as part of new Bill from Minister McEntee' (4 August 2022) <<http://bit.ly/3JTS29d>> accessed 2 February 2023.

40 *ibid.*

41 *ibid.*

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Hotline.ie, the Irish national reporting centre for illegal online content, has experienced a dramatic increase in demand for its services – in 2021 it saw 29,794 reports, which was as many as the previous three years combined.

Additionally, cyber flashing (sending a sexual image to another's device without consent) is expected to become an offence under the amendments to the Online Safety and Media Regulation Act.⁴²

In September 2021, Hotline.ie launched a secure and confidential intimate image abuse ('IIA') web-reporting portal and service, providing relevant resources, and enabling Hotline.ie to remove intimate images shared without a person's consent. Hotline.ie also liaise with An Garda Síochána and the Department of Justice where the reporter would like to have the matter investigated.⁴³

► **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 2023 provided an additional €20.5 million for Garda operational expenditure which includes provisions for the Garda National Protective Services Bureau, equipment for a range of Garda specialist units. Under Budget 2023 an additional €9 million, which represents a 22 per cent increase for combatting domestic, sexual and gender-based violence was also secured.⁴⁴ This additional funding will also support the implementation of the new whole of government Zero Tolerance Strategy.⁴⁵ Hotline.ie reported that it received, assessed, classified, and actioned 25 per cent more child sexual abuse material reports in 2021 than in the last 21 years combined.⁴⁶ Just one public report can lead to hundreds, if not thousands, of online child sexual abuse material. 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. As of March 2022, there have been 35 charges/

42 Hayley Halpin, 'Cyber-flashing to be tackled under new online safety legislation' *The Journal*, 18 Oct 2022.

43 Hotline.ie, *Annual Report 2021* (Hotline.ie 2022) 24.

44 Department of Justice, 'Stronger, safer communities prioritised in Budget 2023' (27 September 2022) <http://bit.ly/3Yv1E2e> accessed 2 February 2023.

45 Communication received by the Children's Rights Alliance from the Department of Justice on 23 February 2023.

46 Hotline.ie, *Annual Report 2021* (Hotline.ie 2022) 11.

summonses under the Harassment and Harmful Communications Act, relating to 22 unique incidents.⁴⁷ The Gardaí must be properly equipped to enforce the legislation including having the appropriate digital equipment to obtain and retain the evidence necessary to bring prosecutions under the 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.⁴⁸ 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'.⁴⁹ It is vital that this commitment is prioritised, and work is 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.⁵⁰ 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.⁵¹

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,⁵² it is vital that, in line with age and developmental

47 An Garda Síochána, *Domestic, Sexual and Gender Based Violence: A Report on Crime Levels and Garda Operational Response* (September 2022) 15 <<https://bit.ly/3Y5BM9r>> accessed 22 November 2022.

48 UNCRRC, *Report of the 2014 General Day of Discussion, Digital Media and Children's Rights* (OHCHR 2014) para 105.

49 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 95.

50 J Brown and A Saied-Tessier, *Preventing Child Sexual Abuse: Towards a national strategy for England 2015* (NSPCC 2015).

51 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.

52 Simon Hackett, 'Children and young people with harmful sexual behaviour', (Research in Practice 2014) <<https://bit.ly/3qQme8u>> accessed 1 February 2022, 59.

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 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. It is welcome that Strand 3 of the reformed Junior Cycle SPHE curriculum proposed by the National Council for Curriculum and Assessment will "investigate the influence of digital media (in particular, the influence of pornography) on young people's understanding, expectations and social norms in relation to sexual expression."⁵³ A consultation on reforming the Senior Cycle SPHE curriculum has also commenced and could contain recommendations in this regard.⁵⁴

This is an important step in the right direction and would serve to actions under the Third National Strategy on Domestic, Sexual and Gender Based Violence which was published last summer.⁵⁵ Under the Strategy there are actions on developing education and public information campaigns which raise awareness of the harm of pornography and of how pornography can fuel misogyny and violence against women and undermine gender equality.⁵⁶

The UN Committee on the Rights of the Child recommended in its Concluding Observations in January 2023 that Ireland ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.⁵⁷ The enactment of the Criminal Law (Sexual Offences) Act 2017 and the Criminal Justice (Victims of Crime) Act 2017 constituted key steps on the pathway to the ratification of the Optional Protocol.⁵⁸ Further smaller legislative amendments relating to the extra-territorial jurisdiction requirements under the Protocol will ensure that

53 National Council for Curriculum and Assessment, "Draft Junior Cycle Social, Personal and Health Education (SPHE) Short Course Curriculum" (2022) 15, <<https://bit.ly/3HlvG7Z>> accessed 21 September 2022.

54 National Council for Curriculum and Assessment, Senior Cycle Social, Personal and Health Education (SPHE), <<http://bit.ly/3l6inzuz>> accessed 2 February 2023.

55 Government of Ireland, Zero Tolerance: Third National Strategy on Domestic, Sexual and Gender-Based Violence 2022-2026 (DOJ 2022).

56 *ibid.*

57 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 47.

58 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth on 23 February 2023.

the State is in compliance with certain outstanding aspects of the Protocol.⁵⁹ These amendments have been included in the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 which was approved for publication by the Government in July 2022, with drafting of the Bill currently at an advanced stage.⁶⁰ The Department of Children, Equality, Disability, Integration and Youth have confirmed that the Bill will be finalised in early 2023 and published thereafter, and once enacted Ireland should be in a position to ratify the Second Optional Protocol.⁶¹ While there have been positive steps towards ratification, it is essential that the government prioritise the enactment of the Bill in order to come in line with all other EU Member State who have already ratified the Protocol.⁶²

Recommendations

- ▶ **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.**

59 *ibid.*

60 *ibid.*

61 *ibid.*

62 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.

15

Child Safety Online

Section Grade:

A



The Programme for Government commits to:

Enact the Online Safety and Media Regulation Bill

▶ Progress: **Complete**

Establish an Online Safety Commissioner

▶ Progress: **Good**

Child Safety Online received an 'A' grade, an increase from the 'C-' grade awarded last year. In 2022, the Online Safety and Media Regulation (OSMR) was enacted which provides for the establishment of an Online Safety Commissioner and explicitly includes an individual complaints mechanism and provision for the development of Online Safety Codes. The introduction of an individual complaints mechanism in the OSMR Act marks a breakthrough change in how children and young people will be protected online, placing a responsibility on platforms to make their services a safer space for children. The legislation puts a particular emphasis on the rights of the child and includes the best interests of the child principle as a guiding principle for the new Coimisiún na Meán. The Online Safety Commissioner was appointed in January 2023.

Ireland's duties and responsibilities in international law



All children have the right to be protected from abuse, neglect and sexual exploitation.¹ 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.'²

The Committee recommended in its 2021 General Comment that 'States parties should ensure that appropriate and effective remedial judicial and non-judicial mechanisms for the violation of children's rights relating to the digital environment are widely known and readily available to all children and their representatives'.³ 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'.⁴

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 January 2023. In its Concluding Observations the Committee referred directly to General Comment 25 and recommended that the Irish State further develop measures to tackle digital inclusion; protect the rights and safety of children in the digital environment through regulations and safeguarding policies and through the mandate of Online Safety Commissioner and the

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* para 44.

4 *ibid* para 113.

individual complaints mechanism.⁵ The Committee also recommended that laws on the digital environment protect children from harmful content including through the implementation of the Online Safety and Media Regulation Act.⁶ In relation to digital literacy the Committee recommended that the State continue to take measures to enhance the skills of children, teachers and families in the area of digital literacy.⁷

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.⁸ It further recommends that Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights⁹ is respected and protected when their rights have been infringed online.¹⁰ 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.¹¹ Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.¹²

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

Children make up one third of global online users.¹³ 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

5 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 22

6 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 22

7 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 22

8 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.

9 European Convention of Human Rights Art 6 and 19.

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) 24.

11 *ibid.*

12 *ibid.*

13 Unicef, *Children in the Digital World* (UNICEF 2017).

children and young people in Ireland, aged nine to 17 years use social media.¹⁴ This rises to 90 per cent of 15 to 17 year olds.¹⁵ 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 2021, CyberSafeKids reported that a quarter of all children 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.¹⁶

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.'¹⁷ Recognising that businesses have a responsibility to respect children's rights,¹⁸ 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.¹⁹ 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.²⁰ 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

14 National Advisory Council for Online Safety, *Report of a National Survey of Children, their Parents and Adults regarding Online Safety 2021* (2021) 8.

15 *ibid.*

16 CyberSafeKids, Annual Report 2021 (2022) 3. CyberSafeKids Ireland gather data from children before they visit their school or deliver a webinar. The data in the 2021 Annual Report is based on 4,408 children aged between 8-12 years. A full breakdown of the data, including gender, county and age is available in the Cyber Kids Ireland's Annual Report 2021.

17 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.

18 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.

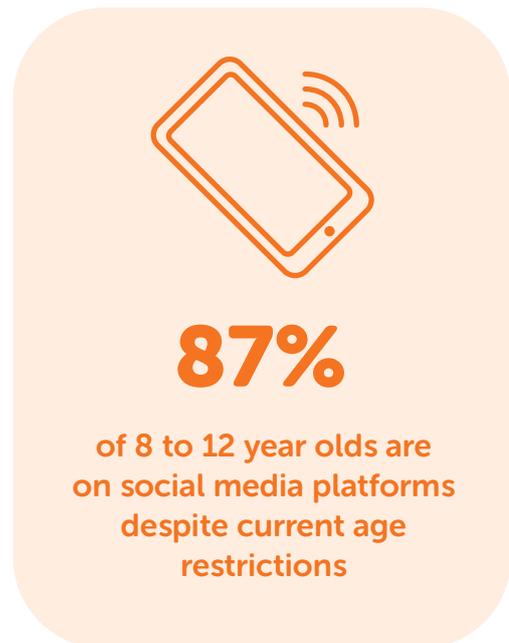
19 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) 11.

20 *ibid.* 23.

Convention on Human Rights²¹ is respected and protected when their rights have been infringed online.²² 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'.²³ Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.²⁴

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.²⁵

Self-regulation of the industry can result in inconsistent standards being applied and data from CyberSafeKids reveals that 87 per cent of eight to 12 year olds are on social media platforms despite current age restrictions.²⁶ While the internet undoubtedly has significant positive impacts 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.



21 European Convention of Human Rights Art 6 and 13.

22 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.

23 *ibid.*

24 *ibid.*

25 Children's Rights Alliance, 'Irish public send clear message to Government – do not shy away from regulating social media and big tech' (16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

26 CyberSafeKids, Annual Report 2021 (2022) 6. CyberSafeKids Ireland gather data from children before they visit their school or deliver a webinar. The data in the 2021 Annual Report is based on 4,408 children aged between 8-12 years. A full breakdown of the data, including gender, county and age is available in the Cyber Kids Ireland's Annual Report 2021.

In 2022, the EU Digital Services Act (DSA) recommended that providers of online platforms used by children and young people 'should take appropriate and proportionate measures to protect minors'.²⁷ The Act gives examples of such measures including platforms designing online interfaces 'with the highest level of privacy, safety and security for minors by default where appropriate or adopting standards for protection of minors, or participating in codes of conduct for protecting minors'.²⁸ It also stated that consideration should be given to best practice such as the EU Commission's *A Digital Decade for children and youth: the new European Strategy for a better internet for kids* (BIK+).²⁹ The *BIK+ Strategy*, adopted in May 2022, proposes actions around three key pillars: to provide safe digital experiences to protect children from harmful content and improve their wellbeing online, to develop the digital empowerment of all children and to encourage active participation respecting children by giving them a say on the digital environment.³⁰ As part of this, from 2023 the Commission will 'facilitate the design of a comprehensive EU code of conduct on age-appropriate design building on the framework of the DSA, by 2024'.³¹ The *Strategy* provides that Member States should among other actions: 'monitor the impact of digital transformation on children's well-being'³², 'make the necessary investment to tackle all forms of the digital divide in line with the European Child Guarantee'³³ and 'engage an inclusive range of youth ambassadors to contribute to digital policies at local, regional and national level'.³⁴

27 Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), 71.

28 *ibid.*

29 *ibid.*

30 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *A Digital Decade for children and youth: the new European strategy for a better internet for kids* (BIK+), Brussels 11.5.2022 COM(2022) 212, 9.

31 *ibid.*

32 *ibid.* 15.

33 *ibid.*

34 *ibid.* 17.

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

The *Programme for Government* committed to enacting the Online Safety and Media Regulation Bill and establish an 'Online Safety Commissioner'. Following a public consultation, the General Scheme of the Online Safety and Media Regulation Bill was first published in January 2020³⁵ but fell with the change in government later that year. An updated General Scheme was published in December 2020.

In April 2021, the General Scheme was referred to the Joint Committee on Tourism, Culture, Arts, Sport and Media for pre-legislative scrutiny.³⁶ 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.³⁷ The Committee recommended that the proposed legislation explicitly name the position of the Online Safety Commissioner and that the Coimisiún na Meán and the Online Safety Commissioner should be satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement.³⁸ 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.³⁹ The Committee also recommended that a regulatory role in online safety education be explicitly included within the legislation for the Online Safety Commissioner.⁴⁰ Similar recommendations were made by the Joint Oireachtas Committee on Education in August 2021. The Committee's Report on *School Bullying and the Impact on Mental Health* called for the establishment of an Online Safety Commissioner with an educational function and an investigative mandate, to include dealing with individual complaints.⁴¹

35 General Scheme of the Online Safety & Media Regulation Bill.

36 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.

37 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).

38 *ibid* 12.

39 *ibid* 25.

40 *ibid* 37.

41 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.

An Expert Group was established in January 2022 to examine the possibility of including an individual complaints mechanism in the Bill.⁴² The report of the Expert Group published in June endorsed the feasibility of introducing an individual complaints mechanism and made twelve specific recommendations on the structure and operation of the mechanism. The Group recommended that Coimisiún na Meán should be enabled to triage and refer complaints to certain other bodies, such as An Garda Síochána, and to handle complaints relating to non-offence specific categories of harmful online content as defined in the Bill.⁴³ It also recommended that the mechanism should be structurally separate from the systemic regulatory functions of Coimisiún na Meán.⁴⁴ The Expert Group also set out a four-stage approach to the implementation of an individual complaints mechanism as follows:

- ▶ **1.** Following its establishment, Coimisiún na Meán should develop online safety codes regarding standards in complaints handling;
- ▶ **2.** Coimisiún na Meán should monitor compliance with the online safety codes on complaints handling over a period of at least 12 months in order to assess which categories of harmful online content most urgently need to be further tackled via the individual complaints mechanism;
- ▶ **3.** Following the period of 12 months, Coimisiún na Meán should develop a scheme to accept complaints about alleged harmful online content which relate to categories of non-offence specific harmful online content where the content in question pertains to a child;
- ▶ **4.** Following the period of 12 months, Coimisiún na Meán should develop and publish a three-year work plan for how it will progressively work towards operating the individual complaints mechanism in full including indicative timelines for the commencement of further schemes and resource requirements.⁴⁵

42 Irish Legal News, 'Expert group to consider inclusion of individual complaints mechanism in online safety law' (24 January 2022) <<http://bit.ly/3jK6hTl>> accessed 2 February 2023.

43 Report of the Expert Group on an Individual Complaints Mechanism (May 2022) 20.

44 *ibid* 19.

45 *ibid* 24.



In creating the Online Safety Codes, the Commission will have particular regard to the 'levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it.

The Minister introduced a number of amendments to the OSMR Bill in July 2022 including explicitly providing for the role of an Online Safety Commissioner, setting out that Coimisiún na Meán has a particular commitment to the safety of children, and providing for the establishment of a Youth Advisory Committee by the Commission.⁴⁶

The Online Safety and Media Regulation Act 2022 passed through the houses of the Oireachtas in November and was signed into law by President Michael D. Higgins on 10 December 2022. The final Act 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 binding 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.⁴⁷ To enforce these 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.⁴⁸ The Commission will also have the power to appoint someone to carry out an audit of compliance.⁴⁹ Coimisiún na Meán will also have the power to appoint authorised officers to seek the imposition of financial sanctions for contraventions, to issue notices to end contraventions and to seek access blocking orders.⁵⁰

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.'⁵¹ The Commission should also 'encourage research, promote or endorse educational and training initiatives and activities, including in media literacy, and co-operate for that purpose with educational and training bodies, sporting bodies

46 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 'Minister Martin brings forward amendments to the Online Safety and Media Regulation Bill' (11 July 2022) < <http://bit.ly/3xaYJfz> > accessed 9 February 2023.

47 Online Safety and Media Regulation Act 2022, s139K(2)(a).

48 *ibid* s139O(1).

49 *ibid* s139P(1).

50 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media on 16 February 2023.

51 *ibid* s7(3)(g).

and community, local and representative bodies, and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its function.⁵² This implements the recommendations of the Joint Committee on Tourism, Culture, Arts, Sport and Media at the pre-legislative scrutiny stage and the Joint Oireachtas Committee on Education that the Commission should have an explicit regulatory role in online safety education. It is welcome that in performing its functions the Commission will have regard to the 'safety of children, and the published policies of the Minister for Children, Equality, Disability, Integration and Youth.'⁵³ The focus on the safety of children is an important step as it recognises the specific risks to children in engaging in the online world as acknowledged by the Council of Europe in its *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*.⁵⁴

The introduction of an individual complaints mechanism in the OSMR Act marks a break-through change in how children and young people will be protected online, placing a responsibility on platforms to make their services a safer space for children. The Act sets out the parameters for making a complaint to the Commission about harmful content online. Harmful content is defined as falling within one of either two categories – content that falls within one of the offence-specific categories of online content,⁵⁵ or content that falls within one of the other categories of online content⁵⁶ and meets the risk test.⁵⁷ The other categories include bullying or humiliating content,⁵⁸ content encouraging an eating disorder,⁵⁹ content that promotes or encourages self-harm or suicide,⁶⁰ content by which a person makes available knowledge of methods of self-harm or suicide,⁶¹ and any category

52 *ibid.*

53 *ibid* s7(4)(a).

54 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.

55 Online Safety and Media Regulation Act 2022, s139A(1)(a).

56 *ibid* s139A(b)(i).

57 *ibid* s139A(b)(ii).

58 *ibid* s139A(3)(a).

59 *ibid* s139A(3)(b).

60 *ibid* s139A(3)(c).

61 *ibid* s139A(3)(d).

specified under the Act.⁶² Online content meets the risk test if it gives rise to 'any risk to a person's life'⁶³ or 'a risk of significant harm to a person's physical or mental health where the harm is reasonably foreseeable.'⁶⁴

A period of more than two days must elapse since the individual made a complaint to the service provider before they can make a complaint to the Commission,⁶⁵ and where 'the provider operates a process in accordance with an online safety code for handling such a complaint' the complainant must have taken 'reasonable steps in that period to have the complaint resolved through that process.'⁶⁶ The interest and rights of the child are firmly embedded into the principles for the resolution of complaints which the Commission are to have regard to when dealing with complaints. The Commission must have regard to 'the interests of any child concerned as complainant, as the person who uploaded the content to the designated online service, or as a person to whom the content relates or at whom it is directed'⁶⁷ and 'the levels of risk of harm, and in particular harm to children, from the availability of the content or exposure to it.'⁶⁸

In line with the commitment in the *Programme for Government*, the OSMR Act provides for the establishment of Online Safety Codes which can make provision for ensuring that 'service providers take appropriate measures to minimise the availability of harmful online content and risks arising from the exposure to such content.'⁶⁹ The Codes may also make provision for ensuring that service providers take measures in relation to commercial communications on their services to protect, in particular, the interests of children.⁷⁰ The Online Safety Codes will set out the standards that services must meet, the practices they must follow and measures that they must take.⁷¹ In particular this includes standards, practices or measures relating to

62 *ibid* s139A(3)(e).

63 *ibid* s139A(4)(a).

64 *ibid* s139A(4)(b).

65 *ibid* s139S(1)(b).

66 *ibid* s139S(1)(c).

67 *ibid* s139U(b).

68 *ibid* s139U(c).

69 *ibid* s139K(2)(a).

70 *ibid* s139K(2)(d).

71 *ibid* s139K(4)(a).

'the moderation of content or how content is delivered on services'⁷² and the handling by service providers of communications from users making complaints.⁷³ In creating the Online Safety Codes, the Commission will have particular regard to the 'levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it.'⁷⁴ On 17 January 2023, Minister Catherine Martin announced the appointment of the Executive Chairperson and Commissioners to the Online Safety Commission.⁷⁵ Niamh Hodnett will act as the Online Safety Commissioner and will take up her duties in mid-February.⁷⁶ Budget 2022 allocated €5.5 million funding for the establishment of Coimisiún na Meán and appointment of the Online Safety Commissioner,⁷⁷ while Budget 2023 allocated €7.5 million to support the initial establishment of the Commission.⁷⁸ It is intended that Coimisiún na Meán will be primarily financed by an industry levy from 2024 onwards.⁷⁹

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

The enactment of the Online Safety and Media Regulation Bill is a landmark occasion that has the potential to put an end to the age of self-regulation by big tech and social media giants. It can create true accountability in the online space. The particular emphasis on the educational remit of the Commission, the rights of children and young people and the best interests principle within the legislation is warmly welcomed. The provision for an individual complaints mechanism within the Act takes a firm stand against the illegal and harmful content we know is prevalent online that platforms have struggled to address

72 *ibid* s139K(4)(b).

73 *ibid* s139K(4)(e).

74 *ibid* s139M(f).

75 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 'Minister Martin announces forthcoming appointment of Executive Chairperson and Commissioners in Coimisiún na Meán' (17 January 2023) <<http://bit.ly/3x9h0dI>> accessed 9 February 2023.

76 *ibid*.

77 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 'Budget 2022: A powerful programme of supports for the department's sectors' (13 October 2021) <<http://bit.ly/40HEkML>> accessed 9 February 2023.

78 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 'Ministers Martin and Chambers announce details of Budget 2023 for the Department of Tourism Culture, Arts, Gaeltacht, Sport and Media' (28 September 2022) <<http://bit.ly/3lcjPAn>> accessed 9 February 2023.

79 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media on 16 February 2023.

adequately and ensures a level of oversight and accountability so that all complainants, and in particular vulnerable children and young people, have an accessible solution when online services and platforms fail to protect them.

The recent naming of the Online Safety Commissioner and the initial resourcing of the Commission is a positive step in its establishment, however focus must now turn to ensuring that the Online Safety Commissioner is adequately resourced, with appropriate ring-fenced funding and staffing. Additionally, it is critical that the Online Safety Codes are developed promptly and that we see the establishment of the Youth Advisory Committee and the individual complaints mechanism without delay.

Recommendations:

- ▶ Establish the Youth Advisory Committee without delay.
- ▶ Develop the Online Safety Codes as a matter of priority.
- ▶ Ensure the Online Safety Commissioner is adequately resourced to implement the different aspects of the legislation.

16

Reform of the Family Law Courts

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.

▶ Progress: **Some**

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.

▶ Progress: **Slow**

Reform of the Family Law Courts receives a 'C+' grade, which is an increase on the 'C-' grade awarded last year. In November 2022, the Department of Justice published its Family Justice Strategy with the objective of 'changing how the family justice system works for children and families.' In December 2022, the Family Courts Bill 2022 was published. Design and pre-planning consultations for the Hammond Lane site took place in 2022 with the planning application and the transfer of the site into Courts Service ownership both progressing.

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.¹ 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'.² 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'.³

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 January 2023. In its Concluding Observations the Committee noted the publication of the Family Court Bill and called on the State to prioritise reform in this area so that proceedings are resolved efficiently in a child-friendly manner.⁴ The Committee also called for the resourcing of the Child Care (Amendment) Act 2022 to ensure that children's views and best interests are taken into consideration in child care proceedings.⁵

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'.⁶ The Guidelines

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 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 26

5 UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 26

6 Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (COE 2010) 29.

recommend that interviewing and waiting rooms for children 'in a child-friendly environment' be provided in court settings.⁷ 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.⁸ The Guidelines also recommend that all proceedings involving children should be heard in a speedy manner and that the urgency principle should be applied.⁹ 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'.¹⁰

► 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.¹¹ Family law proceedings are subject to the *in camera* rule (meaning they are heard in private). Most child and family proceedings are heard by the District Court, a generalist court of first instance, which also hears criminal, civil, and licensing matters. The District Court comprises of 24 Districts, each of which is operationally independent. This has resulted in different practices developing in the different districts. For example, in child care proceedings variations have been observed in relation to the type and nature of the order sought and granted, how the views of the child are heard and the reviews of orders by the court.¹²

7 *ibid.*

8 *ibid.*

9 *ibid* 28.

10 *ibid* 33.

11 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 22.

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

The District Court is overworked and under resourced.¹³ There can be lengthy waits to secure a date for a hearing and extensive case lists.¹⁴ In some Districts the list may be up to and over 100 cases for one judge to hear in a single day.¹⁵ This leads to pressure to hear cases quickly or to engage in informal negotiation, and can contribute to a lack of privacy and over-crowding.¹⁶

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 Courts¹⁷ 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.'¹⁸ 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.'¹⁹ 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.'²⁰

Family members are often in disagreement during family law proceedings and the current physical court environment does not provide them with the necessary space and privacy to deal with very personal and sensitive matters.²¹ The design of courtrooms has 'a direct impact on the way in which family law

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

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

15 *ibid* 22.

16 *ibid*.

17 Law Reform Commission, *Report on Family Courts* (LRC 1996).

18 *ibid* ii.

19 *ibid* ii.

20 *ibid* 22.

21 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.

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'.²² Judges are making decisions 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.²³

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.²⁴ 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.²⁵

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.²⁶ 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'.²⁷ It also recommended that the necessary funding be allocated to build the dedicated family law complex in Dublin.²⁸

22 *ibid* 7.

23 Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (DCYA 2018) 72.

24 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.

25 *ibid*.

26 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 43.

27 *ibid*.

28 *ibid*.

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

Family Law Court Bill 2022

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 procedures that 'support a less adversarial resolution of disputes'.²⁹ 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.³⁰

In September 2020, the Government published the Heads of Bill to provide for the establishment of a District Family Court,³¹ a Circuit Family Court³² and a Family High Court³³ within existing court structures. The General Scheme of the Family Court Bill was referred to the Joint Oireachtas Committee on Justice for pre-legislative scrutiny³⁴ 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.³⁵

The Family Courts Bill 2022 was published in December 2022. It is welcome that the Bill provides that Judges appointed to the Family Courts have to be 'a suitable person to deal with matters of family law' by reason of their 'training or experience and temperament'.³⁶ Equally welcome is the requirement for Judges of all levels in the Family Courts to undergo education and training.³⁷ While barristers and solicitors who work in the area are not also required to undertake

29 Government of Ireland, *Programme for Government, Our Shared Future*, 85.

30 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 10 February 2023.

31 Family Court Bill General Scheme (September 2020) Head 6.

32 *ibid* Head 11.

33 *ibid* Head 16.

34 *ibid*.

35 Joint Oireachtas Committee on Justice, Letter to Minister for Justice Helen McEntee 16 December 2021 <<https://bit.ly/3G2za2g>> accessed 10 February 2023.

36 Family Courts Bill 2022, s15(1).

37 *ibid*, s59.

such training, the requirement for them to abide by the guiding principles on equal terms as that of the judiciary is a very positive development.³⁸ In particular, that this duty falls on all legal professionals to be guided by the best interests of the child and to ensure the child be both informed and have their view heard is noteworthy. Currently in Ireland, most child and family law cases are heard by generalist judges in the general courts system. The Bill also includes 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. This implements the provision in the Council of Europe's *Guidelines on Child-Friendly Justice* which provides that States should establish 'a system of specialised judges and lawyers for children.'³⁹

In line with the commitment to construct a separate Family Court complex at Hammond Lane as set out in the Family Justice Strategy, s.40 of the Bill provides that sittings of the Court shall be held in a different building or room from the building or room in which sittings of other Courts are held or on different days and different times from sittings of other courts.⁴⁰

The Bill also provides that sittings be placed under distinct duties to be run as informally as possible, without gowns or wigs.⁴¹ This further reflects the principles of child-friendly justice⁴² and will enable more accessible and effective communication with children and young people.

Provision is made for the establishment of a Family Law Rules Committee, or in the alternative Family Law sub-committees of existing Rules Committees, in the Bill which would develop a comprehensive set of overarching rules and practice guidelines.⁴³ This is a welcome measure to work towards consistency

38 *ibid*, s8.

39 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 33.

40 This is provided for in Section 10 (inserted section 8C of the Courts (Supplemental Provisions) Act 1961) with respect to the Family High Court; section 25 with respect to the Family Circuit Court and in section 40 (inserted section 26C of the Courts of Justice Act 1953) regarding the Family District Court.

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42 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010).

43 Family Courts Bill 2022, s51.

in the new system. The Bill provides for the extension of jurisdiction across all three Family Court Divisions in Judicial Separation, Divorce, and Civil Partnership.⁴⁴ This should facilitate non contentious cases being dealt with in the District Court, with complex or contested Family Law cases to be heard in the higher court jurisdictions.⁴⁵ The Family High Court will maintain jurisdiction to hear cases on adoption, child abduction and special care cases, as well as having the jurisdiction to hear cases stated and appeals.⁴⁶

Section 8 of the Bill expanded the guiding principle that the best interests of the child is the primary consideration reflecting Article 3 of the UN Convention on the Rights of the Child and following on from Part V of the Guardianship of Infants Act 1964, as amended by the Children and Family Relationship Act 2015. The Bill provides that all courts, barristers, and solicitors must have the best interests of the child as 'the primary consideration in the conduct of proceedings.'⁴⁷ Additionally, the Bill requires that parties to the proceedings shall have regard to the fact that 'the best interests of the child are a primary consideration in the conduct of the proceedings.'⁴⁸ The Bill also sets out 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.'⁴⁹

It is also welcome that the General Scheme of the Bill has been expanded to include a focus in the guiding principles on user-friendliness of the system for parties to family law proceedings.. The Bill also encourages the facilitation, in so far as is possible, of the parties in proceedings to achieve consensus to resolve their family law disputes without recourse to the courts as a guiding principle. This includes alternative dispute resolution methods such as mediation.⁵⁰

44 Communication received by the Children's Rights Alliance from the Department of Justice on 17 February 2023.

45 Family Courts Bill 2022, ss10, 20, 37.

46 Family Courts Bill 2022, ss10, 20, 37.

47 *ibid*, s8(2)(a)(i).

48 *ibid*, s8(4)(a).

49 *ibid*, s8(2)(a)(iii).

50 *ibid*, s8(2)(b).

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.⁵¹ 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.⁵² 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.⁵³

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 2022.⁵⁴ The commitment in the *Family Justice Strategy 2022-2024* to 'continue work on the Hammond Lane project' is welcome in this regard. The Hammond Lane complex will replace the present facilities for family law in central Dublin at Dolphin House, Chancery Street, Phoenix House and in the Four Courts.⁵⁵ The projected completion date for the project under an updated high-level programme is late 2027/early 2028.⁵⁶ The Court Service Hammond Lane Project Board approved in principle design plans, subject to a number of amendments, on 28 November 2022.⁵⁷ The Court Service continues to work with the OPW regarding a Part 9 Planning application and progressing the transfer of the site into Courts Service ownership.⁵⁸

While the progress to date and the renewed commitment to build a dedicated Family Law Court complex in Dublin is welcome, momentum needs to be maintained.

51 Government of Ireland, *Programme for Government, Our Shared Future* (Government Publications 2020) 85.

52 Irish Legal News, Funding secured for Hammond Lane family courts complex, 15 July 2020 <<https://bit.ly/3601bs8>> accessed 10 February 2023.

53 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

54 Government of Ireland, *Performance Delivery Agreement between the Courts Service and the Department of Justice 2021* <<https://bit.ly/3IHgzKQ>> accessed 10 February 2023.

55 Communication received by the Children's Rights Alliance from the Department of Justice, 1 December 2022.

56 *ibid.*

57 Communication received by the Children's Rights Alliance from the Department of Justice, 17 February 2023.

58 *ibid.*



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 Gardai in courthouses.

The Office of Public Works purchased the site for £4 million in 1999 and it has remained vacant since that time, for some 25 years.⁵⁹ 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 particular to ensure that interview and waiting rooms for children are provided 'in a child-friendly environment' in court settings.⁶⁰

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.⁶¹ 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, Naas, Bray, Navan, Swords, Tallaght & Dun Laoghaire.⁶² It also states that '[i]n some of these locations, the proposed projects will include the provision of facilities for Regional Family Law Centres'.⁶³ The Courts Service is in the process of identifying and acquiring suitable sites for such projects.⁶⁴ Sites for the new regional family law centres have not yet been decided however they will align with the plans under the National Development Plan 2021-2030.⁶⁵

59 Olivia Kelly, 'OPW targeted for criticism over vacant sites', *The Irish Times* 5 August 2013.

60 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 30.

61 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

62 Department of Public Expenditure and Reform, *National Development Plan 2021-2030* (Government of Ireland 2021) 153.

63 *ibid* 153.

64 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

65 Communication received by the Children's Rights Alliance from the Department of Justice, 1 December 2022.

Family Justice Strategy

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. A commitment was made to hold a consultation specifically with children and young people.⁶⁶ The consultation with children and young people took place in 2021 and both a detailed report and a child-friendly summary were published and are available on the Department website along with the Strategy.⁶⁷

In November 2022, the Department of Justice published its *'Family Justice Strategy'*. The Strategy contains a vision, nine goals, including one focused on supporting children with the descriptor of 'ensuring' that the needs of children are at the centre of the family justice system, their voices are heard and considered, and that they are supported in their own individual journey through the system.⁶⁸ The Strategy is cross governmental in nature with responsibility for implementing actions coming under many different government departments. Under the Family Justice Strategy, the Department has committed to, among other things:

- ▶ Develop and pilot mechanisms to enhance hearing the voice of the child in all family justice matters.⁶⁹
- ▶ Produce child-friendly and accessible material to explain family justice judgments and decisions (where appropriate and feasible) tailored to children.⁷⁰
- ▶ Deliver common child-focused training to all professionals working within the family-justice sector.⁷¹
- ▶ Review the enforcement of child maintenance orders and, if required

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

67 *ibid.*

68 *ibid.*

69 *ibid.*, Action 1.1.

70 *ibid.*, Action 1.2.2.

71 *ibid.*, Action 2.5.

identify proposals for reform.⁷²

- ▶ Creating a directory of counselling and support services.⁷³
- ▶ Design and implement an 'ideal' service delivery model for family courts, informed by the Family Court Bill, putting the user at the centre.⁷⁴
- ▶ Researching how Child Liaison Officers (CLO) are used in other jurisdictions, identifying potential opportunities where a CLO could assist children and their families in the current system and reporting on the outcome.⁷⁵ If deemed appropriate develop role requirements for potential CLOs and implement a pilot demonstration project on a CLO.⁷⁶
- ▶ Develop capacity in the family justice system to ensure that there are enough suitably trained and experienced individuals who can resolve matters through alternative dispute resolution.⁷⁷
- ▶ Engage with educational and professional bodies and associations to develop and implement training across professions in core family justice area, e.g. child-centred approach, and dispute resolution.⁷⁸
- ▶ Support the creation of specialist family courts, and explore opportunities to provide more suitable facilities.⁷⁹
- ▶ Scope the possible improvements of physical environment in court buildings taking account of the Courts Service's ideal future state family law building.⁸⁰

The publication of the Family Justice Strategy is an extremely welcome step as it outlines a much needed vision for change in our family justice system to ensure that it is one that works for children and families. It is very positive to see that this vision for guiding the change is one that places children and

72 *ibid*, Action 1.9

73 *ibid*, Action 2.1.2

74 *ibid*, Action 2,,2

75 *ibid*, Action 4.1.

76 *ibid*, Action 4.2.

77 *ibid*, Action 4,4

78 *ibid*, Action 5.1.3

79 *ibid*, Action 8,1

80 *ibid*, Action 8.4

young people at the very centre. The child-centred approach in this strategy builds a strong foundation for reform. In order to ensure the best interests of the child are taken into consideration, the voice of the child must be heard and respected. It is positive to see a long-term commitment to review how effective the system is at hearing the voice of the child and to steer the development of mechanisms that would enhance how the system and practitioners hear the voice of the child in all family justice matters.

Moreover, it is encouraging to see the proposal to 'develop and deliver child-friendly and accessible information and material'⁸¹ that will help children and young people in understanding their situation and the choices being made in their case. 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. 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. Digital technology could help to make information accessible to children and to the families and organisations who support and work with them.

While there is a strong focus on the need to develop child-friendly information and guidelines for professionals within the strategy, it is essential that the Government also look to the physical environment and what improvements are needed. This should include child-friendly spaces for interviews and waiting rooms which are currently not designed with children in mind. Further consideration should also be given on how to ensure that key services are developed to support families going through the courts system.

Legal professionals are a pivotal part of delivering the vision for a reformed family justice system. It is positive to see a focus on the need for standardised, child-focused training and the development of guidelines and

81 Department of Justice, 'Family Justice Strategy 2022 – 2025 (2022) Action 1.2.2.

protocols to assist judges when interviewing children in family law cases. This will support the system to respond to the needs and rights of children which will in turn, improve children's own experience of the legal system.

The strategy points in the right direction for change as it commits to exploring avenues outside of information provision, with research into the benefits of appointing a designated role (Child Liaison Officer) to support and guide children through the legal system and further development of the Guardian ad Litem service.⁸²

► **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. While it is positive that an overarching completion date of late 2027/early 2028 has been set, 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.

The publication of the Family Courts Bill in December was an important and welcome step, placing the best interests of the child as a primary consideration at the heart of any future legislation and adding much needed clarity and accessibility to the operation of the family law system. Great scope remains however to deliver a family law system that truly serves the needs of families and children and young people. It is disappointing that the Bill does not make any reference to the need for solicitors and barristers to undergo specialised training similar to that required of Judges in this space. The Council of Europe's *Guidelines on Child-Friendly Justice* provide that States should establish 'a system of specialised judges and lawyers for children.'⁸³ 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.

82 Department of Justice, 'Family Justice Strategy 2022 – 2025 (2022) Action 4.

83 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice* (COE 2010) 33.

The *Guidelines on Child-Friendly Justice* also 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.'⁸⁴ The publication of the Family Courts Bill is a positive development, but the final Act should address some important challenges. This reform presents an opportunity to 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.⁸⁵ 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.⁸⁶ The Bill further missed an opportunity to begin building the capacity of both the District and Circuit Courts for the increase in caseload that will come from the reforms. However, the numbers of judges to be assigned to the Family Courts is a matter that is under examination currently.⁸⁷

The publication of the Family Justice Strategy in November provided an important vision for change in the family justice system. Now it will be essential that the strategy is supported with adequate resources to begin implementation without delay.

84 *ibid* para 136.

85 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 43.

86 *ibid*.

87 Communication received by the Children's Rights Alliance from the Department of Justice on 17 February 2023.

➔ Recommendations

- ▶ Consider including a requirement in the Family Courts Bill for specialist training for all professionals working in the family law courts, including solicitors and barristers, and for this to specifically include training on the mechanisms for meeting with and hearing from children and young people.
- ▶ 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*.
- ▶ Develop a clear timeline 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.
- ▶ Ensure that work on researching child liaison officer roles and the potential opportunities for the Irish legal system begins in Q2 2023 as per the *Family Justice Strategy*.
- ▶ Ensure the development of protocols and guidance to assist judges when speaking to or interviewing children in family law cases is carried out in Q1 2023 as per the *Family Justice Strategy*.

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

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