

Franset National contribution to the Fundamental Rights Report 2021

IRELAND

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Policy and legal highlights 2020 - Ireland

<p>Issues in the fundamental rights institutional landscape</p>	<p>Establishment of the Anti-Racism Committee:</p> <p>In June 2020, Ministers of the State announced the establishment of the new Anti-Racism Committee (ARC). The ARC is an independent body entrusted with the drafting of a new National Action Plan Against Racism. The ARC is comprised of various individuals from across society, including academia, civil society organisations and the private sector.</p>
<p>EU Charter of Fundamental Rights</p>	<p>Preliminary reference on data protection:</p> <p>In February 2020, the Supreme Court referred the case of Dwyer vs. The Commissioner of An Garda Siochana to the Court of Justice of the European Union. The key legal question is whether Ireland’s current data retention regime is compatible with EU law, read in light of the EU Charter of Fundamental Rights. If the CJEU rules against the Irish state, it is expected to have far-reaching implications, not just for the applicant in this case (who is convicted of murder), but for many current investigations and cases.</p>
<p>Equality and non-discrimination</p>	<p>Enhancement of the legal position of female same-sex parents:</p> <p>The commencement of Parts 2 and 3 of the Children and Family Relationships Act 2015, on 4 May 2020, improved the legal position of female same-sex parents and donor-conceived children and helps to foster equality and combat discrimination against LGBTQI+ people.</p>
<p>Racism, xenophobia & Roma integration</p>	<p>Ban on Traveller evictions during the spring/summer wave of COVID-19:</p> <p>The Emergency Measures in the Public Interest (Covid-19) Act 2020 (section 5(7) specifically prohibited the eviction of Travellers from any location during the COVID-19 emergency period. However, please note that Section 13(b) of the Residential Tenancies and Valuation Act 2020 deleted this provision, with the protection ending on 1 August 2020.</p>
<p>Asylum & migration</p>	<p>Automatic renewals of visas and residence permits during the Pandemic:</p> <p>The Minister of Justice and Equality has extended immigration & international protection permissions to reside in the state on 5 occasions during the pandemic. The most recent of these automatic renewals will expire on 31 January 2021.</p>
<p>Data protection and digital society</p>	<p>State surveillance:</p> <p>In March 2020, the Data Protection Commission found that CCTV systems used by Kerry County Council were being operated unlawfully due to a lack of an appropriate legal basis, inadequate signage, inadequate security, and failure to carry out data protection impact assessments before use. This finding is significant as part of a wider national investigation into CCTV and ANPR surveillance by police and</p>

	Local Authorities which confirms that similar schemes in use throughout Ireland are illegal.
Rights of the child	Announced ratification of the Lanzarote Convention: In September 2020, the Minister of Justice and Equality announced that Ireland intended to ratify the Council of Europe’s Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. This Convention was formally ratified on 21 December 2021.
Access to justice, including victims of crime	New Victims Charter: The Department of Justice and Equality published a new Victims’ Charter that sets out what victims can expect from the criminal justice system. First conviction in a case of coercive control: In 2020, Ireland recorded its first convictions in respect of female genital mutilation and coercive control .
Convention on the Rights of Persons with Disability	Covid-19 impact and announced OP-CRPD ratification: The COVID-19 Pandemic has had a disproportionately negative impact on people with disabilities in Ireland . On 3 December 2020, Ireland released its Draft Initial State report to the CRPD Committee including a call for public consultation on the Draft. Ireland will present its initial State Report to the CRPD Committee in 2021. In addition, the Government has agreed to ratify the Optional Protocol of the CRPD once the first reporting cycle has been completed.

Chapter 1. Equality and non-discrimination

1. Legal and policy developments or measures relevant to fostering equality and combating discrimination against older people and against LGBTI people.

Parts 2 and 3 of the Children and Family Relationships Act 2015 entered into force on 4 May 2020 and **improved the legal position of female same-sex parents**.¹ Parts 2 and 3 regulate, inter alia, parentage in cases of **donor-assisted human reproduction** other than surrogacy. Parts 2 and 3 of the Act prospectively concern donor-assisted human reproduction (DAHR) that occurs in a DAHR clinic in Ireland.

¹ In November 2019, the then Minister for Health signed the [Children and Family Relationships Act \(Parts 2 and 3\) \(Commencement\) Order 2019](#), appointing 4 May 2020 as the date on which Parts 2 and 3 of the 2015 Act would enter into force ('be commenced').

A non-genetic intended parent of a donor-conceived child can now be recognised as a second legal parent at birth once s/he and the child's mother consented to this outcome by signing the requisite consent forms at the DAHR facility prior to any procedure taking place there.² The child must have been born in the State.³ In addition, only the use of gametes from a non-anonymous donor is now permitted to protect the child's right to knowledge of genetic identity.⁴ As regards **legal parentage of a child**, the commencement of Parts 2 and 3 equates the legal position of female same-sex parents who have a child via DAHR with opposite-sex parents who have a child via DAHR or opposite-sex married couples who have a child via natural procreation. The persons recognised as the child's parents upon his/her birth by virtue of Parts 2 and 3 are the birth mother and her spouse (whether same sex or opposite sex), same-sex civil partner, or a cohabiting partner (whether same sex or opposite sex) of 3 years duration or more.

Part 2 also regulates **retrospective recognition of parentage**. A non-genetic intended parent and the child's mother can now make a joint application to the District Court seeking a declaration that the intended parent is a parent of a child who was conceived via a DAHR procedure performed in a clinic in Ireland or abroad before the date of commencement of Part 2 of the 2015 Act (4 May 2020).⁵ The child's birth must have taken place in Ireland, either before or after the commencement of Part 2. The use of gametes from either an unknown/anonymous or a non-anonymous donor in order to conceive the child via a DAHR procedure in Ireland or abroad will suffice where a declaration of parentage in relation to a child conceived pre-commencement is sought after the date of commencement (4 May 2020).⁶ There is currently no domestic legislation regulating the parentage of a child born via international or domestic surrogacy and while the commencement of Parts 2 and 3 of the 2015 Act has improved the legal position of female same-sex parents in Ireland, it has also served to highlight the disparity between the

² Ireland, Houses of Oireachtas, [Children and Family Relationships Act 2015](#), no. 9/2015, Sections 9 and 11.

³ Ireland, Houses of Oireachtas, Children and Family Relationships Act 2015, no. 9/2015, Section 4.

⁴ Part 3 of the Children and Family Relationships Act 2015 provides for the establishment of the National Donor-Conceived Person Register, from which a donor-conceived child will be permitted to access his or her non-anonymous donor's identifying/non-identifying information at the age of 18.

⁵ Section 22 of the Children and Family Relationships Act 2015 provides that the non-genetic intended parent or the child's mother can make a *sole application* to the Circuit Court for the intended parent to be recognised as a parent of a donor-conceived child who was born in Ireland, and conceived via a DAHR procedure performed in a clinic in Ireland or abroad before the commencement of Part 2. By allowing a court application by only one of the parties, this section provides for situations where the relationship between the mother and the intended parent has broken down following the conception/birth of the donor-conceived child.

⁶ The provisions on retrospective recognition acknowledge that clinical practice in Ireland prior to the commencement of Parts 2 and 3 of the 2015 Act was mainly to use anonymous donor sperm in DAHR procedures, so it would be unfair to exclude intended parents from obtaining retrospective recognition of parentage on the basis of a common practice that was not prohibited by any domestic law at the time of the child's conception. Brian Tobin (2020), 'Assisted Reproductive Techniques and Irish Law – No Child Left Behind?' *Irish Jurist*, Vol. 64.

legal position of female same-sex parents and male same-sex parents who conceive a child via assisted reproductive techniques.

2. Findings and methodology of research, studies or surveys on experiences of discrimination against older people and against LGBTI people.

In July 2020, the Health Information and Quality Authority (HIQA) published a report examining the impact of the COVID-19 pandemic on nursing home residents in Ireland.⁷ The report details the findings of HIQA's contingency assessment and risk inspection programmes and draws attention to the human impact of COVID-19 by reporting on the experiences of nursing home residents, their families and staff, as reported to HIQA Inspectors. HIQA inspectors spoke with many residents, relatives and staff working in nursing homes, including those who had been directly affected by COVID-19. The report found that '**COVID-19 has disproportionately affected older people** and has caused much anxiety, grief, fear and isolation for residents, their families, friends and carers'.⁸

The report emphasised that 'while a significant number of nursing homes reported outbreaks, it should be borne in mind that many centres have to that date remained COVID-free'.⁹ The report found that some nursing homes were unable to comply with the relevant public health advice pertaining to COVID-19 'through a combination of **poor governance, a lack of planning and outdated facilities and premises**'.¹⁰ The report found that 'the continued use of multi-occupancy rooms and outmoded premises in some nursing homes (due to end at the end of 2021) undoubtedly created a situation where the spread of infection was difficult to contain'. Consequently, the report concluded that 'As a result of COVID-19, it is absolutely vital that premises are modernised as a matter of urgency in order to facilitate physical distancing requirements, promote modern infection prevention and control practices, and provide residents with the dignity and privacy they deserve'.¹¹

The report also identified gaps in clinical governance arrangements for nursing homes because 'for many, the only form of **clinical oversight is provided by general practitioners**, and this is simply insufficient for many centres given their size and the complex needs of residents'.¹² The report concluded that the 2013

⁷ HIQA (Health Quality and Information Authority) (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', available at: https://www.hiqa.ie/sites/default/files/2020-07/The-impact-of-COVID-19-on-nursing-homes-in-Ireland_0.pdf.

⁸ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p. 44.

⁹ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p.41.

¹⁰ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', pp. 43-44.

¹¹ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p.44.

¹² HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p.42.

nursing home regulations need to be reformed and strengthened to protect older people into the future, particularly with regard to important issues such as staffing levels, premises, governance and infection prevention and control. Furthermore, the report found that the regulations should be reformed to bring about a greater emphasis on a **human rights-based approach to care**.¹³

The report emphasised that 'reform of the regulatory framework and current models of care for older people is essential' and that 'as a country [Ireland] must explore alternative, more suitable models of care, such as homecare and assisted living.'¹⁴ The report concluded that 'as we move forward and seek to **improve** the way we provide **care to older people** in Ireland, meaningful and **comprehensive engagement with residents** and their **advocates** is imperative to ensure that we learn the lessons of this public health emergency'.¹⁵

Chapter 2. Racism, xenophobia and related intolerance

1. Legal and policy developments relating to the application of the Racial Equality Directive

1.1. Committee on the Elimination of Racial Discrimination (CERD)

January: The CERD (henceforth Committee) published its concluding observations on the combined fifth to ninth reports of Ireland.¹⁶ The following points represent a selection of key concerns and recommendations raised by the Committee in the context of the Directive. Ireland was required to:

(in relation to) the legislative/institutional framework

- 1) Incorporate the Convention in its legal order;
- 2) Review Equality legislation to align the definition of racist discrimination with Art.1 of the CERD;

¹³ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p. 43.

¹⁴ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p. 44.

¹⁵ HIQA (2020), 'The Impact of COVID-19 on Nursing Homes in Ireland', p. 44. For more information on the impact of COVID-19 on older people in Ireland, see pages 7-8 of the FRANET country study released on 23rd March 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ireland-report-covid-19-april-2020_en.pdf.

¹⁶ United Nations Committee on the Elimination of Racial Discrimination (2020), 'Concluding observations on the combined fifth to ninth reports of Ireland', CERD/C/IRL/CO/5-9, 23 January 2020, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRL/CO/5-9&Lang=En.

- 3) 'Ensure that no protection gaps exist in policy and institutional framework for any group of people experiencing racial discrimination'.

(Re.) racial profiling

- 1) Introduce legislation prohibiting racial profiling;
- 2) Introduce an independent complaints mechanism specific to racial profiling;
- 3) 'Collect disaggregated data on racial profiling, publish it regularly'.

(Re.) people of African descent

- 1) 'Take effective measures... to address all forms of discrimination against people of African descent, in particular in the employment and education sectors'.

(Re.) the right to housing

- 1) Take 'effective measures against discrimination in the private rental sector;
- 2) 'Place a moratorium on evictions of Traveller accommodations'.

(Re.) access to licensed premises

The Committee raised 'the discriminatory refusal of entry to licensed premises such as bars, public houses and hotels experienced mainly by Travellers and Roma'; and difficulties these communities face in accessing redress for same. The Committee recommends that such experiences be covered by existent Equality legislation and access for redress claims be made accessible.¹⁷

1.2. European Union Agency for Fundamental Rights: Roma and Travellers in Six Countries

September: The European Union Agency for Fundamental Rights published a report on Roma and Travellers in Six Member States, which focused on issues of (in)equality and discrimination *inter alia*.¹⁸ The following points constitute instances of its key findings:

- 65% of Travellers felt discriminated against in the last month based on the ethnicity (68% men, 62% women);

¹⁷ UN CERD Committee, 'Concluding observations on the combined fifth to ninth reports of Ireland', CERD/C/IRL/CO/5-9, 23 January 2020.

¹⁸ FRA (2020), 'Roma and Travellers in six countries', 23 September 2020, available at: <https://fra.europa.eu/en/publication/2020/roma-travellers-survey> .

- 38% experienced discrimination while looking for work in the past twelve months; 70% in the last five years;
- Travellers reported experiencing discrimination accessing health services;
- 73% of Travellers reported discrimination when trying to rent/buy houses.¹⁹

1.3. Irish Human Rights and Equality Commission

June: the Irish Human Rights and Equality Commission (IHREC) submitted its comments on Ireland's 17th National Report on the Implementation of the European Social Charter.²⁰ Drawing on an extensive evidence and a list of concerns, the IHREC noted, *inter alia*:

- That Traveller children comprise '12% of the homeless children residing in emergency accommodation'. Travellers comprise only 1% of the population;
- Concerns 'that the State is not meeting the needs of those who would prefer to live in culturally appropriate Traveller-specific accommodation' or standard housing.
- Concerns 'that the current housing policy potentially exposes minority and vulnerable groups [...] to greater levels of discrimination in accessing housing, inequalities in housing quality outcomes (deprivation and overcrowding), and to a higher risk of homelessness'.²¹

July: The IHREC and the Economic and Social Research Institute published research on 'people's hidden attitudes to minorities in Ireland'.²² Employing a sample size of approximately 1,600 individuals, the research 'compares anonymously expressed attitudes' regarding the levels of support for immigration of Black or Muslim people. Key findings include:

¹⁹ FRA (2020), 'Roma and Travellers in six countries', 23 September 2020.

²⁰ Irish Human Rights and Equality Commission (IHREC) (2020), 'Comments on Ireland's 17th National Report on the Implementation of the European Social Charter,' 28 June 2020, available at: <https://www.ihrec.ie/documents/comments-on-irelands-17th-national-report-on-the-implementation-of-the-european-social-charter/>

²¹ IHREC (2020), 'Comments on Ireland's 17th National Report on the Implementation of the European Social Charter,' 28 June 2020.

²² Frances McGinnity, Mathew Creighton and Éamonn Fahey (2020) 'Hidden Versus Revealed Attitudes: A List Experiment on Support for Minorities in Ireland', report published by the IHREC and the Economic and Social Research Institute, 29 July 2020, available at: <https://www.ihrec.ie/new-research-examines-peoples-hidden-attitudes-to-minorities-in-ireland/> .

- When asked openly, people are more likely to express support for more Black people coming to Ireland than for Muslims.
- 'Social pressures' vis desirability are greater when people are responding to questions about Black immigration than Muslim people;

August: The IHREC published a guidance note on the 'Public Sector Equality and Human Rights Duty' (henceforth 'Duty') concerning official responses to COVID-19.²³ The guidance note referenced the disproportionate impact of COVID-19 on ethnic minorities and underscored that the Duty inform considerations of COVID-19 responses and to protect against discrimination. IHREC made a submission to the Special Committee on COVID-19 Response on the adequacy of the State's legislative framework in September, noting the potential disproportionate impact of emergency legislation on the Traveller Community and people living in Direct Provision Centres.²⁴

1.4. Irish Network Against Racism

March: The Irish Network Against Racism (INAR) published data on reports of racist hostility and discrimination received to the INAR organisations via their iReport tool. Key 'highlights' of the report include:

- A total of 530 reports were received in 2019;
- These included incidents of:
 - Discrimination (111)
 - A high rate of physical injury and negative effects on mental health for both hostility and discrimination;
 - Low levels of trust in and reports to the police;
 - Racial profiling by police;

²³ IHREC (2020), 'Guidance Note – COVID-19 and the Public Sector Equality and Human Rights Duty,' 4 August 2020, available at: <https://www.ihrec.ie/documents/guidance-note-covid-19-and-the-public-sector-equality-and-human-rights-duty/> .

²⁴ IHREC (2020), 'Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies,' September 2020, available at: <https://www.ihrec.ie/app/uploads/2020/09/IHREC-Submission-to-Special-Committee-on-COVID-19-Response-regarding-Adequacy-of-Legislative-Framework.pdf> .

- 'Institutional racism [...] evident in the policies and processes of a range of public sector organisations'.²⁵

2. Legal and policy developments relating to the application of the Framework Decision on Racism and Xenophobia relevant to combating hate speech and hate crime

2.1. Committee on the Elimination of Racial Discrimination

January: As aforementioned, the CERD (henceforth Committee) published its concluding observations on the combined fifth to ninth reports of Ireland at the beginning of 2020.²⁶ The following details a selection of key concerns and recommendations raised by the Committee in the context of the Framework Decision that the State party, *inter alia*:

Racist Hate Speech

- 1) Strengthen legislation on hate speech;
- 2) Intensify efforts to challenge racist hate speech online/social media;
- 3) Investigate and penalise hate speech committed by politicians during campaigns;
- 4) Engage in raising awareness of racist hate speech (in order to challenge it).

Racist Hate Crime

- 1) 'Introduce and enforce legislative provisions that include racist motivation as an aggravating circumstance that will result in a penalty enhancement for crimes committed as a result of racial bias';
- 2) Ensure accurate recording of racist hate crime and collection of disaggregated data;
- 3) Provide training for police, prosecutors, judges on the identification, registration and prosecution of racist incidents and hate crimes;
- 4) Introduce legislation to declare illegal and prohibit racist organisations.

²⁵ Lucy Michael (2020) 'Data from iReport.ie: Reports of Racism in Ireland', *Irish Network Against Racism*, 18 March 2020, available at: https://inar.ie/wp-content/uploads/2020/03/2019_iReport_Final.pdf.

²⁶ UN CERD Committee, 'Concluding observations on the combined fifth to ninth reports of Ireland', CERD/C/IRL/CO/5-9, 23 January 2020.

People of African Descent

'Take effective measures to prevent racist hate crime against people of African descent and ensure that all cases of such crime are thoroughly investigated, perpetrators are sanctioned and victims are provided with effective remedies'.²⁷

2.2. Department of Justice and Equality

February: the Minister for Justice and Equality published a 'new and expanded' Victims Charter, which 'sets out information on the services offered by the State as well as voluntary groups who work with victims of crime'. The Charter references racist incidents and the actions taken by police should they receive such a report. Including accurately recording and investigating the incident, and connecting the victim to the local Garda (Irish Police) Diversity Officer.²⁸

June: the Minister for Justice and Equality and the Minister of State with responsibility for Equality, Immigration and Integration announced the membership of the new Anti-Racism Committee (ARC). The ARC is an independent body that has been established with the aim of drafting a new National Action Plan Against Racism.²⁹ The ARC is comprised of various individuals from across society, including academia, civil society organisations and the private sector.

December: The Department of Justice and Equality published the 'Legislating for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation 2020'.³⁰ As the title suggests, this Report was based on a public consultation with a range of stakeholders from across society. According to Minister, the consultation process was a 'significant step toward new criminal legislation to deal with hate crime and incitement to hatred'.³¹ Key conclusions from the consultation include that:

²⁷ UN CERD Committee, 'Concluding observations on the combined fifth to ninth reports of Ireland', CERD/C/IRL/CO/5-9, 23 January 2020.

²⁸ Government of Ireland (2020) 'Victims Charter', February 2020, available at: <https://www.victimscharter.ie/wp-content/uploads/2020/04/Victims-Charter-22042020.pdf>

²⁹ Ireland, Department of Justice and Equality (2020), 'Action Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee,' 19 June 2020, available at: <http://www.justice.ie/en/JELR/Pages/PR20000115> .

³⁰ Ireland, Department of Justice and Equality (2020), 'Legislating for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation,' 17 December 2020, available at: [http://www.justice.ie/en/JELR/Legislating for Hate Speech and Hate Crime in Ireland Web.pdf](http://www.justice.ie/en/JELR/Legislating%20for%20Hate%20Speech%20and%20Hate%20Crime%20in%20Ireland%20Web.pdf) .

³¹ Ireland, Department of Justice and Equality (2020), 'Legislating for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation,' 17 December 2020,

- Current incitement legislation is not fit for purpose and needs to be replaced;
- New offences vis incitement are required and should prohibit:
 - ‘deliberately or recklessly inciting hatred against a person or group of people due to their association with a protected characteristic’, which may be based on perception of membership or association;
 - ‘displaying or distributing material inciting hatred’ – ‘there should be no requirement for the material to be threatening, abusive or insulting in itself’;
- Protected characteristics be updated to include: gender, gender expression or identity, and the explicit inclusion of Traveller Community vis the definition of ethnicity;
- Freedom of expression be protected;
- Any new legislation include hate crime with a focus on ‘aggravated forms of existing criminal offences’ to allow for sentence enhancement and clear recording of same.³²

2.3. Irish Network Against Racism

March: The INAR published its position on online hate speech. The network supported the UN CERD reiteration that Member States and organisations take action to ‘curb incitement to racial discrimination or violence, the propagation of ideas of racial superiority, and to prohibit organisations that promote or incite discrimination.’³³ INAR recommended that Ireland:

- Expedite the Online Safety and Media Regulation Bill;
- Investigate and prosecute hate speech, including in election campaigns;

In the context of social media platforms and in particular Facebook, INAR recommends, *inter alia*:

- Encouragement of reporting of online hate speech and make reporting easier;

³² Ireland, Department of Justice and Equality (2020), ‘Legislating for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation,’ 17 December 2020.

³³ Irish Network Against Racism (2020), ‘INAR: Network Position on Online Hate Speech’, March 2020, available at: <https://inar.ie/wp-content/uploads/2020/03/Network-Position-on-Online-Hate-Content-FINAL.pdf> .

- Improve the response to report times;
- Ensure that advertisements on Facebook align with equality legislation, including political advertising.³⁴

March: As above-mentioned, the INAR published data on reports racist hostility and discrimination received to the group via their iReport website and mobile application. The following are some of the key 'highlights' of the report vis-à-vis the Framework Decision:

- A total of 530 reports were received in 2019 including:
- Incitement to Hatred (112); Recordable racist incidents (130); Hate speech (174);
- Highest ever reported number of racist assaults;
- Highest reported rate of repeat harassment (92);
- Increased far-right presence online focusing attacks on asylum seekers, refugees, Muslims and people of an African background.

2.4 Organisation for Security and Co-operation in Europe (OSCE): Office for Democratic Institutions and Human Rights (ODIHR): Hate Crime Data

November: Irish authorities released official hate crime data, otherwise unavailable publicly, to the OSCE's ODIHR for inclusion on the latter's 'Hate Crime Reporting database.' These official data note that there were nine reports of crimes with a 'Bias against Muslims' (type of crime is not reported) (15 hate crimes against Muslims were reported to authorities for 2018).³⁵ Interestingly, as published by the ODIHR for the same period, third parties noted 23 anti-Muslim crimes, including 14 violent attacks, 6 attacks against property and 3 threats.³⁶

³⁴ Irish Network Against Racism (INAR) (2020), 'INAR: Network Position on Online Hate Speech', March 2020.

³⁵ Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE ODIHR) (2020) 'Hate Crime Reporting database: Ireland 2019', 16 November 2020, available at: <https://hatecrime.osce.org/ireland> .

³⁶ OSCE ODIHR (2020) 'Hate Crime Reporting database: Ireland 2019', 16 November 2020.

Chapter 3. Roma and Traveller equality and inclusion

1. Legal, policy developments in regards to Roma/Travellers in regards to the application of the EU Framework on national Roma integration strategies

As indicated in the previous Chapter, in June 2020, the Department of Justice and Equality announced the establishment of a new independent **Anti-Racism Committee**, which is tasked with developing an '**Action Plan against Racism**' (for Ireland) within one year.³⁷ The Committee includes two representatives of the Traveller community. Announcing the Committee's establishment, the Minister for Justice and Equality said that the Government intends to build on the work done over the past three years under the Migrant Integration Strategy and the National Traveller and Roma Inclusion Strategy (NTRIS).³⁸ Traveller and Roma organisations continue to argue that the implementation of the NTRIS has been weak and under-resourced to date.³⁹ These concerns were echoed by the **UN Committee for the Elimination of Racial Discrimination** in its 2020 concluding observations on Ireland's state report, in which it recommended that the State 'fully implement the National Traveller and Roma Inclusion Strategy 2017–2021, including by developing concrete action plans with clear targets, indicators, outcomes, time frames and a budget line for that implementation and by putting in place a mechanism to coordinate and monitor the implementation'.⁴⁰

Following a general election in February 2020, the new coalition Government's '**Programme for Government**' 2020 contains a number of commitments related to Travellers and Roma.⁴¹ These include: to publish a **Traveller and Roma**

³⁷ Ireland, Department of Justice and Equality, 'Action Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee', press release, 19 June 2020, available at: <https://www.gov.ie/en/press-release/6bedb-action-plan-against-racism-for-ireland-to-be-drawn-up-by-new-independent-anti-racism-committee/> .

³⁸ Ireland, Department of Justice and Equality, 'Action Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee', press release, 19 June 2020.

³⁹ Pavee Point, 'Submission to the 87th Pre-Sessional Working Group of the UN Committee on the Rights of the Child (28 Sep 2020 - 02 Oct 2020) Suggested List of Issues for Ireland – Traveller and Roma Children', p. 2, available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/Rights-of-Child-Submission-Aug-2020.pdf>

⁴⁰ UN CERD, 'Concluding observations on the combined fifth to ninth reports of Ireland', UN Doc CERD/C/IRL/CO/5-9, 23 January 2020, paras. 31-32.

⁴¹ Ireland, Governmental Coalition, 'Programme for Government: Our Shared Future', available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

Mental Health Action Plan;⁴² to devise a **Traveller and Roma Training, Employment and Enterprise Plan;** to undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education; to ensure that the housing needs of the Traveller Community are met by local authorities; and to ensure that existing funding is fully drawn down and utilised.⁴³

The Taoiseach (Prime Minister) nominated Eileen Flynn, a traveller woman, to the upper house of the Oireachtas (Irish Parliament), the Seanad, on 28 June 2020. The nomination came after she narrowly missed out on direct election through the vocational Labour panel.⁴⁴ **Senator Flynn is the first Traveller to be appointed to the Seanad.** National NGO Pavee Point observes that this was the first special measure taken by the State to ensure Traveller representation in the Irish political system.⁴⁵

It appears that the State is at the final stages of publishing the first **National Traveller Health Action Plan** (NTHAP), following a protracted process of consultation and development, which started in 2018.⁴⁶

2. Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion

As part of its **work to include Traveller culture and history in the curriculum**, the National Council for Curriculum and Assessment (NCCA) produced a curriculum audit,⁴⁷ and appointed an Education Officer for Traveller

⁴² Ireland, Governmental Coalition, 'Programme for Government: Our Shared Future', available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf>, p. 49.

⁴³ Ireland, Governmental Coalition, 'Programme for Government: Our Shared Future', available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf>, p. 77.

⁴⁴ Marie O'Halloran, 'Seanad elections: Traveller candidate narrowly loses out on election', *Irish Times*, 1 April 2020, available at: <https://www.irishtimes.com/news/politics/seanad-elections-traveller-candidate-narrowly-loses-out-on-election-1.4217616>.

⁴⁵ Pavee Point, 'Submission to the Human Rights Committee: Ireland's Examination in Relation to the International Covenant on Civil and Political Rights. Suggested List of Issues for Ireland -130th Session of the Human Rights Committee (12 October to 6 November 2020)', para. 12, available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/Pavee-Point-List-of-Issues-for-Ireland-Human-Rights-Committee-CCPR-14082020.pdf>.

⁴⁶ See response of Catherine Byne TD to Parliamentary Question (Dáil Debates, [47042/19], 14 November 2019).

⁴⁷ NCCA, 'Traveller culture and history in the curriculum: a curriculum audit', NCCA, November 2019, available here: https://ncca.ie/media/4324/ncca_draftaudit_travellerculturehistory_0919.pdf.

Culture and History.⁴⁸ Traveller organisations continue to advocate having these inclusions enshrined in legislation.⁴⁹

An **internal survey of Garda (Irish Police) attitudes** to ethnic minorities, based on interviews dating from 2012-2014, was reported on in the national newspaper (the Irish Times) in August 2020.⁵⁰ No frontline Garda surveyed (on attitudes towards Travellers) had a favourable view of the community, according to the newspaper. Gardaí also had poor views of the Roma community, with around 75 per cent of frontline Gardaí expressing poor opinions of its members.

It is well recognised that the COVID-19 crisis disproportionately affected Traveller and Roma communities.⁵¹ Both communities were **designated as vulnerable groups** for the purposes of the COVID-19 response in Ireland.⁵² In April, the Government commenced communicating **data on the impact of COVID-19 on Traveller, Roma and other vulnerable communities**. This practice continues up to the time of writing.⁵³ Guidance notes issued by the State in relation to prioritising children from disadvantaged backgrounds during the pandemic included specific reference to Travellers and Roma.⁵⁴ In relation to higher education, funding was announced for targeted supports to address the implications of COVID-19 for Traveller transfer to and progression within higher education.⁵⁵

⁴⁸ Irish Traveller Movement Newsletter, Newsletter August 2020, available at: <https://mailchi.mp/f0899fbc32b1/august-updates-from-itm> .

⁴⁹ Irish Traveller Movement Newsletter, Newsletter August 2020, available at: <https://mailchi.mp/f0899fbc32b1/august-updates-from-itm> .

⁵⁰ Conor Gallagher, 'Gardaí have negative view of Travellers, survey finds', *The Irish Times*, 20 August 2020, available at <https://www.irishtimes.com/news/crime-and-law/garda%C3%AD-have-negative-view-of-travellers-survey-finds-1.4334274> .

⁵¹ FRA (2020), 'Country Research for Ireland - Roma and Travellers Survey 2019 - Implications of COVID-19 pandemic on Roma and Travellers communities', 29 September 2020; Bernard Joyce, 'Opinion: Conditions for Travellers have been difficult in the Covid-19 shutdown', *The Journal.ie*, 6 June 2020, available at: <https://www.thejournal.ie/readme/travellers-coronavirus-5113397-Jun2020/> .

⁵² See Health Protection Surveillance Centre (HPSC), 'Guidance for Vulnerable Groups', available at: <https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/guidance/vulnerablegroupsguidance/> .

⁵³ HSE/HPSC, 'Epidemiology of COVID-19 Outbreaks/Clusters in Ireland', 28 September 2020, available at: https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/surveillance/covid-19outbreaksclustersinireland/COVID-19%20Weekly%20Outbreak%20Highlights_Week392020_web%20version_v1.0_28092020.pdf .

⁵⁴ Ireland, Minister for Education and Skills, 'Letter from Minister for Education Traveller students and Covid', May 2020, available at: <https://itmtrav.ie/wp-content/uploads/2020/05/Letter-from-Minister-for-Education-Traveller-students-and-Covid.pdf> .

⁵⁵ Ireland, Department of Further and Higher Education, Research, Innovation and Science, 'Minister Harris announces ring-fenced Dormant Accounts funding to support Traveller access to and ability

The provision of once-off **urgent needs payments** to a number of Roma, who were not able to satisfy the Habitual Residence Condition and Right to Reside conditions during the public health emergency, was welcomed.⁵⁶ Similarly, the implementation of **more flexible procedures for applying for a Personal Public Services number (PPSN: social security number)** in Dublin was important.⁵⁷

In the field of accommodation, the Department of Housing, Planning and Local Government issued **guidelines to Local Authorities in respect of measures to protect Travellers living in Traveller-specific accommodation**.⁵⁸ Identified areas of need included running water, extra space, additional units and other facilities. Local authorities were directed to contact the Department to discuss the measures and the availability of funding. However, concerns have been expressed about the implementation 'on-the-ground' of these guidelines.⁵⁹ The Irish Traveller Movement reports that it has been agreed that a further circular will issue to the local authorities, highlighting ways that they can identify risk factors for Covid-19 and continue to take action to reduce these risks.⁶⁰

On the 27th of March 2020, the **Emergency Measures in the Public Interest (Covid-19) Act 2020** came into effect. Among other things, it prohibited rent increases and tenancy terminations, with limited exceptions, during the Covid-19

to remain in higher education', press release, 12 November 2020, available at: <https://www.gov.ie/en/press-release/cf6c4-minister-harris-announces-ring-fenced-dormant-accounts-funding-to-support-traveller-access-to-and-ability-to-remain-in-higher-education/> .

⁵⁶ Pavee Point, 'Submission to the 87th Pre-Sessional Working Group of the UN Committee on the Rights of the Child (28 Sep 2020 - 02 Oct 2020); Suggested List of Issues for Ireland – Traveller and Roma Children', para. 8. Available at <https://www.paveepoint.ie/document/87th-pre-sessional-working-group-of-the-un-committee-on-the-rights-of-the-child-28-sep-2020-02-oct-2020/> .

⁵⁷ Pavee Point, 'Submission to the 87th Pre-Sessional Working Group of the UN Committee on the Rights of the Child (28 Sep 2020 - 02 Oct 2020); Suggested List of Issues for Ireland – Traveller and Roma Children', para. 8. Available at <https://www.paveepoint.ie/document/87th-pre-sessional-working-group-of-the-un-committee-on-the-rights-of-the-child-28-sep-2020-02-oct-2020/> .

⁵⁸ Ireland, Department of Planning, Housing and Local Government (DPHLG), Circular 06/2020, 18 March 2020, available at <https://www.paveepoint.ie/stay-safe-from-coronavirus-covid-19/>; Ireland, DPHLG, 'Note for clarifications on Circular 06/2020 and examples of good practice', 24 April 2020, available at: https://mcusercontent.com/ed5a922d721d5640ea6620735/files/48d01ee9-1862-4be3-9238-e59a2b3e645c/C_19_TA_clarifications_and_egs_of_good_practice.pdf .

⁵⁹ Pavee Point, 'Letter to Minister of Housing', 25 March 2020, available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/Letter-to-Minister-of-Housing-March25.pdf> . In October, it emerged that only 45.5% of the general (non-Covid-related) funding has been drawn down by local authorities so far during this year. See *The Journal*, 'Over a quarter of counties have drawn down no funding for Traveller accommodation this year', 27 October 2020, available at: <https://www.thejournal.ie/funding-traveller-accommodation-drawn-down-5246134-Oct2020/> .

⁶⁰ Irish Traveller Movement Newsletter, Newsletter August 2020, available at: <https://mailchi.mp/f0899fbc32b1/august-updates-from-itm> .

emergency period. Section 5(7) thereof expressly provided that: 'all Travellers currently residing in any location should not be evicted from that location during the COVID-19 emergency, except where the movement 'is required to ameliorate hardship and provide protection' and subject to consultation with the Travellers concerned'. This emergency period expired on 1st August 2020 and section 5(7) deleted.⁶¹ The protection against eviction for Travellers does not appear to have been continued.

⁶¹ Ireland, Houses of Oireachtas, Residential Tenancies and Valuation Act, no. 7 of 2020, Section 13(b), available at: <http://www.irishstatutebook.ie/eli/2020/act/7/enacted/en/print.html> .

Chapter 4. Asylum, visas, migration, borders and integration

Extension of residence permits and other authorisations to stay that expired during COVID-19 pandemic measures.

EUMS/ Republic of North Macedon ia, Republic of Serbia	Category of TCN	Brief description of the measure	Legal source (legislation or case law as relevant) with hyperlink	Comments
	Complete this row if measures concern all/most of the TCN listed below whose (national or EU law based) permission to stay expired during COVID-19 related travel restrictions. In this case indicate in the next rows the categories to which the measure applies	N/A See statement in 'Comments', <u>Special extension measures are indicated below in the last row</u>	N/A	These Regulations do not apply to Ireland, as they constitute a 'development of the provisions of the Schengen <i>acquis</i> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC; Ireland is therefore not taking part in the adoption of this Regulation and is not

				bound by it or subject to its application'
	Holders of visas issued based on the Visa Code No. 810/2009 (as last amended by Regulation (EU) No. 2019/1155) (Schengen visas)	N/A	N/A	The above quotation is reproduced in the Preambles of the Visa Code (Recital 37) & the Regulation 2019/1155 EU (recital 25)
	Visa-free TCN who reached the maximum of 90 days in any 180-day period under Article 4 of the Visa List Regulation (Regulation (EU) 2018/1806)	N/A	N/A	Ibid, Preamble, Recital 39
	Holders of long-term visas issued by the EUMS (under Regulation (EU) No. 265/2010 and beyond, under national law)	N/A	N/A	Ibid, Preamble, Recital 17

<p> Holders of residence permits issued under Regulation (EC) No. 1030/2002 (as last amended by Regulation (EU) 2017/1954)</p>	<p>Please see information provided in the last row</p>	<p>N/A</p>	<p>Please see information provided in the last row</p>
<p> Holders of local border traffic permit under Regulation (EC) No. 1931/2006</p>	<p>N/A</p>	<p>N/A</p>	<p>Ibid, Preamble, Recital 18</p>
<p> Any other category of TCN not listed above.</p>	<p> During the course of 2020, the Minister of Justice and Equality periodically decided to extend the validity of immigration and international protection permissions to reside in the state. Extensions were, respectively, of 2 months on 20 March (1); 2 months on 13 May (2); 1 month on 16 July (3); 1 month on 18 August (4); and 4 extra months on 18 September (5).</p>	<p><u>The normative source of these extensions were notice(s)</u> periodically published by the Minister of Justice and Equality – hyperlinks on the left (20 March, 13 May, 16 July, 18 August, 18 September)</p>	<p> These notices apply to people whose permissions to stay in the country were/are due to expire respectively between (1) 20 March and 20 May 2020; (2) 20 May and 20 July 2020; (3) 20 July and 20 August 2020; (4) 20 August and 20 September 2020; (5) 20 September 2020 and 20 January 2021</p>

		<p>Further information is available here (FAQ document of the Department of Justice - last update 22 December 2020)</p>		<p>Applicable categories of TCN:</p> <p>(i) Persons who hold a current valid permission (or a permission that has been extended under the previous notice); (ii) Persons granted permission to land at a port of entry on condition they register with immigration authorities within 3 months but who have yet to do so; (iii) People who are granted short stay visas (authorised stay of less than 3 months) that may be unable to leave the State and return home due to uncertainties caused by the Coronavirus pandemic</p>
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Notes:

TCN = third-country nationals

EUMS = EU Member State

Chapter 5. Information society, privacy and data protection

1. Legal and political initiatives that have been implemented to support access to, and use of, personal data.

1.1. Measures taken in the context of the COVID-19 pandemic

Ireland adopted the decentralised Google/Apple exposure notification protocol in the 'Health Service Executive (HSE) Covid Tracker App'.⁶² A detailed Data Protection Impact Assessment was published before its launch. Source code for the app was also published and it was made available for use in other jurisdictions under a permissive open source licence.⁶³ The source code has since been reused in apps in Gibraltar, Northern Ireland, Scotland and New York.⁶⁴ A joint assessment by the Irish Council for Civil Liberties and Digital Rights Ireland gave the app an overall rating of C+ in relation to fundamental rights issues, stating that it 'applaud[ed] the HSE and Department of Health for their efforts to be transparent' but that 'best practice principles [...] had not been wholly adhered to' in relation to a number of factors including the app's (optional) recording of user location and symptom data, and a failure to show that the app would be effective at identifying close contacts and avoiding false

⁶² The app was launched on 7 July 2020. The DPIA and other supporting documents have been published at: <https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/covid-tracker-app/>.

⁶³ The source code is available at: <https://github.com/HSEIreland/covid-tracker-app> under the MIT License.

⁶⁴ Una McCaffrey (2020), 'Waterford Company Launches Covid App in New York and New Jersey', The Irish Times, 1 October 2020. Available at: <https://www.irishtimes.com/business/technology/waterford-company-launches-covid-app-in-new-york-and-new-jersey-1.4369822>.

positives. The Data Protection Commission (DPC) has also published a number of guides for employers and individuals in relation to protecting personal data in the context of remote working.⁶⁵

In May 2020, the Department of Education and Skills cancelled the Leaving Certificate examinations (the state terminal examinations for secondary school students) due to COVID 19 and introduced a system of estimated ('calculated') grades instead. This presented significant data protection issues in relation to the fairness and reliability of the process, particularly given the importance of these grades for entry to university.⁶⁶ However, calculating errors in the system for generating and standardising grades (based on the past performance of students) resulted in approximately 6,000 students being issued with grades lower than they should have been, while approximately 8,000 students were issued with grades higher than they should have been.⁶⁷

1.2. Measures that may impact on the ePrivacy Directive legal framework

⁶⁵ Edoardo Celeste (2020), 'Covid-19 and data protection in Ireland', blogdroiteuropéen, 13 July 2020, available at: <https://blogdroiteuropeen.com/2020/07/13/covid-19-and-data-protection-in-ireland-by-edoardo-celeste/>.

⁶⁶ 'Data Protection Matters in the Calculated Grades Process', Department of Education and Skills, 7 August 2020, available at: <https://www.education.ie/en/The-Department/Data-Protection/data-protection-matters-calculated-grades-process.pdf>.

⁶⁷ Carl O'Brien (2020), 'Almost 8,000 Higher Leaving Cert Grades Issued in Error', *The Irish Times*, 5 October 2020, available at: [https://www.ncge.ie/sites/default/files/NCGE-PP-NPC%28PP%29-FAQ-051020.pdf](https://www.irishtimes.com/news/education/almost-8-000-higher-leaving-cert-grades-issued-in-error-1.4371975#:~:text=Almost%208%2C000%20Leaving%20Cert%20grades,process%2C%20according%20to%20new%20figures.&text=The%20total%20number%20of%20grades,has%20now%20reached%20almost%2015%2C000; ; Department of Education and Skills (2020), 'FAQ Document to Support NPC(PP) Leaving Certificate Calculated Grades Helpline', 5 October 2020, available at: <a href=).

There have been no such measures in 2020.

1.3. Legal framework governing data retention

The 2018 decision in *Dwyer v The Commissioner of An Garda Siochana & Others*,⁶⁸ invalidating the Communications (Retention of Data) Act 2011, was appealed to the Supreme Court that, in February 2020, decided to refer several issues of law to the Court of Justice of the European Union (CJEU).⁶⁹ The Supreme Court summarised those issues as follows:

- (a) Whether a system of universal retention of certain types of metadata for a fixed period is never permissible irrespective of how robust any regime for allowing access to such data may be;
- (b) The criteria whereby an assessment can be made as to whether any access regime to such data can be found to be sufficiently independent and robust;
- (c) Whether a national court, should it find that national data retention and access legislation is inconsistent with European Union law, can decide that the national law in question should not be regarded as having been invalid at all times but rather can determine invalidity to be prospective only.

⁶⁸ *Dwyer v The Commissioner of An Garda Siochana & Ors* [2018] IEHC 685.

⁶⁹ *Dwyer v The Commissioner of An Garda Siochana & Ors* [2020] IESC 4.

Pending the conclusion of that reference, the Irish law on data retention remains in force. There has been no public government action in relation to reform since the publication of draft legislation in 2017 (which was largely rejected by a parliamentary committee following pre-legislative scrutiny).⁷⁰

1.4. GDPR fines

In May 2020, the DPC issued its first fines under the General Data Protection Regulation (GDPR), issuing two separate fines (of €75,000 and €40,000) against the state child protection agency TUSLA for data breaches including disclosure of the identity of individuals who had made allegations of abuse and the details of the alleged abuse.⁷¹

1.5. State surveillance

From 2018 onwards, the DPC has carried out a number of inquiries into state surveillance by local authorities and the Garda Síochána (police force), focusing on CCTV and Automatic Number Plate Recognition (ANPR) systems. In March 2020, it found that CCTV systems used by Kerry County Council were being operated unlawfully, with no lawful basis and other failings in relation to, amongst other things, inadequate notice/signage, inadequate data security and a failure to carry out data protection

⁷⁰ Joint Committee on Justice and Equality (2018) 'Report on Pre-Legislative Scrutiny of the Communications (Retention of Data) Bill 2017', Dublin, Houses of the Oireachtas, available at: <http://www.oireachtas.ie/parliament/media/committees/justice/2018/Data-Retention-Report-Final.pdf> .

⁷¹ Data Protection Commission (2020), 'Regulatory Activity Under GDPR', Dublin, 39. Available at: <https://www.dataprotection.ie/sites/default/files/uploads/2020-06/DPC%20Ireland%202018-2020%20Regulatory%20Activity%20Under%20GDPR.pdf> .

impact assessments.⁷² This finding has national significance in that it interprets the general legal framework to prohibit similar CCTV schemes by other local authorities.

1.6. Online content regulation

In January 2020, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media published proposals for legislation to transpose the revised Audiovisual Media Services Directive (AVMSD) into Irish law and to create a regulatory framework to deal with the spread and amplification of harmful online content.⁷³ The proposed legislation, insofar as it goes beyond transposing the AVMSD, has been criticised for seeking to oblige social media firms to prevent the publication of 'harmful online content' and 'age inappropriate content' but without fully defining these terms. O'Dell has described it as 'rushed, vague and incomplete'⁷⁴ and, in testimony before the Oireachtas Joint Committee on Justice and Equality, I argued that the model ultimately adopted by the legislation would not comply with the requirements of Article 10 ECHR in that a restriction on undefined 'harmful content' could not be considered to be 'prescribed by law'.⁷⁵

⁷² Data Protection Commission (2020), 'Regulatory Activity Under GDPR', Dublin, 63-72. Available at: <https://www.dataprotection.ie/sites/default/files/uploads/2020-06/DPC%20Ireland%202018-2020%20Regulatory%20Activity%20Under%20GDPR.pdf> .

⁷³ Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2020), 'Online Safety', Gov.ie, 16 October 2020, available at: <https://www.gov.ie/en/policy-information/33d440-online-safety-and-security/#> .

⁷⁴ Eoin O'Dell (2020), 'The Irish Government's Proposed Online Safety and Media Regulation Bill Has a Surprising Omission', *Cearta*, 11 January 2020, available at: <http://www.cearta.ie/2020/01/the-governments-proposed-online-safety-and-media-regulation-bill-has-a-surprising-omission/> .

⁷⁵ McIntyre, T.J. (2019), 'Written Submissions to Joint Committee on Justice and Equality Hearing on Online Harassment and Harmful Communications', 16 October 2019, available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-10-16_opening-statement-dr-t-j-mcintyre-chairman-digital-rights-ireland_en.pdf .

2. Artificial intelligence and big data

Please fill in the table below with any initiatives you may identify in your country:

MS	Actor*	Type*	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
IE	Government	Other	<p>This is the Irish Government Submission in response to the Commission White Paper on Artificial Intelligence, published in June 2020.</p> <p>In summary, the submission argues that:</p> <ul style="list-style-type: none"> The White Paper fails to justify the amount of regulation which is suggested, particularly given the lack of an 	Yes	Yes, including gender issues and child rights	<p>Government of Ireland (2020), 'Ireland's National Submission to the Public Consultation on the EU White Paper on Artificial Intelligence', Dublin. Available at:</p> <p>https://dbei.gov.ie/en/Publications/Publication-files/National-Submission-EU-White-Paper-on-AI.pdf.</p>

			<p>evidence base from sufficient take up of AI in the market;</p> <ul style="list-style-type: none"> • The existing regulatory acquis needs to be fully understood before further regulation is adopted; • The White Paper fails to explicitly mention the need to comply with international human rights law; • Regulation should be based on incremental experience rather than ex ante principles; and • Overly restrictive regulation should be avoided to avoid putting EU businesses at a disadvantage as against businesses in the US, China and UK. <p>The submission also includes an appendix setting out AI use cases and potential impacts on human rights, identifying</p>			
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			<p>healthcare diagnostics, criminal justice (such as pre-trial detention and sentencing) and facial recognition technology as areas of particular concern.</p> <p>It should be noted that Ireland does not yet have a national artificial intelligence strategy. In 2019, the Department of Business, Enterprise and Innovation held a consultation on a national AI strategy and publication was expected in Q1 of 2020,⁷⁶ but the strategy has not yet been published, and in September 2020 was described by a Government junior minister as still 'at a very early stage'.⁷⁷</p>			
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⁷⁶ European Commission (2020) 'Ireland AI Strategy Report', Brussels, 24 February 2020, available at: https://ec.europa.eu/knowledge4policy/ai-watch/ireland-ai-strategy-report_en .

⁷⁷ Ireland, 'Statement by Minister for Law Reform, James Browne TD', 23 September 2020, available at: <https://www.gov.ie/en/speech/9bdca-statement-by-minister-for-law-reform-james-browne-td-commencement-matter-23-september-2020/> .

*For the actors, please pick from the following suggestions:

Government/ Parliamentary

DPA

NGO/Other Non Profit

Academia

Domestic Courts

Business

Independent State Institution

Other

** for the type, please pick from the following suggestions:

National Draft Acts / Adopted Acts

report/study

other projects

Chapter 6. Rights of the child

1. Measures taken during the COVID 19 to ensure the well-being of children living in poverty and the protection of children from violence

<p>Measures to address the specific vulnerabilities of children living in poverty</p>	<p>The Survey on Income and Living Conditions (CSO 2019) indicates that 8% of children in Ireland are living in consistent poverty, and an additional 16% are at risk.⁷⁸ With the onset of COVID 19, many parents lost their jobs. The closure of schools meant that children suffered a deficit in learning, interaction and support.⁷⁹ This disproportionately affected children in lower income families, within specific ethnic groups (Traveller and Roma) and children with specific care needs.⁸⁰ Online teaching highlighted the lack of technological resources available to access materials. A Pandemic Unemployment Payment was introduced to alleviate some of the financial hardship. On 24th April, the Children’s Rights Alliance launched the Food Provision Scheme providing food to children under the age of 6. The scheme is estimated to have addressed the nutritional needs of 7,000 children in over 21 counties.⁸¹ The draft Programme for Government, published in June 2020, commits to support ‘the work of Young Social Innovators to assist young people in responding to the COVID-19 pandemic [...]’ and ‘to address issues facing their communities and the country as a whole,</p>
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⁷⁸ Ireland, Central Statistics Office (2019), ‘Survey on Income and Living Conditions’, available at: <https://www.cso.ie/en/statistics/socialconditions/surveyonincomeandlivingconditionssilc/> .

⁷⁹ Irish Centre for Human Rights Galway (2020), ‘Coronavirus pandemic in the EU – Fundamental Rights Obligations – country research Ireland’, 4 May 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ie_report_on_coronavirus_pandemic_may_2020_0.pdf .

⁸⁰ Irish Centre for Human Rights Galway (2020), ‘Implications of COVID -19 pandemic on Roma and Travellers communities – country research Ireland’, 15 June 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ie_report_-_covid-19_impact_on_roma_en.pdf .

⁸¹ Children’s Right Alliance (2020), ‘Food Provision Scheme’, June 2020, available at: https://www.childrensrights.ie/sites/default/files/submissions_reports/files/Food%20Provisi on%20Scheme%20June%20Update.pdf .

	<p>and to harness their energy, skills and talent'.⁸² It was noted that anti-poverty and social inclusion measures are required 'to improve outcomes for those who are struggling on low incomes, struggling with caring responsibilities, having to raise their families alone, or living with a disability'.⁸³ The Government committed to 'reform our child maintenance system guided by international best practice and to continue to prioritise and protect supports for lone parents, to address food poverty in children, ensure that no child goes hungry and review international pilots with a view to implementing a universal basic income pilot'.⁸⁴ Additional supports are mentioned for women who wish to return to the workforce;⁸⁵ the development of a National Childcare Scheme; capping fees for parents and improvements to Early Education and Childcare.⁸⁶ The Ombudsman for Children called for a 'mental health system for children that is fit for purpose and upholds children's right to the highest attainable standard of mental health', that the homelessness crisis be addressed and meaningful steps taken on enumerating a Constitutional right to housing and an appropriate alternative for direct provision.⁸⁷ On 12 August 2020, the UNCRC Committee on the Rights of the Child published draft General Comment No.25 on Children's rights in relation to the digital environment. The</p>
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⁸² Ireland, Government Coalition (2020), 'Programme for Government – Our Shared Future', p. 62, available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

⁸³ Ireland, Government Coalition (2020), 'Programme for Government – Our Shared Future', p. 86, available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

⁸⁴ Ireland, Government Coalition (2020), 'Programme for Government – Our Shared Future', p. 86, available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

⁸⁵ Ireland, Government Coalition (2020), 'Programme for Government – Our Shared Future', pp. 75-76, available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

⁸⁶ Ireland, Government Coalition (2020), 'Programme for Government – Our Shared Future', p. 86, available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> .

⁸⁷ Progress for Children (2020), Ombudsman for Children's Annual Report 2019, p. 8, available at: <https://www.oco.ie/app/uploads/2020/09/OCO-Annual-Report-2019.pdf> .

	General Comment calls for States to enact legislation to address access and inclusion to the digital environment for children in poverty . ⁸⁸
Measures to protect children from violence	The Domestic Violence Act 2018 protects spouses, civil partners, persons in intimate relationships, parents of abusive adult children and people not in a contractual relationship. ⁸⁹ It provides that children cannot be cross-examined in person by the applicant or respondent, ⁹⁰ and children have the opportunity to have their views known. ⁹¹ There are no specific provisions that allow children to bring proceedings in their own right but Tulsa (the Child and Family Agency) can apply for protection on behalf of children and can, also, seek supervision or care orders on their behalf, if required. ⁹² The Garda Commissioner noted there was a 'startling and shocking' increase in cases of online abuse of children, abuse imagery, cybercrime, sexual violence and domestic violence. ⁹³ There was a 26% increase in instances of domestic violence from 1 March to 31 May and a reduction in available accommodation in refuges, due to social distancing. The Government, through An Garda Síochána, launched the 'Still here' Awareness campaign aimed at assuring victims of domestic violence of their continuing support and an extra €160,000 was allocated to domestic violence organisations. Additionally, 'Operation Faoiseamh' aims to

⁸⁸ United Nations (UN), Committee on the Rights of the Child (2020), Draft General Comment No. 25 on Children's rights in relation to the digital environment, CRC/C/GC/25, 13 August 2020, para 12, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CR C%2fC%2fGC%2f25&Lang=en .

⁸⁹ Ireland, Houses of the Oireachtas (2018), Domestic Violence Act, no. 6 of 2018, available at: <http://www.irishstatutebook.ie/eli/2018/act/6/enacted/en/html> .

⁹⁰ Ireland, Domestic Violence Act 2018, S. 16.

⁹¹ Ireland, Domestic Violence Act 2018, S. 27.

⁹² Ireland, Domestic Violence Act 2018, S. 12.

⁹³ Cormac O'Keeffe (2020), 'Gardai warn of 'startling' rise in reports of online child abuse', *Irish Examiner*, 25 June 2020, available at: <https://www.irishexaminer.com/news/arid-31007287.html> .

	<p>support victims of domestic violence.⁹⁴ The Courts Service of Ireland prioritised domestic violence and childcare cases. The Legal Aid Board provided additional support for domestic violence and childcare cases and established a helpline to assist victims of domestic violence.⁹⁵ In September 2020, the Minister of Justice and Equality announced that Ireland is going to ratify the Lanzarote Convention on child exploitation and sexual abuse.⁹⁶ Other initiatives included the Government's efforts through the 'Return to Practice' policy to recruit additional social workers and social care workers.⁹⁷</p>
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2. Legal and policy measures or initiatives developed about criminal proceedings

<p>Legislative changes</p>	<p>Ireland is not taking part in the adoption of the Directive 2016/800 on procedural safeguards for children in accordance with Protocol No 21 (Articles 1 and 2) on the position of Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol. Therefore, it is not bound by it, or subject to its application. No</p>
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⁹⁴ An Garda Siochana (2020), 'Operation Faoiseamh - Domestic Abuse 9th June 2020', press release, June 2020, available at: <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/june/operation%20faoiseamh%20-%20domestic%20abuse%209th%20june%202020%20.html>.

⁹⁵ The Legal Aid Board (2020), 'Legal Aid Board launches legal and mediation information helpline', 1 April 2020, available at: <https://irishlegal.com/article/legal-aid-board-launches-legal-and-mediation-information-helpline>.

⁹⁶ Helen McEntee (2020), 'Ireland now 'in position to proceed' to ratify child abuse convention', Irish Legal News, 23 September 2020, available at:

<https://www.irishlegal.com/article/ireland-now-in-position-to-proceed-to-ratify-child-abuse-convention>.

⁹⁷ Ireland, Social Workers Registration Board (2020), 'S.I. No. 249/2020 - Social Workers Registration Board Return to Practice Bye-Law 2020', available at: <http://www.irishstatutebook.ie/eli/2020/si/249/made/en/print>.

	legislative measures have thus been taken during 2020 for the transposition of the Directive. The position remains as per the provisions of The Child Care Act 2001, as amended by the Criminal Justice Act 2006.
Policy developments	On 8 June 2020, it was announced that the Bail Supervision Scheme, would be extended to Cork and Limerick. The Scheme provides an alternative to remand by offering courts the opportunity to order bail with intensive supervision.
Other measures or initiatives	Under the Judicial Council Act 2019, experts have been appointed to a Sentencing Guidelines and Information Committee to review the legislation and procedures in place including a review of the youth justice system. The Department of Justice and Equality also launched a Consultation Process for a new Youth Justice Strategy. The guiding principles centre on involving children in the development of policy, protecting their rights, ensuring a collaborative approach and that the voices of children are heard and respected. ⁹⁸ .

⁹⁸ Ireland, Department of Justice and Equality (2020), 'Youth Justice Strategy, Public Consultation', available at: [http://www.justice.ie/en/JELR/Pages/Youth Justice Strategy Public Consultation .](http://www.justice.ie/en/JELR/Pages/Youth_Justice_Strategy_Public_Consultation)

Chapter 7. Access to justice including crime victims

1. Victims' Rights Directive

Ireland completed the transposition of the Victims' Rights Directive with the enactment of the Criminal Justice (Victims of Crime) Act 2017,⁹⁹ which is now fully in force. No new legislation was adopted in 2020 regarding victims generally. However, one of the principal initiatives introduced, because of the Directive, was the establishment of **Protective Services Units** into each division of An Garda Síochána (again, Irish police force). These are specialist investigative units that focus on sexual and domestic violence, human trafficking and missing persons. The rollout of these units in each Garda division was completed at the end of September 2020.¹⁰⁰

On 21 February 2020, the Department of Justice and Equality published a **new Victims' Rights Charter**,¹⁰¹ to replace the Charter issued in 2010.¹⁰² This Charter is designed to provide victims of crime with information on the criminal justice system and their rights, along with what they can expect from each of the agencies involved in the system. However, it does not have statutory force.¹⁰³

An Garda Síochána expected to attest 800 new members in the course of 2020; at an attestation in February 2020, 201 new members were attested.¹⁰⁴ The COVID-19 pandemic appears to have interrupted this plan, although 319 **new members were attested ahead of schedule in March 2020 in order to assist with the enforcement of pandemic restrictions**.¹⁰⁵ On 9 July 2020, the Minister for Justice and Equality announced an **increase in 2020 funding for the**

⁹⁹ Ireland, Minister for Justice and Equality (2020), 'Answer to PQ 453 from Deputy Brendan Howlin', 8 May 2019, available at <http://www.justice.ie/en/JELR/Pages/PQ-08-05-2019-453>.

¹⁰⁰ Ireland, Minister for Justice and Equality, 'Minister McEntee welcomes completion of rollout of Garda Divisional Protective Services Units', press release, 29 September 2020, available at: <http://www.justice.ie/en/JELR/Pages/PR20000220>.

¹⁰¹ Available at www.victimscharter.ie.

¹⁰² Ireland, Minister for Justice and Equality, Press Release, 21 February 2020, available at: www.justice.ie/en/JELR/Pages/PR20000222.

¹⁰³ The Charter states, 'Please note that this Charter is only a guide. It is not a legal document and does not give you any legal rights'. Government of Ireland, *Victims' Charter* (2010) at 2.

¹⁰⁴ Ireland, Minister for Justice and Equality (2020), 'Minister Flanagan welcomes 201 new members to An Garda Síochána', press release, 21 February 2020, available at <http://www.justice.ie/en/JELR/Pages/PR20000023>.

¹⁰⁵ Ireland, Minister for Justice and Equality (2020), 'Estimates 2020 – Justice Vote Group Introductory Remarks by Minister for Justice Helen McEntee', 9 July 2020, available at <http://www.justice.ie/en/JELR/Pages/SP20000139>.

provision of services to victims of crime from €1.7 million to €1.9 million.¹⁰⁶ The recipients of this year's funding have not been published, but in 2019, 57 organisations providing services to victims of crime shared €1,707,090, five of which received allocations in excess of €100,000 (Crime Victims' Helpline, One in Four, Support After cRime, Victim Support at Court, and Women's Aid Dublin).¹⁰⁷ The lowest amount awarded, by contrast, was 1,000 given to Hope Trust, a counselling service. Another three organisations involved in the prevention of domestic abuse shared €902,727.¹⁰⁸

In her speech on Budget 2021, the Minister of Justice announced a total of €2.7 million to support groups working in the field of domestic, sexual and gender-based violence, which she identified as one of her priorities.¹⁰⁹ This sum includes €0.4 million allocated to organisations responding to increased service demands in respect of domestic violence during the COVID-19 pandemic; the money is intended to provide 'extra remote counselling services, and help keep helplines open, as well as welfare packs and other practical supports for the most vulnerable'.¹¹⁰

2. Violence against women

In June 2020, the Minister for Justice pointed to **several recent initiatives to reduce, or to respond better to, violence against women**: the enactment of the Criminal Justice (Victims of Crime) Act 2017, the Criminal Law (Sexual Offences) Act 2017, and the Domestic Violence Act 2018. He also indicated several ongoing reviews: a review of the investigation and prosecution of rape cases (see below), a study of domestic homicide (due in May 2020 but overdue), and the funding of a prevalence study of sexual crime (due in 2022). Nevertheless, evidence that women have substantially higher levels of fear of violence than men do became known with the publication by the Central Statistics Office in June 2020

¹⁰⁶ Ireland, Minister for Justice and Equality (2020), 'Estimates 2020 – Justice ...', 9 July 2020.

¹⁰⁷ Ireland, Minister for Justice and Equality (2020), 'Answer to PQ 1040 from Deputy Cathal Crowe, 3 November 2020, available at: <http://www.justice.ie/en/JELR/Pages/PQ-03-11-2020-1040>.

¹⁰⁸ Ireland, Minister for Justice and Equality (2020), 'Answer to PQ 1040 ...', 3 November 2020.

¹⁰⁹ Ireland, Minister for Justice and Equality (2020), 'Budget 2021 Dáil Speech', 14 October 2020, available at: <http://www.justice.ie/en/JELR/Pages/SP20000238>.

¹¹⁰ Ireland, Department of Justice and Equality (2020), 'A record 3 billion budget to modernise, reform and Covid-equip Justice Sector announced by Minister mcEntee', press release, 13 October 2020, available at: <http://www.justice.ie/en/JELR/Pages/PR20000237>.

of a Crime and Victimization Survey for 2019.¹¹¹ Participants were asked whether they felt fear when walking alone at night in their own neighbourhoods. One-third of women reported feeling unsafe to some degree, as opposed to one-eighth of men (table 1). The Minister described this finding as 'very concerning'.¹¹²

Table 1 – Fear and safety perception while walking alone at night (CSO 2020)					
Year	Gender	Very Safe	Safe	Unsafe	Very Unsafe
1998					
	Men	44	45.8	8.7	1.5
	Women	15.6	41.9	33.5	9
2006					
	Men	44.3	46.5	7.9	1.3
	Women	15.3	42.2	33.4	9.1
2019					
	Men	60	27	9	4
	Women	29	35	22	14

In March 2018, a Belfast jury acquitted four men on rape charges. The case and the jury’s decision created substantial controversy, but the case also caused some disquiet as regards trial procedure. The Minister for Justice commissioned a study of this procedure by a barrister and lecturer at NUI Galway, and his **report** was published in August 2020.¹¹³ The report made multiple recommendations, including:

- Specialist training for all frontline Gardaí dealing with victims of sexual crime
- The completion of the roll-out of divisional protective services units

¹¹¹ Ireland, Central Statistics Office (2020) 'Crime and Victimization 2019', available online at <https://www.cso.ie/en/csolatestnews/presspages/2020/crimeandvictimisation2019/>.

¹¹² Ireland, Minister for Justice and Equality (2020), 'Minister McEntee welcomes publication of CSO Crime and Victimization Survey 2019', press release, available at <http://www.justice.ie/en/JELR/Pages/PR20000138> .

¹¹³ Thomas O'Malley (2020), 'Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences', July 2020, available at http://www.justice.ie/en/JELR/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf/Files/Review_of_Protections_for_Vulnerable_Witnesses_in%20the_Investigation_and_Prosecution_of_Sexual_Offences.pdf .

- The extension of anonymity to victims in trials under sections 21 and 22 of the Criminal Law (Sexual Offences) Act 2017 (sexual abuse of mental illness or mental disability). At present, such anonymity applies only to victims in rape cases.
- The extension of anonymity for defendants in all sexual assault cases unless convicted.
- The statutory exclusion of the public from all trials of sexual offences.
- The introduction of preliminary trial hearings as soon as possible.
- The extension of the separate representation scheme. At present, this scheme applies when an application is made to question the victim in a rape case as to her prior sexual history. The recommendation is that the lawyer representing the victim should be present while the questioning is being conducted. The scheme should also be extended to the trial of allegations of sexual assault. The report recommended against the introduction of full separate representation for the victim in sexual cases. In response to the O'Malley report, the Minister published an implementation plan on 27 October 2020.¹¹⁴ As part of this plan, the government committed almost immediately to deliver specialist training – one of the report's key recommendations – throughout the criminal justice system.¹¹⁵ Specialist victims suites have been established in multiple locations around Galway, and the Gardaí will review the geographical spread and suitability of these suites every three years.¹¹⁶ Additionally, the Minister announced funding of €2.7 million in the Budget for 2021 in respect of domestic, sexual and gender-based violence, and this sum includes moneys required for the O'Malley Implementation Plan.¹¹⁷

The state achieved **first convictions for female genital mutilation (FGM) and coercive control** in 2020. FGM is an offence under the Criminal Justice (Female Genital Mutilation) Act 2012, and the maximum penalty available on trial on indictment is fourteen years' imprisonment. In this case, the father of the girl received five and a half years' imprisonment, while his wife received a sentence of four years and nine months.¹¹⁸ The charity Action Aid estimates that in excess of

¹¹⁴ Ireland, Department of Justice and Equality (2020), 'Supporting a Victims' Journey: A plan to help victims and vulnerable witnesses in sexual violence', available at: http://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey .

¹¹⁵ Ireland, Minister for Justice and Equality (2020) 'Specialist training across Justice Sector to better support victims in sexual violence cases announced by Minister McEntee', press release, 28 October 2020, available at: <http://www.justice.ie/en/JELR/Pages/PR20000250> .

¹¹⁶ Ireland, Department of Justice and Equality (2020), 'Supporting a Victims' Journey: A plan to help victims and vulnerable witnesses in sexual violence', at 6, available at: http://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey .

¹¹⁷ Ireland, Minister for Justice and Equality (2020), 'Budget 2021 Dáil Speech, 14 October 2020, available at: <http://www.justice.ie/en/JELR/Pages/SP20000238> .

¹¹⁸ Liz Dunphy, '1,600 girls in Ireland at risk of FGM', *Irish Examiner*, 28 January 2020, available at: <https://www.irishexaminer.com/news/arid-30978150.html> .

1,600 girls in Ireland may be at risk of suffering FGM.¹¹⁹ As for coercive control, this is an offence under section 39 of the Domestic Violence Act 2018, punishable by imprisonment for up to five years. The first conviction for this new offence occurred in February 2020; the offender received a sentence of thirty months' imprisonment with the final nine months suspended.¹²⁰

In March 2020, the Irish government ordered a full **lockdown** of the country and people were ordered to remain at home, but essential workers. The government recognised that this order put **victims of domestic violence** at serious risk, and introduced the following initiatives: 1) An Garda Síochána initiated Operation Faoiseamh (meaning 'relief'), under which officers proactively contacted victims of domestic violence; 2) The Legal Aid Board gave priority to victims of domestic violence; 3) The Courts Service gave priority to domestic violence and childcare cases; every district was required to keep one courtroom open to hear applications of domestic violence orders;¹²¹ 4) 'Still Here' campaign, designed with the support of civil society organisations.¹²² This campaign is a one-stop-shop resource for victims of domestic violence. At the end of October, the Minister for Justice relaunched the 'Still Here' media ads.¹²³

Notwithstanding these efforts, a recent report in the *Irish Times* cites Garda sources to the effect that domestic violence has worsened because of the pandemic restrictions, and has moved indoors: street assaults have fallen sharply but attacks in the home have increased.¹²⁴ Under Operation Faoiseamh, the Gardai received 22,540 reports of domestic violence between 11 March and 3 November 2020, an increase of 17 % on the same period in 2019. These incidents resulted in charges

¹¹⁹ Liz Dunphy, '1,600 girls in Ireland at risk of FGM', *Irish Examiner*, 28 January 2020.

¹²⁰ Stephen Maguire, 'Man jailed for coercive control phoned woman 5,757 times in four months', *The Irish Times*, 11 February 2020, available at: <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/man-jailed-for-coercive-control-phoned-woman-5-757-times-in-four-months-1.4170652> .

¹²¹ Ireland, Minister for Justice and Equality (2020), 'Ministers Flanagan and Stanton announce campaign to reassure victims of domestic abuse that support is still available despite COVID-19', Press Release, 10 April 2020, available at: <https://www.drcc.ie/news-resources/notice-impact-of-covid-19-on-drcc-services/> .

¹²² Ireland, Minister for Justice and Equality (2020), 'Still Here Campaign', available at: www.stillhere.ie .

¹²³ Ireland, Department of Justice and Equality (2020), 'Ministers McEntee and Browne relaunch TV and Radio Ads as part of the Still here Campaign', press release, available at: <http://www.justice.ie/en/JELR/Pages/PR20000248> .

¹²⁴ Conor Lally (2020), 'Domestic violence is worsening during Covid-19 pandemic, Garda figures show', *Irish Times*, 3 December 2020, available at: <https://www.irishtimes.com/news/crime-and-law/domestic-violence-is-worsening-amid-covid-19-pandemic-garda-figures-show-1.4425582> .

being brought in 3,899 cases, up 13 % on the same period last year.¹²⁵ The *Irish Times* report commented, 'Garda sources described a marked level of fear among many women, adding in some cases children had also been exposed for the first time to their mother being attacked or had witnesses the incidents more frequently because of the lockdown'.¹²⁶ The Department of Justice has announced an audit into the state's response to domestic and sexual violence, which is expected to be completed by March 2021.¹²⁷

Women's Aid annual report discussed the effect of the lockdown order on the provision of domestic violence services.¹²⁸ Compared to the same period (March to June) in 2019, Women's Aid recorded a 71 % increase to their website, a 43 % increase in calls to their 24-hour freephone helpline, and a 78 % expansion of hours for their instant messaging support service.¹²⁹ Women's Aid noted a 25 % increase in calls to the Gardaí. However, they also pointed to a 23 % drop in applications for domestic violence orders. This figure is not explained in the report, but appears to refer to a newspaper article, which obtained figures from the Courts Service that showed that applications to the District Court for domestic violence orders between 16 March 2020 and 3 July 2020 fell to 4,695 from 6,149 over the same period in 2019.¹³⁰ Women's Aid annual report also noted a 25 % decrease in emergency refuge and accommodation capacity due to social distancing and isolation.¹³¹

Covid-19 also had an impact on the provision of NGO services for victims of sexual crime. Rape Crisis Network Ireland reported that all sixteen rape crisis centres in Ireland closed their buildings but were continuing to provide support by telephone

¹²⁵ Conor Lally (2020), 'Domestic violence is worsening during Covid-19 pandemic, Garda figures show', *Irish Times*, 3 December 2020.

¹²⁶ Conor Lally (2020), 'Domestic violence is worsening during Covid-19 pandemic, Garda figures show', *Irish Times*, 3 December 2020.

¹²⁷ Jennifer Bray (2021), 'Concerns over vulnerability spur domestic violence services audit', *Irish Times*, 6 January 2021, available at: <https://www.irishtimes.com/news/social-affairs/concerns-over-vulnerability-spur-domestic-violence-services-audit-1.4450612> .

¹²⁸ Women's Aid (2020), 'When Home is not Safe: Domestic Abuse during the Covid-19 Emergency', available at: https://www.womensaid.ie/assets/files/pdf/womens_aid_when_home_is_not_safe_covid-19_supplement_-_embargoed_20820.pdf .

¹²⁹ Women's Aid (2020), 'When Home is not Safe: Domestic Abuse during the Covid-19 Emergency', at 2.

¹³⁰ Shane Phelan, 'Domestic violence court cases fall despite spike in reported incidents', *Irish Independent*, 15 July 2020, available at: <https://www.independent.ie/irish-news/courts/domestic-violence-court-cases-fall-despite-spike-in-reported-incidents-39369160.html> .

¹³¹ Ibid (citing a letter to the *Irish Times* from Safe Ireland, 28 July 2020, available at: [/www.irishtimes.com/opinion/letters/domestic-violence-and-covid-19-1.4252680](https://www.irishtimes.com/opinion/letters/domestic-violence-and-covid-19-1.4252680) .

and online.¹³² In a snapshot of six rape crisis centres over the period 1 March to 30 June, the centres provided 4,734 appointments (mainly by phone, but some by video link), a 30 % increase over the same period in 2019.¹³³ In the same period, 4,413 contacts were made with centre helplines, a 23 % increase on the same period in 2019.¹³⁴ The vast majority of these contacts (82 %) came from victims, two-thirds of whom preferred to contact the helpline by text.¹³⁵ Nevertheless, counsellors spent a total of 367 hours on helpline calls.¹³⁶ The Dublin Rape Crisis Centre issued a similar report, but noted that its accompaniment service to the Sexual Assault Treatment Unit has been suspended.¹³⁷

Finally, the President of Ireland signed into law the Harassment, Harmful Communications and Related Offences Act 2020, on 28 December 2020.¹³⁸ This Act, colloquially known as 'Coco's law' in memory of a young woman who committed suicide following sustained online bullying,¹³⁹ makes it an offence to distribute intimate images of another person without his or her consent, with the intention of causing harm to that person. The fact that the image is taken consensually will be irrelevant if the distribution is done without consent. The maximum penalty is 7 years' imprisonment, and the fact that the offender was involved in an intimate relationship with the victim will be considered an aggravating factor for sentencing purposes.

¹³² Rape Crisis Network Ireland, Covid-19 information available at: <https://www.rcni.ie/rape-crisis-centres-services-are-here-to-help-during-covid-19/> .

¹³³ Rape Crisis Network Ireland (RCNI) (2020), 'Together with Survivors: Rape Crisis Adaptation and Transformation during Lockdown', July 2020, at 5, available at: <https://www.rcni.ie/wp-content/uploads/RCNI-Data-During-Covid-1March-30June-2020.pdf> .

¹³⁴ (RCNI) (2020), 'Together with Survivors: Rape Crisis Adaptation and Transformation during Lockdown', July 2020, at 6.

¹³⁵ (RCNI) (2020), 'Together with Survivors: Rape Crisis Adaptation and Transformation during Lockdown', July 2020, at 9.

¹³⁶ (RCNI) (2020), 'Together with Survivors: Rape Crisis Adaptation and Transformation during Lockdown', July 2020, at 10.

¹³⁷ Dublin Rape Crisis Centre, Covid-19 information available at: <https://www.drcc.ie/news-resources/notice-impact-of-covid-19-on-drcc-services/> .

¹³⁸ See the website of the Irish President, available at: <https://president.ie/en/the-president/2020-legislation> (accessed 5 January 2021). The Act, as signed by the President, has not yet been made available online, but the Bill, as passed by Dáil Éireann on 17 December 2020, is available at: https://data.oireachtas.ie/ie/oireachtas/bill/2017/63/eng/ver_b/b63b17d.pdf .

¹³⁹ See 'Coco's Law: Online harassment and harmful communications bill passes all legislative stages', *RTE News*, 18 December 2020, available at: <https://www.rte.ie/news/politics/2020/1218/1185356-cocos-law-passes/> .

Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

1. CRPD policy & legal developments

In 2007, Ireland signed the Convention on the Rights of Persons with Disabilities (CRPD), which was ratified in March 2018, and came into force on the 19th April 2018.¹⁴⁰ Ireland's first '**Draft Initial Consultation Report under the Convention on the Rights of Persons with Disabilities**' (draft report to the CRPD Committee) was released by the Minister for Disability on 3 March 2021, as well as a series of government consultations with key stakeholder groups.¹⁴¹ Ireland will then present its **initial State Report to the CRPD Committee** during 2021. The Irish government has confirmed that it will ratify the Optional Protocol to the CRPD 'once the first reporting cycle has been completed'¹⁴². Preliminary meetings have taken place between a variety of civil society disability stakeholders to discuss the CRPD Shadow Reporting process. In recent months, a number of National Disabled Persons Organisations (DPO's) have formed a coalition to develop a CRPD Shadow Report.

The COVID-19 pandemic has disproportionately affected Persons with Disabilities (PWD's) in Ireland across a wide range of key areas.¹⁴³ The (parliamentary) **Special Committee on Covid-19 Response** was established on the 6 May 2020,

¹⁴⁰ Ireland, Department of Justice and Equality (2018), 'Ratification of the United Nations Convention on the Rights of Person with Disabilities', 2018, available at: <http://www.justice.ie/en/JELR/Pages/PR18000033>.

¹⁴¹ Ireland, Department of Children, Equality, Disability, Integration and Youth (2020), 'Ireland's first report to the UN under the Convention on the Rights of Persons with Disabilities Consultation Draft Published by Disabilities Minister Anne Rabbitte on International Day of Persons with Disabilities, press release, 3 December 2020, available at: <https://www.gov.ie/en/press-release/c3108-irelands-first-report-to-the-un-under-the-convention-on-the-rights-of-persons-with-disabilities-consultation-draft-published-by-disabilities-minister-anne-rabbitte-on-international-day-of-people-with-disabilities/>.

¹⁴² Ireland, House of the Oireachtas (2020), Joint Committee on Disability Matters, (Debate) 4 November 2020, para 10, available at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_disability_matters/2020-11-04/2/.

¹⁴³ For more information on the impacts of Covid-19 on PWD's in Ireland please see: Fundamental Rights Agency, (2020) 'Coronavirus pandemic in the EU-Fundamental Rights Implications, Country research Ireland', Irish Centre for Human Rights, 3rd June 2020, pp. 7-8, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ie_report_on_coronavirus_pandemic_june_20_20.pdf. Also, see, Irish Human Rights and Equality Commission (2020), 'The Impact of COVID 19 on People with Disabilities. Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response', June 2020, available at: <https://www.ihrec.ie/app/uploads/2020/07/IHREC-Submission-The-Impact-of-COVID-19-on-People-with-Disabilites.pdf>.

and has held dedicated sessions to address the impacts of the pandemic on PWD's.¹⁴⁴ Ireland published its national COVID-19 vaccination implementation plan on 15 December 2020,¹⁴⁵ with the first vaccines being administered on the 29 December 2020. The plans initial focus is on double vaccinations being administered to all individuals and staff in nursing homes as highest first priority. The Disability Federation of Ireland (DFI) earlier expressed concern that the provisional COVID-19 vaccine allocation announced by the Department of Health did not specifically mention people with disabilities. This especially related to the 9000 PWD's living in residential care settings in Ireland, as well as PWD's who may have underlying issues that act to increase their particular risks to COVID-19.¹⁴⁶

Due to a change in Government in 2020, after elections held on the 8th of February,¹⁴⁷ from 1 October 2020, the Disability portfolio has moved to the remit of a new Department of Children, Disability, Equality and Integration and Youth,¹⁴⁸ which is the designated focal point and coordinating mechanism under the CRPD. According to the Minister for Children, Equality, Disability, Integration and Youth, disability services will be transitioned in full from the Department of Health by the first quarter of 2021.¹⁴⁹

Positive policy action taken by the Government in relation to the CRPD includes a **midterm review of the Irish National Disability Inclusion Strategy**

¹⁴⁴ Ireland, House of the Oireachtas (2020), 'Our role: Special Committee on Covid-19 Response', available at: <https://www.oireachtas.ie/en/committees/33/special-committee-on-covid-19-response/our-role/>.

¹⁴⁵ Ireland, Department of Health (2020), 'Covid 19 Vaccination Strategy and Implementation Plan', available at: <https://www.gov.ie/en/publication/bf337-covid-19-vaccination-strategy-and-implementation-plan/#:~:text=Minister%20for%20Health%2C%20Stephen%20Donnelly,health%20and%20social%20care%20services>.

¹⁴⁶ Disability Federation of Ireland (2020), 'DFI urge government to prioritise people with disabilities for COVID-19 vaccines', press release, December 10 2020, available at: <https://www.disability-federation.ie/news/latest/2020/12/10/dfi-urge-government-to-prioritise-people-with-disa/>.

¹⁴⁷ For a list of specific COVID-19 measures taken by the caretaker government while a new Irish coalition government was being formed after the election please see: FRA, '(2020) Coronavirus COVID 19 outbreak in the EU Fundamental Rights Implications, Country: Ireland', Irish Centre for Human Rights, 23rd March 2020, p.1-10, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ireland-report-covid-19-april-2020_en.pdf.

¹⁴⁸ Ireland, Department of Children and Youth Affairs (2020), 'Minister O' Gorman sets out department priorities', press release, 30 June 2020, available at: <https://www.gov.ie/en/press-release/9a0eb-minister-ogorman-sets-out-department-priorities/>.

¹⁴⁹ Ireland, House of the Oireachtas (2020), Joint Committee on Disability Matters, (Debate), para 5, available at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_disability_matters/2020-11-04/2/.

(NDIS)¹⁵⁰ to assess how this aligns with the CRPD Articles.¹⁵¹ A commitment has been made to develop monitoring structures and metrics, in line with the governments stated aim to ensure the 'progressive realisation of the CRPD'.¹⁵² A second positive example includes the Department of Justice and Equality's call to **launch** the development of a '**Disability Participation and Consultation Network**'.¹⁵³ This Network will engage with PWD's in the development of policy and legislation, and includes funding for a Disability Organisation (DO) to lead the work of the Network in an organising member role, and separate funding for up to four Disabled persons' organizations (DPO's) to support PWD to be involved in the network.¹⁵⁴ In November 2020 a second call was made (after the first call for selection for DO's to run the network in August) to invite PWD's, DPO'S and representative organisations to apply to become active members of the 'Disability Participation and Consultation Network'.¹⁵⁵

In the October 2020 budget, there was no increase made to the weekly disability allowance, however an extra 100 million euro was announced for disability health services to 'address extra disability related COVID-19 costs and to keep existing services going'.¹⁵⁶ In addition, on 23 December 2020, the Minister for Social Protection announced provision of an extra 2.3 million euro funding to 17 projects involving carers and PWD's, in conjunction with the Department of Social Protection and Pobál as part of the Dormant Account Action Plan 2021.¹⁵⁷

¹⁵⁰ Finian McGrath TD (2020), 'Minister McGrath publishes mid-term review of the national disability inclusion strategy', 7 March 2020, available at: <https://www.finianmcgrath.ie/minister-mcgrath-publishes-mid-term-review-of-the-national-disability-inclusion-strategy/>.

¹⁵¹ Ireland, House of the Oireachtas (2020) Dáil Eireann Debate Question 9, 10 September 2020, available at: <https://www.oireachtas.ie/en/debates/question/2020-09-10/9/>.

¹⁵² Ireland, House of the Oireachtas (2020) Dáil Eireann Debate Question 9, 10 September 2020, available at: <https://www.oireachtas.ie/en/debates/question/2020-09-10/9/>.

¹⁵³ Ireland, Department of Justice and Equality (2020), 'Expression of interest for the position of organizing member of the Disability Participation and Consultation Network', available at: [http://www.justice.ie/en/JELR/Pages/EoI_Organising_Member_Disability_Participation_and_Consultation_Network#:~:text=Launch%20of%20Disability%20Participation%20and,Persons%20with%20Disabilities%20\(UNCRPD\)](http://www.justice.ie/en/JELR/Pages/EoI_Organising_Member_Disability_Participation_and_Consultation_Network#:~:text=Launch%20of%20Disability%20Participation%20and,Persons%20with%20Disabilities%20(UNCRPD).).

¹⁵⁴ Ireland, Department of Justice and Equality (2020), 'Launch of expressions of interest to establish a disability participation and consultation network', Press Release, 10 August 2020, available at: <https://www.gov.ie/en/press-release/a4ea9-launch-of-expressions-of-interest-to-establish-a-disability-participation-and-consultation-network/>.

¹⁵⁵ Ireland, Department of Justice and Equality (2020), 'Launch of Expressions of Interest to Establish a Disability Participation and Consultation Network', press release, 9 November 2020, available at: <https://www.gov.ie/en/press-release/b1b47-launch-of-expressions-of-interest-to-join-irelands-disability-participation-and-consultation-network/>.

¹⁵⁶ Disability Federation of Ireland, (2020) 'Budget 21 Welcome for Extra Funds, but More Still to Do,' press release, October 18 2020, available at: <https://www.disability-federation.ie/news/press-releases/2020/10/13/budget-21-welcome-for-extra-funds-but-more-to-do/>.

¹⁵⁷ Ireland, Department of Social Protection (2020), 'Minister Humphreys Announces 2.3 Million in Dormant Accounts Funding for Carerw and People with Disabilities', press release, 23 December 2020, available at: <https://www.gov.ie/en/press-release/7870e-minister-humphreys-announces-23-million-in-dormant-accounts-funding-for-carers-and-people-with-disabilities/>.

As far as **legislation** linked to disability is concerned, please see the below Table 2, which lists the most recent legislative updates available in the 2020 Autumn Session Legislation programme.¹⁵⁸

Table 2: Legislative Programme 2020		
<i>Autumn Session Legislation Programme, September 15, 2020</i>		
Name of Legislation	Update	Page
Assisted Decision Making (Capacity) (Amendment) Act	Heads in preparation	23
Disability (Miscellaneous Provision) Bill	Revised heads in preparation	24
Mental Health (Amendment) Bill	Final heads in preparation	20
The Protection of Liberty Safeguard Bill	Heads in preparation	20
Health (Adult Safeguarding) Bill	Preparation work under way	20

The Assisted Decision-Making (Capacity) Act was passed on the 30 December 2015 to maximise a person’s ability to make decisions with legally recognised support, where it is possible. The Act has not yet been commenced (or entered into force). The latest update from the Health Service Executive (HSE) is that over the summer and autumn 2020, they have delivered webinars to provide training concerning advanced care planning, supported decision making, consent and assisted decision making, and ‘do not attempt resuscitation (DNAR) guidance’ for healthcare workers.¹⁵⁹ In the past year, there has also been progress with the Decision Support Service (DSS), which operates under the remit of the Mental Health Commission. On 10 August 2020, a key milestone was achieved when the website for the DSS was launched. This website provides key access and up to date information to stakeholders to fully prepare for the commencement of the DSS

¹⁵⁸ Ireland, Office of the Government Chief Whip Jack Chambers, T.D. Legislation Programme, Autumn Session 15th September 2020, p. 24, available at: <https://www.gov.ie/en/press-release/996c1-autumn-legislative-programme-published/>.

¹⁵⁹ Health Service Executive (2020), Assisted Decision Making (Capacity Act, 2020), available at: <https://www.hse.ie/eng/about/who/qid/other-quality-improvement-programmes/assisteddecisionmaking/assisted-decision-making.html> .

(estimated to be operational in 2022), as well as the eventual commencement of the *Assisted Decision-Making (Capacity) Act 2015* itself.¹⁶⁰

The *Disability (Miscellaneous Provisions Bill) 2016* officially lapsed on 14 January 2020 and there is no information when it will next appear.¹⁶¹ The Department of Health leads on the drafting of the *Protection of Liberty Safeguards Bill*. There is no date when the next action is estimated to be taken to progress the Bill. After many submissions during public consultations on the Bill,¹⁶² further workshops were planned for 2020 but these have been put on hold due to COVID-19 pandemic.

The *Mental Health (Amendment) Bill's* purpose is to amend the Mental Health Act (2001) based on the recommendations of an Expert Group Review on mental health legislation. This is currently stalled. The most recent status of the Bill, detailed in the 2020 Autumn Legislation Programme, is 'Final Heads in preparation'.¹⁶³ According to the Director of the National Disability Authority (NDA), 'priority should be given to the full commencement of the Assisted Decision Making legislation and the amended Mental Health Act, so that Ireland will be compliant with key articles of the Convention'.¹⁶⁴ The *Health (Adult Safeguarding) Bill* lapsed with the dissolution of the Dáil and Seanad in early 2020.¹⁶⁵ The aim of this Bill is to 'underpin a planned national health sector policy on safeguarding vulnerable or at risk adults in their interactions with the health service'. It is currently listed as 'preparatory work is underway'.¹⁶⁶

¹⁶⁰ Mental Health Commission (2020), 'DSS takes important step forward for people with capacity issue', available at: https://www.mhcirl.ie/File/PR_100820.pdf .

¹⁶¹ Ireland, House of the Oireachtas (2020), Disability (Miscellaneous Provision) Bill 2016 (no. 119 of 2016), lapsed on 14 January 2020, available at: <https://www.oireachtas.ie/en/bills/bill/2016/119/>

¹⁶² For more information on the public consultation please see: Ireland, Department of Health (2019), 'The deprivation of liberty Safeguard proposals: report on public consultation', available at: <https://www.gov.ie/en/publication/3f88c4-the-deprivation-of-liberty-safeguard-proposals-report-on-the-public/>.

¹⁶³ Ireland, Office of the Government Chief Whip Jack Chambers, T.D. Legislation Programme, Autumn Session 15th September 2020, p. 21, available at: <https://www.gov.ie/en/press-release/996c1-autumn-legislative-programme-published/> .

¹⁶⁴ Ireland, House of the Oireachtas (2020), Joint Committee on Disability Matters Debate, National Disability Inclusion Strategy, Discussion (Resumed), Para 148, available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46 .

¹⁶⁵ Ireland, House of the Oireachtas (2017), Adult Safeguarding Bill (2017) (No. 44 of 2017), available at: <https://www.oireachtas.ie/en/bills/bill/2017/44/> .

¹⁶⁶ Ireland, Office of the Government Chief Whip Jack Chambers, T.D. Legislation Programme, Autumn Session 15th September 2020, p. 20, available at: <https://www.gov.ie/en/press-release/996c1-autumn-legislative-programme-published/> .

In regards to the aforementioned legislation, the IHREC's Chief Commissioner stated to the Joint Committee on Disability Matters, on 11 November 2020, that there is a need to 'examine thoroughly the book of legislation and make sure that it is all fit for purpose under the CRPD'¹⁶⁷. On 18 November 2020, at the Oireachtas Joint Committee on Disability Matters, the incoming UN Special Rapporteur on the Rights of Persons with Disabilities raised further concern regarding the various disability laws that have not yet been commenced. He stated 'we have a lot of law on the books, it has not been commenced and for whatever reason it has been held back' and it is necessary to 'ask the deeper questions about what are the inhibiting factors holding this back?'.¹⁶⁸

In a positive recent step regarding legislation, on the 23 December 2020, the Minister for Disabilities announced the commencement of the '*Irish Sign Language Act*', which had been signed into law on the 24th of December in 2017. This Act 'recognises Irish Sign Language (ISL) as a native language of the State' and sets out 'requirements and obligations on public bodies for the provision of ISL'.¹⁶⁹

2. CRPD monitoring at national level

The Irish Human Rights and Equality Commission (IHREC) is the independent mechanism for the monitoring of the implementation of the CRPD, and it has the support of the National Disability Authority (NDA). The Disability Advisory Committee (DAC)¹⁷⁰ is a Statutory Advisory Committee that is comprised of 11 members¹⁷¹ and 3 Commissioners the majority of whom have expertise and lived

¹⁶⁷ Ireland, House of the Oireachtas (2020), Joint Committee on Disability Matters Debate, National Disability Inclusion Strategy, Discussion (Resumed), Para 71, available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46 .

¹⁶⁸ Ireland, House of the Oireachtas (2020), Joint Committee on Disability Matters Debate, Convention on the Rights of Persons with Disabilities, Wednesday 18th November 2020, Para 30, available at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_disability_matters/2020-11-18/2/ .

¹⁶⁹ Government of Ireland (2020), 'Minister Rabbitte announces commencement of Irish Sign Language Act (2017)', press release, 23 December 2020, available at: <https://www.gov.ie/en/press-release/50472-minister-rabbitte-announces-commencement-of-the-irish-sign-language-act-2017/>.

¹⁷⁰ IHREC (2019), 'New Departure on the Rights of Persons with Disabilities as Formal Committee Begins Work in Monitoring Irelands Obligations', available at: <https://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/>.

¹⁷¹ IHREC (2019), Members of the Disability Advisory Committee, available at: <https://www.ihrec.ie/crpd/members-of-the-disability-advisory-committee/> .

experience of disability. The role of DAC is to assist IHREC in its independent monitoring of the Irish States implementation of the CRPD under Article 33 (1).

Table 3: Structures set up for the implementation and monitoring of the CRPD			
EUMS	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
IE	Department of Children, Disability, Equality, Integration and Youth.		Irish Human Rights and Equality Commission supported by the National Disability Authority Disability Advisory Committee established to support independent monitoring role of IHREC.

Annex 1 – Promising Practices

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one example of a promising practice to tackle discrimination against older people or LGBTI people such as awareness raising campaigns or ethical codes for healthcare staff held in your country in 2020. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2020 relevant to equality and non-discrimination of older people or LGBTI people, preferably one conducted by a national equality body.
Title (original language)	
Title (EN)	Report on The Impact of COVID-19 on Nursing Homes in Ireland
Organisation (original language)	
Organisation (EN)	Health Information and Quality Authority (HIQA)
Government / Civil society	Statutory Body
Funding body	
Reference (incl. url, where available)	https://www.hiqa.ie/reports-and-publications/key-reports-and-investigations/impact-covid-19-nursing-homes-ireland
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	21 July 2020
Type of initiative	
Main target group	Older Persons

Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The report concluded that 'as a result of COVID-19, it is absolutely vital that premises are modernised as a matter of urgency in order to facilitate physical distancing requirements, promote modern infection prevention and control practices, and provide residents with the dignity and privacy they deserve'.
Highlight any element of the actions that is transferable (max. 500 chars)	All of the above actions are transferable to other jurisdictions if funding is available.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	Oversight of this practice by HIQA, and governance in nursing homes, should promote its sustainability.
Give reasons why you consider the practice as having concrete measurable impact	With single-occupancy rooms, the alteration of premises to facilitate social distancing, and the promotion of modern infection prevention and control practices, the practice favoured by HIQA should translate to concrete measurable impact on reducing the spread of COVID-19 among older persons in care home settings.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	It is a viable practice that could work just as well elsewhere, but admittedly there are financial implications.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The recommendations are based on the findings of HIQA's contingency assessment and risk inspection programmes and the experiences of nursing home residents, their families and staff, as reported to HIQA Inspectors. HIQA inspectors spoke with many residents, relatives and staff working in nursing homes, including those who have been directly affected by COVID-19.

Explain, if applicable, how the practice provides for review and assessment.	It is envisaged that HIQA will monitor and assess the practice and engage with various stakeholders, including older persons and those who advocate on their behalf.
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Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide one example of a promising practice to address racism and xenophobia in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	Anti-Racism Committee
Title (EN)	Anti-Racism Committee
Organisation (original language)	Department of Justice and Equality
Organisation (EN)	Department of Justice and Equality
Government / Civil society	Government
Funding body	Department of Justice and Equality
Reference (incl. url, where available)	http://www.justice.ie/en/JELR/Pages/PR20000115
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	June 2020
Type of initiative	The ARC is an independent body that has been established with the aim of drafting a new National Action Plan Against Racism.
Main target group	Groups targeted by racism; broader society.

Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Minister for Justice and Equality Charlie Flanagan, and the Minister of State David Stanton, announced the membership of the new Anti-Racism Committee (ARC) to commence in June 2020. The ARC is an independent body that has been established with the aim of drafting a new National Action Plan Against Racism. The ARC is comprised of various individuals from across society, including academia, civil society organisations and the private sector.
Highlight any element of the actions that is transferable (max. 500 chars)	Policing, education, employment, politics, sport, youth.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The ARC was created in order to produce a National Action Plan Against Racism. This plan is long overdue, and the creation of the Committee is a positive step towards the development of a sustainable National Action Plan Against Racism in Ireland.
Give reasons why you consider the practice as having concrete measurable impact	This initiative has the potential to support those civil society organisations working at the frontline vis-à-vis anti-racism; the same organisations who have previously raised critical responses to the State in the context of meaningful anti-racism activity.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	As an EU Member State, Ireland faces many of the same challenges in regards to racism when compared to other European Member States. The rise of far-right discourses and the presence of far-right actors on the street are cases in point. Ireland needs a planned strategic approach to challenge racism, working in conjunction with national stakeholders, and also at an EU level.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation,	Assessment is measurable in the context of detailed timelines of the deliverables of the ARC via the National Action Plan Against Racism as stated in the terms of reference.

review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	

Thematic area	<p>ROMA AND TRAVELLER EQUALITY AND INCLUSION</p> <p>Please provide one example of promising practice in relation to the legal and policy developments in regard to Roma/Travellers (or any group covered by this term as per the Council of Europe definition) in 2020 that relate to the (1) application of the EU Framework on national Roma integration strategies and (2) the preparations for the new post-2020 initiative on Roma equality, inclusion and participation or in relation to any measures in your country in 2020 to address Roma inclusion and prevent discrimination, hate crime and hate speech with a particular focus on COVID-19.</p>
Title (original language)	Appointment of Senator Eileen Flynn to Seanad Eireann (the Irish Senate)
Title (EN)	Appointment of Senator Eileen Flynn to Seanad Eireann
Organisation (original language)	
Organisation (EN)	
Government / Civil society	Irish Government
Funding body	

Reference (incl. url, where available)	Department of the Taoiseach (2020), 'Taoiseach's Nominees to the Seanad' (28 June 2020), available at: https://www.gov.ie/en/news/d0b87-taoiseachs-nominees-to-seanad-eireann/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	29 June 2020
Type of initiative	Measure to promote political participation
Main target group	Traveller Community
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Taoiseach (Prime Minister) nominated Eileen Flynn to the upper house of the Oireachtas (Irish Parliament), the Seanad, on the 28 June 2020. Senator Flynn is the first Traveller to be appointed to the Seanad. National NGO Pavee Point observed that this was the first special measure taken by the State to ensure Traveller representation in the Irish political system.
Highlight any element of the actions that is transferable (max. 500 chars)	Nomination to upper houses of Parliament is a common practice across Europe. The nomination of members of the Traveller or Roma community may send a message about that country's commitment to the inclusion and political participation of these groups.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The practice would become sustainable IF there was a place in the Seanad reserved for members of the Traveller community. This was recommended in a report of Seanad Eireann in 2020 ('Seanad Public Consultation Committee Report on Travellers Towards a More Equitable Ireland Post-Recognition January 2020'), available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/seanad_public_consultation

	_committee/reports/2020/2020-01-23_report-on-travellers-towards-a-more-equitable-ireland-post-recognition_en.pdf , p. 21).
Give reasons why you consider the practice as having concrete measurable impact	The nomination of Senator Flynn has had an instant impact in terms of enhancing the representation of the Traveller community in the Oireachtas (Parliament).
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Nomination to upper houses of Parliament is a common practice across Europe. Nomination of members of the Traveller or Roma community may send a message about that country's commitment to the inclusion and political participation of these groups.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Traveller organisations had been advocating for the nomination of a member of the Traveller community, as well as the reservation of a place in the Seanad for a member of the Traveller Community. (See 'Seanad Public Consultation Committee Report on Travellers Towards a More Equitable Ireland Post-Recognition January 2020', p. 20).
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please, provide one example of a promising practice related to any of the topics addressed in the chapter – i.e. in relation to data protection, and/or artificial intelligence systems - in 2020.
Title (original language)	Development of COVID Tracker App
Title (EN)	Development of COVID Tracker App

Organisation (original language)	Health Service Executive
Organisation (EN)	Health Service Executive
Government / Civil society	Government
Funding body	State
Reference (incl. url, where available)	Health Service Executive (2020), 'Covid Tracker App'. Available at: https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/covid-tracker-app/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	June 2020
Type of initiative	Developing smartphone application to detect possible exposure to individuals with COVID-19
Main target group	Entire population
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	In common with many other countries, Ireland sought to develop an exposure notification app which would use Bluetooth on smartphones to identify close contacts between individuals who might have been exposed to COVID-19. The initial project, from March 2020 onwards, sought to develop a centralised tracking model, however initially there was little transparency as to how the system would operate. Following significant criticism from civil society and opposition parliamentarians, the project moved to the Google/Apple decentralised exposure notification system, and became significantly more transparent with source code and a detailed data protection impact assessment published before its launch. This appears to have contributed to public confidence in the app which has been widely installed.

	<p>For background see Nearform (2020), 'Inside the Collaborative Effort behind Ireland's COVID Tracker App', 14 July 2020, available at: https://www.nearform.com/blog/inside-the-collaborative-effort-behind-irelands-covid-tracker-app/; Horgan-Jones, J. (2020), 'Lack of Transparency Will 'Damage Uptake' of Contact Tracing App', <i>The Irish Times</i>, 27 April 2020, available at: https://www.irishtimes.com/news/ireland/irish-news/lack-of-transparency-will-damage-uptake-of-contact-tracing-app-1.4238417.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>The transferable element here is not the app itself, which remains unproven, but rather the much greater transparency (by Irish standards) in the development of the app, including the publication of the source code and DPIA, and the explicit commitment to privacy protection including use of a decentralised protocol.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The move to transparency in developing the app provides a proof of concept for other state actions in Ireland regarding the value of openness in achieving public confidence in new technology, and provides a sharp contrast with other state initiatives (such as the roll out of the Public Services Card) which have been the subject of sustained criticism.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The take-up rate of the app appears to be one of the highest in the world, with an active user base of 1.3 million representing 34% of the Irish population aged 16 and above. While an assessment of the effectiveness of the app has not yet been carried out, approximately 3,200 users have received alerts warning them that they have been in close contact with a person who has tested positive.</p> <p>Source: Department of Health (2020), 'Minister for Health Welcomes Launch of Contact Tracing Apps in New York and New Jersey Based on the Irish Contact Tracing App', 2 October 2020, available at: https://www.gov.ie/en/press-release/02080-minister-for-health-welcomes-launch-of-contact-tracing-apps-in-new-york-and-new-jersey-based-on-the-irish-contact-tracing-app/.</p>
<p>Give reasons why you consider the practice as transferable to</p>	<p>In an Irish context, the public commitment to release source code and publish a DPIA in advance of the roll out of the app was unusual and provides an example of best practice for other state actions.</p>

other settings and/or Member States?	
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	There does not appear to have been any input from non-state bodies in the development of the app, though the Data Protection Commission was consulted prior to its adoption. The publication of source code permits greater evaluation of the app.
Explain, if applicable, how the practice provides for review and assessment.	An Advisory Committee with a membership from a range of state bodies has been established to keep the operation and effectiveness of the app under review, and to ensure that it is wound down within 90 days if it is assessed as ineffective. Health Service Executive (2020), 'Covid Tracker App Data Protection Impact Assessment', 26 June 2020, p. 27, available at: https://github.com/HSEIreland/covidtracker-documentation .

Thematic area	RIGHTS OF THE CHILD Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	
Title (EN)	Report on Suspended Sentences LRC 123-2020
Organisation (original language)	Law Reform Commission
Organisation (EN)	Law Reform Commission
Government / Civil society	Government appointed Law Reform Commission
Funding body	Government

Reference (incl. url, where available)	https://publications.lawreform.ie/Portal/DownloadImageFile.ashx?objectId=6155
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	The Department of Equality and Justice launched a consultation process on the development of a new 'Draft Youth Justice Strategy 2020-2026'. The Law Reform Commission has recommended matters to be discussed in the review of the Children Act 2001.
Type of initiative	Recommendations for consideration as part of the review of the Children Act 2001 and improvements to the juvenile justice system.
Main target group	Children in the Criminal Justice System.
Indicate level of implementation: Local/Regional/National	Nationally. Reform in this area is also in accordance with the United Nations Committee on the Rights of the Child (UNCRC) 'General Comment No 24 (2019) on children's rights in the child justice system'.
Brief description (max. 1000 chars)	One of the objectives of the Department of Justice 'Draft Youth Justice Strategy (2020-2026)' is to review the Children Act 2001. Separately, the Law Reform Commission engaged in a consultation process to consider reform in the area of suspended sentences. The Commission had intended that this review would focus on the sentencing of adults in the criminal justice system. However, as a result of submissions made, the Commission was alerted to the need to consider sentencing for child offenders. While the current statutory framework does not permit the suspension of a detention for child offenders (as confirmed in <i>(DPP) v AS</i>) ¹ due to the 'strong temporal nexus between the offence and the punishment', difficulties were highlighted with regard to s144 of the Act. This permits deferral of detention in certain circumstances, and can lead to a resumed hearing up to one year later, at which time the offender may have 'aged out' of the system. The orders available to the court under s144(9), however, are only enforceable against a child. The report highlighted that parts 7-9 of the children Act 2001-transitioning to adulthood, are in need of reform.

¹ *The People DPP v AS* 2017 IECA 310

Highlight any element of the actions that is transferable (max. 500 chars)	All of the above.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The recommendations made are important because they come at a juncture where the Children Act 2001 is under review. Changes incorporated into the legislation will have ongoing long-term effects for future generations of children.
Give reasons why you consider the practice as having concrete measurable impact	The current provisions under s144 (9) of the Children Act cause uncertainty for youth offenders and difficulties for the judiciary, who frequently are not in a position to make orders in some cases where the offender has transitioned to adulthood.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	<i>General Comment No 24 (2019) on children's rights in the child justice system</i> notes that states protection should also be extended 'to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.' ² The developing needs of the child are also relevant. Review of sentencing and legislation in respect of 'aging out' of the Youth Justice System is relevant across all Member States. The impact of COVID-19 on children in detention has also been noted. In a report compiled with other human rights organisations, the Committee on the Rights of the Child calls for children in detention to be provided with electronic and other means of maintaining contact with their families throughout the pandemic, warning of 'the grave physical, emotional and psychological impacts of COVID-19 on children'. ³
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and	The Law Reform Commission follow a procedure where they seek submissions from practitioners, academics, NGOs and others who have experience on the topic under review. Taking this 'bottom up' approach means that the legislation enacted can be framed in a such a way that ensures that it is workable and has practical impact.

² Committee on the Rights of the Child (2019), *General Comment No 24 (2019) on children's rights in the child justice system*, available at : https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en.

³ OCHR, Human Rights Treaties Branch, *Compilation of Statements by human rights treaty bodies in the context of COVID 19*, p 33 available at https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Compilation_statements.pdf

implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	Recommendations made by the Law Reform Commission will be considered in drafting the new 'Youth Justice Strategy (2020-2026)' and in the reform of the Children Act 2001.

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Operation Faoiseamh
Title (EN)	Operation Relief
Organisation (original language)	An Garda Síochána
Organisation (EN)	Irish Police
Government / Civil society	State
Funding body	State
Reference (incl. url, where available)	Garda Press Release 'Operation Faoiseamh – Domestic Violence', 9 th June 2020'; https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/june/operation%20faoiseamh%20-%20domestic%20abuse%209th%20june%202020%20.html
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	1 st April 2020 (Phase I); 13 th May 2020 (Phase II). The Operation is ongoing.
Type of initiative	Garda Outreach Policy

Main target group	Victims of Domestic Violence
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Phase I involved specialist Garda officers making contact with victims of domestic abuse reported between January and May 2020, to determine existing areas of concern and to offer support and reassurance. Some victims took the opportunity to seek assistance, and resources were deployed accordingly. By early June, over 8,000 contacts had been made. Phase II began in May, and focused on the execution of arrests and the commencement of prosecutions for offences relating to breaches of domestic violence orders. Over one hundred such prosecutions were commenced.
Highlight any element of the actions that is transferable (max. 500 chars)	The whole programme.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It was designed as a one-off policy arising from the COVID-19 lockdown, but there is no reason why such an outreach programme cannot be continued on an ongoing basis.
Give reasons why you consider the practice as having concrete measurable impact	A feedback mechanism was built into the Operation, and it was reported to be 'overwhelmingly positive'. Womens' Aid, a leading non-governmental organisation, echoed these reports.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	There is no reason why all aspects of this Operation cannot be replicated in any other EU Member State.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and	The Operation was conceived by An Garda Síochána, who also planned and implemented it.

implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	The Gardaí actively sought feedback from victims of domestic violence.

Thematic area	<p>DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)</p> <p>Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.</p>
Title (original language)	Disability Advisory Committee
Title (EN)	
Organisation (original language)	Irish Human Rights and Equality Commission (IHREC)
Organisation (EN)	
Government / Civil society	Grade A. National Human Rights Institution
Funding body	Funding provided by the Oireachtas with consent of the Minister for Public Expenditure and Reform
Reference (incl. url, where available)	https://www.ihrec.ie/crpd/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	<p>Start date: 28 January 2019</p> <p>Current period under review: 2020</p> <p>End date: January 2022</p>

Type of initiative	Independent Disability Advisory Committee to monitor and implement the CRPD under Article 33
Main target group	Persons with Disabilities
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The work of the Disability Advisory Committee (DAC) ⁴ has been selected as a promising disability-related practice in Ireland for 2020. ⁵ It has informed and assisted IHREC's work to monitor Ireland's implementation of the CRPD. In addition, the work of the DAC was chosen as it has significant positive impacts on the rights, agency and representation of PWD's in leadership in what is such a crucial time in disability rights in Ireland. This includes the current rollout of the CRPD (first ratified in March 2018), and in the current context of the upcoming Initial State Report by Ireland to the CRPD Committee, which is expected to be delivered in 2021. A brief history of the DAC is that the members were appointed by an open public recruitment process in December 2018. It was established under Section 18 of the Irish Human Rights and Equality Commission Act. The DAC commenced its work in January 2019, and this review period is applied specifically to 2020, which is the second year of DAC's work of a three-year scheduled term. The DAC has 14 members, 11 who were openly recruited, as well as three Commission members. These DAC members were selected because of their diverse personal and professional expertise, as well as the lived experiences of disability for the majority of the committee members. ⁶ The role of the DAC members is to ensure that IHREC can fulfil its mandate to hold the Irish State to account on the rights of PWD's, and to ensure that Ireland meets its obligations as it implements the CRPD. An example of some of the key duties

⁴ Irish Human Rights and Equality Commission (2019), New departure on the rights of persons with disabilities as formal committee begins work in monitoring Ireland's obligations, 29 January 2019, available at: <https://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/>.

⁵ Please note, this is was also selected as the promising practice in the previous (2019) FRA report.

⁶ Irish Human Rights and Equality Commission (2019), Members of the Disability Advisory Committee, available at: <https://www.ihrec.ie/crpd/members-of-the-disability-advisory-committee/>.

	<p>undertaken by the DAC in 2020 has been the ongoing expert advice given to the IHREC in regards to the disproportionate impact the COVID-19 pandemic has had on PWD's, and the Irish disability sector overall. This has been vital to inform the Commissions work in relation to COVID-19, and specifically to assist in IHREC's various submissions⁷ to the Oireachtas COVID-19 Response Special Committee⁸, and the Joint Committee on Disability Matters⁹, as well as for example informing the opening Statement to the Oireachtas COVID-19 Response Special Committee by Commission member Dr Franks Conaty¹⁰, and other submissions and statements.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>The 'transferable actions' are the incorporation in law of a statutory DAC, as well as the support function of the DAC in the monitoring role of the independent mechanism. The DAC gave expert advice to the Commission on the following CRPD Articles: <i>Article 7</i> (children with disabilities), <i>Article 19</i> (living independently and being included in the community), <i>Article 25</i> (Health), <i>Article 27</i> (work and employment) and <i>Article 28</i> (adequate standard of living and social protection). The Commission will be able to transfer the knowledge and expertise gained about these important CRPD Articles, to inform and transfer the information to other key sectors involved in the Irish CRPD implementation. In addition, the progress and experience gained in the actual process of setting up the first DAC in Ireland will potentially be able to be transferred to other Member States for replication as best practice in their own country contexts when setting up their own DAC's in the future. An example of this transfer of knowledge is when the DAC briefed a delegation from the South African Human Rights Commission in regard to</p>

⁷ For more information on the impacts of COVID-19 on PWD's in Ireland please see: Irish Human Rights and Equality Commission (2020), 'The Impact of COVID-19 on People with Disabilities. Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response', June 2020, available at: <https://www.ihrec.ie/app/uploads/2020/07/IHREC-Submission-The-Impact-of-COVID-19-on-People-with-Disabilites.pdf>

⁸ Ireland, House of the Oireachtas (2020), 'Our role: Special Committee on Covid-19 Response', available at: <https://www.oireachtas.ie/en/committees/33/special-committee-on-covid-19-response/our-role/>.

⁹ Ireland, House of the Oireachtas (2020), 'Joint Committee on Disability Matters' Wednesday, 11th November 2020, Available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46.

¹⁰ Irish Human Rights and Equality Commission (2020), 'Opening statement by Dr Frank Conaty, Acting Chief Commissioner, Irish Human Rights and Equality Commissioner', Delivered to the Oireachtas Special Committee on Covid-19 Response, 17 July 2020, available at: <https://www.ihrec.ie/app/uploads/2020/07/Opening-Statement-COVID-Committee-Dr.-Frank-Conaty-16-July-2020-F.pdf>.

	<p>their experiences and best practices developed in relation to Article 33.¹¹ Importantly, during the COVID-19 Pandemic the DAC has transferred its knowledge and expertise about the disproportionately negative impacts COVID-19¹² have had on PWD's in Ireland to inform Irish Governments responses. For example, in a recent address to the Oireachtas on November 11th 2020, Dr Rosaleen McDonagh, an IHREC Commission Member and the Chairperson of the DAC, gave an in-depth cross-sectional update to the 'Oireachtas Joint Committee on Disability Matters' on key current and outstanding issues related to PWD's in Ireland including COVID-19 and the 'increased propensity or possibility of violence against disabled people'¹³. Dr McDonagh also highlighted issues faced by Travellers and the Roma Community some of whom are living in 'deplorable conditions',¹⁴ including citing a specific example of disabled and deaf Travellers living on a site with 'no water or appropriate sanitation, let alone access'.¹⁵</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>It is sustainable as it is a statutory requirement that the National Human Rights Institution must establish a DAC to support its role in monitoring implementation of the CRPD, so this will continue into the future. The mandate of the DAC is clear, such as assisting the Commission on matters related to its function of keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of PWD's in Ireland, and advising the Commission on the fulfilment of its independent monitoring role.¹⁶ This clear mandate assists the DAC now and in the future to be</p>

¹¹ Irish Human Rights and Equality Commission (2020), 'Annual report 2019', p. 52, available at: <https://www.ihrec.ie/our-work/annual-report-2019/>.

¹² For further information on the impacts of COVID-19 on PWD's in Ireland, please see Fundamental Rights Agency (2020), 'Coronavirus Pandemic in the EU- Fundamental Rights Implications, Country: Ireland', Irish Centre for Human Rights, 3 June, 2020, p. 7, available at: https://fra.europa.eu/sites/default/files/fra_uploads/ie_report_on_coronavirus_pandemic_june_2020.pdf.

¹³ Ireland, House of the Oireachtas (2020), 'Joint Committee on Disability Matters' Wednesday, 11th November 2020, para 25. Available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46.

¹⁴ Ireland, House of the Oireachtas (2020), 'Joint Committee on Disability Matters' Wednesday, 11th November 2020, para 23. Available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46.

¹⁵ Ireland, House of the Oireachtas (2020), 'Joint Committee on Disability Matters' Wednesday, 11th November 2020, para 55. Available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46.

¹⁶ Irish Human Rights and Equality Commission (2020), 'Annual report 2019', p. 52, available at: <https://www.ihrec.ie/our-work/annual-report-2019/>.

	sustainable in its approach, and to keep a spotlight on the most important disability issues to ensure Ireland meets its obligations under the CRPD.
Give reasons why you consider the practice as having concrete measurable impact	It allows the DAC, the majority of whom are PWD's, to provide their personal and professional expertise to have direct impact on the Commission's work informing on target and priority areas of importance, while monitoring the laws, policies and practices related to disability. This allows IHREC to be best informed of the most up to date Irish disability contexts on the ground, and allow early intervention in identification of human rights violations, or to be able to identify early any potential barriers to the exercise of human rights of PWD's in relation to the practical application of the CRPD in Ireland. The participation of the DAC in these various processes can be tracked and evaluated to measure the impact of their involvement in law and policy development, and towards the overall monitoring and implementation of the CRPD in Ireland. Expert advice given to the Commission such as during the 2020 COVID-19 Pandemic, has informed and steered the Commissions responses, and is able to be measured in impacts such as the vital inputs from DAC to the development of IHREC submissions to the Oireachtas COVID-19 Response Special Committee, and the Oireachtas Joint Committee on Disability Matters, which last met on November 11 2020, to review the progress of the National Disability Inclusion Strategy and the implementation of the CRPD. ¹⁷
Give reasons why you consider the practice as transferable to other settings and/or Member States?	This practice is transferrable to other Member States as the Irish Human Rights and Equality Commission (IHREC) holds an 'A' status as an NHRI, and other Member States NHRI's can apply the experience of Ireland's development of the first DAC in their own country contexts. IHREC's monitoring mechanism are fully compliant with the Paris Principles, and are allocated voting, seating, and speaking rights at UN Human Rights Treaty Bodies. Other Member States will also be able to benefit from knowledge gained from IHREC's first Independent Report to the CRPD Committee in the near future.
Explain, if applicable, how the practice involves beneficiaries	It can be argued that all PWD's in Ireland are potential stakeholders in the important 2020 work and representation that the DAC members undertake to advise the

¹⁷ Ireland, House of the Oireachtas (2020), 'Joint Committee on Disability Matters' Wednesday, 11th November 2020, available at: https://www.oireachtas.ie/ga/debates/debate/joint_committee_on_disability_matters/2020-11-11/2/#spk_46

<p>and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>Commission on the fulfilment of its independent monitoring role of the implementation of the CRPD. Other agencies, government departments, organisations, as well as Irish society in general also benefit from the important work undertaken by IHREC and the DAC which is actively informing best practice in relation to the CRPD. As set out under Section 18 of the Irish Human Rights and Equality Commission Act 2014, the DAC Chair and Vice Chair must be Commission members. This links engagement directly between the Commission and DAC's considerations of the CRPD. Additionally, the DAC informs the Commission on the key deliberations after each DAC meeting which has had a significant impact on CRPD monitoring and implementation during 2020.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>The IHREC has a statutory duty to appoint an Advisory Committee and the process will be reviewed and assessed.</p>

Annex 2 – Case Law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination against older people or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
Decision date	21 April 2020
Reference details	Workplace Relations Commission ADJ-00023458 <i>(Operations Manager v Oil Company, Adjudication Officer: Eugene Hanly)</i>
Key facts of the case (max. 500 chars)	The complainant was employed as an operations manager in an oil company from 1982 to 2019. He had a permanent employment contract until 2017, and was subsequently placed on two consecutive 1-year fixed term contracts. His complaint included that his employment was terminated in June 2019, and that he was discriminated against on grounds of his age.
Main reasoning/argumentation (max. 500 chars)	The WRC considers that ‘mandatory retirement ages are not unlawful under Irish law’ [Equality Employment Acts 1998-2015], and that their abstract lawfulness is not in dispute in this case. However, according to Irish and EU law ‘employers must be able to <i>objectively justify</i> their decision’ to impose a difference in treatment in connection with age. Furthermore, compelling evidence must be provided that the use of the mandatory retirement age in the particular case, ‘is <i>appropriate, proportionate and a necessary means</i> of achieving a legitimate aim’.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The respondent argued that ‘ <i>unfortunately retirement is not a decision about you, or anyone else for personal reasons, rather it is a decision taken to protect the health and safety of staff, to preserve personal and professional loyalty, and also to assist with succession planning providing promotion opportunities and intergenerational fairness</i> ’. The WRC found that none of these reasons, that are in abstract acceptable, were ‘clearly advanced by the Respondent at the time of the termination of employment’.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The WRC does not 'support contention of objective justification as advanced by the Respondent [who] discriminated against the Complainant on grounds of age. [Accordingly] the Respondent [is required] to pay the Complainant compensation of €25,000 within six weeks [...]'
Key quotation in original language and translated into English with reference details (max. 500 chars)	'I find that the Respondent should consider the impact on the employee both financially and otherwise, and [that] the impact on the organisation must be balanced and weighed up when determining the proportionality of using a mandatory retirement age. In this case I find that the Respondent had no such concerns when extending the contract of employment on two occasions and then listed the above matters as a reason for not extending the contract on a third occasion, without setting out clearly why it was relying upon these issues that is: intergenerational fairness, health and safety of the staff, internal recruitment and promotion opportunities, succession planning, preservation of personal and professional dignity'.

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE. Please provide the most relevant high court decision concerning the application of <u>either</u> the Racial Equality Directive <u>or</u> the Framework Decision on racism and xenophobia, addressing racism, xenophobia and other forms of intolerance more generally.
Decision date	28 January 2020
Reference details	Workplace Relations Commission ADJ-00020743 (<i>An Asylum Seeker v A Statutory Body</i> , Adjudication Officer: Patsy Doyle)
Key facts of the case (max. 500 chars)	The complainant in this case is a single mother living in 'Direct Provision' (an asylum seeker reception centre), in rural Ireland, 49 km from the closest city. She held a full driver licence in her country of origin (India), and in 2018 applied for a 'learner driver permit'. In the complainant's submission to the WRC, it is explained that obtaining a driving licence in Ireland would facilitate her access to better employment opportunities and childcare facilities, without the need to commute on expensive public transport for several hours each day. After having passed the mandatory theory and eye tests, her application to obtain a

	<p>learner driver permit was rejected because her 'temporary residence certificate' as an asylum seeker was not considered a 'valid evidence of residency entitlement'. This decision was based on the 'Guidance Notes for Completion of a Learner Permit Application Form' which states that 'to make an application for a learner permit, you must be able to show that you are a national of the EU, EEA or Switzerland or <i>have leave to remain in Ireland</i>', a condition that is not mandated by the Road Traffic (Licencing of Drivers) Regulations 2006. The complainant submitted that she had been discriminated against on the ground of race, which in Irish law include 'nationality'.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The WRC found in favour of a prima facie discrimination. Being required to provide evidence of residence based on the criteria in the guidelines 'constitutes an apparent neutral provision which has place the complainant at a disadvantage compared with other non-Indian asylum seekers' which 'had a negative impact [o]n her capacity to access and sustain a presence in the labour market in Ireland'. Then, the WRC employed the CJEU's <i>Bilka Kaufhaus V Weber Von Hartz [1986] ECR 1607</i> test to determine whether the respondent's course of action had objective justification and was proportionate. The respondent failed to justify that its interpretation of the concept of residence was meeting a legitimate aim and was appropriate and necessary to achieve that aim in the instance of this case.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>This case, which strongly relies on arguments of EU law (and case-law), dealt with the practical and normative consequences of outlawing a former complete ban on asylum seekers applying for work, following the landmark 2018 'NHV' Supreme Court decision, which led to the enactment of the SI 230/2018, European Community (Reception Conditions) Regulations 2018 which implemented Directive 2013/33/EU 2013 (Reception Conditions Directive). The <i>permanent or indefinite</i> residence requirement that is established in the Guidance Notes of the Respondent (the statutory body charged with overall responsibility for road safety) is not a requirement by any national or EU law. As it is impossible for asylum seekers to satisfy the requirements (their residence entitlement may only be temporary and conditional to the outcome of their application for international protection), such conditions constituted indirectly discrimination on the ground of race (also including 'nationality') because it would act to directly impede the (conditional) right to work of asylum seekers.</p>

<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The WRC concluded the following:</p> <ol style="list-style-type: none"> 1. I order the Respondent to meet with the complainant in the company of her chosen representative within four weeks of the date on this decision [...] to discuss whether the complainant is permitted to surrender her Indian Licence for an equivalent licence in Ireland without cost. If this is unsuccessful, she should be granted a Learner Permit immediately without any cost to her. 2. As I have found that the impact of the indirect discrimination was pronounced and obstructive to the complainants wish for self-actualisation in accessing work [A learner Driver Permit is a first step in that process], I order the Respondent to pay the complainant €5,000 in compensation for the distress suffered. 3 I order the Respondent to immediately amend the 2018 Guidelines to take account of the revised status of the applicants for International protection who have like the complainant been given permission to work in Ireland. It is of note that Section 14 permits more favourable treatment’.
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>‘Given that the Irish State has now declared an application process for access to the labour Market (with conditions) for those who seek International Protection and has gone one step further and granted this permission to over two thousand workers, over 1,000 of whom were confirmed active in the workplace. The means of accessing this work from a rural remote Direct Provision Centre is now a logical consideration for all parties involved’.</p>

<p>Thematic area</p>	<p>ROMA AND TRAVELLER EQUALITY AND INCLUSION Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.</p>
<p>Decision date</p>	<p>28 April 2020</p>

Reference details	<i>Crumlish v Donegal County Council</i> [2020] IEHC 233
Key facts of the case (max. 500 chars)	<p>The applicant is aged 66, is a member of the Traveller community and pursued a nomadic lifestyle for most of her life. The applicant was on Donegal County Council's housing list from 2003. She was suspended from this list for a year after she refused two offers of accommodation in similar one-bedroomed houses. The applicant disputed the council's claim those were 'reasonable' offers of accommodation on the grounds that she required halting site accommodation which could accommodate her children when they visit as they pursue a nomadic lifestyle.</p> <p>The applicant applied for judicial review, seeking to quash her suspension on the County Council housing list on the basis <i>inter alia</i> that it constituted a violation of her constitutional rights and/or her fundamental rights under the ECHR (Art. 8 and Arts. 8 and 14).</p> <p>The suspension lasted one year and because the applicant was restored to the housing list some five days after the hearing of her challenge, the Council argued that her case should be dismissed as moot.</p>
Main reasoning/argumentation (max. 500 chars)	<p>Judge Meenan did not grant the orders sought as he was of the view that the issues involved were moot. The twelve months of the suspension would not be counted for the purposes of reckoning the applicant's priority on the housing list was deemed a key factor. This was because the applicant already had the maximum points that could be allocated for social housing as she had already been on the list since 2003.</p> <p>Judge Meenan declined to state principles that the respondent (or any other Housing Authority) should apply when making offers of Traveller specific and/or suitable accommodation, as requested by the applicant, as he deemed the case was moot. This would effectively involve the Court in providing legal advice. The Judge stated that whether or not an offer of accommodation to a member of the Traveller community is, or is not, reasonable must depend on the facts of the particular case.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, the High Court <i>declined</i> to clarify the principles that Housing Authorities are required to apply when making offers of Traveller specific accommodation, or suitable accommodation for members of the Traveller community.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The key consequence of the case is that no specific guidance was given from the Courts on the principles which housing authorities are required to apply when making offers of Traveller specific accommodation or suitable accommodation for members of the Traveller community, in the context of constitutional and fundamental rights.
Key quotation in original language and translated into English with reference details (max. 500 chars)	'[...] whether or not an offer of accommodation to a member of the Traveller community is, or is not, reasonable must depend on the facts of the particular case'. <i>Crumlish v Donegal County Council</i> [2020] IEHC 233, para. 22.

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. in relation to data protection, and/or artificial intelligence systems.
Decision date	24 February 2020
Reference details	<i>Dwyer v The Commissioner of An Garda Siochana & Ors</i> [2020] IESC 4
Key facts of the case (max. 500 chars)	A man convicted of murder in March 2015 (based largely on retained mobile telephone data) brought a challenge to the Communications (Retention of Data) Act 2011. The challenge sought to have the 2011 Act declared unconstitutional and in breach of EU law. In December 2018, the High Court declared sections 3(1), 6(1) and 7 of the 2011 Act (the sections dealing with retention and access) invalid as contrary to EU law and the principles articulated in <i>Tele2/Watson</i> . This was because it provided for general and indiscriminate retention of telephony data, and permitted access to that data without prior approval by an independent body, and without notification of the affected party. In December 2019, the

	Supreme Court heard an appeal against that decision, and in February 2020 referred three issues of law to the Court of Justice of the European Union.
Main reasoning/argumentation (max. 500 chars)	The judgment of the Supreme Court considers two practical issues resulting from the <i>Tele2/Watson</i> jurisprudence related to the retrospective effect of that jurisprudence, and whether a scheme of internal authorisation within the police force is sufficiently independent to permit access to retained data. For the most part, however, it puts forward a remarkable challenge to the reasoning of the CJEU in the line of cases starting with <i>Digital Rights Ireland</i> , describing it as 'unworkable' (para 5.5) and as 'set[ting] at nought [...] the very significant rights of the victims of serious crime' (para 6.19).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Court summarised the issues to be referred as follows: '(a) Whether a system of universal retention of certain types of metadata for a fixed period of time is never permissible irrespective of how robust any regime for allowing access to such data may be; (b) The criteria whereby an assessment can be made as to whether any access regime to such data can be found to be sufficiently independent and robust; and (c) Whether a national court, should it find that national data retention and access legislation is inconsistent with European Union law, can decide that the national law in question should not be regarded as having been invalid at all times but rather can determine invalidity to be prospective only' (Para 7.2).
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The preliminary reference in this case is in essence an invitation to the CJEU to depart from the <i>Digital Rights Ireland</i> line of cases on mass surveillance, based on a specific finding of fact that: 'The objective of the prevention, investigation, detection and prosecution of serious crime would be significantly compromised in the absence of a general data retention regime' (para 5.5).
Key quotation in original language and translated into English with reference details (max. 500 chars)	'The conclusion [...] that the objective of investigating serious crime cannot justify the universal retention of bulk communications data [...] is a value judgment but one not apparent from the Charter nor, it would appear, one which would be made either under the Convention or the Irish Constitution. In circumstances where the Charter refers to and embodies the common constitutional traditions of the Member States, it is arguable that it

	should not be interpreted in such a way as to impose such a value judgment on Member States at odds with their constitutional traditions [...]’ (Para 6.16).
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Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision relating to the topics addressed in this chapter.
Decision date	24th September 2020
Reference details	<i>N.P(a minor) suing by her Mother and Next Friend B.P. v. the Minister for Education and Skills</i> [2020] IEHC 479
Key facts of the case (max. 500 chars)	The Leaving Certificate State Exam assesses students’ end of secondary school performance and provides a baseline for entry to third level education. Due to COVID-19, the 2020 Leaving Certificate exam could not proceed. In its place, there was a policy for the calculation of grades assessed by teachers as well as a process of further ‘alignment’ within the school and a ‘standardisation’ process by the Department. A policy for ‘out of school learners’ required certification by a registered teacher. The complainant’s tutors were not registered. The Education Department refused to give a calculated grade. The complainant sought a judicial review of the decision.
Main reasoning/argumentation (max. 500 chars)	The complainant argued that the ‘school policy’ did allow certification to be given by a non-registered teacher, as ‘alignment’ was undertaken by a registered teacher within the school. She ‘was not claiming that she was entitled to a calculated grade but, rather, that she should be allowed to be considered for a calculated grade’ and that her rights to equal treatment (Article 40 of the Constitution) had been breached. The Department argued she was seeking a system for herself that was not available to other students, and that she could sit the deferred Leaving Certificate in November 2020.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Irish Constitution provides, under Article 42.2, that ‘parents shall be free to provide this education in their homes, or in private schools, or in schools recognised or established by the State’. Article 40.1 provides: ‘all citizens shall, as human persons, be held equal before the law’. The court was asked to determine whether the policy to calculate grades adopted by the Department, which differentiated in approach between children educated in the

	school and those who were home-schooled, was a breach of the applicant's constitutional rights.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court granted an Order of certiorari quashing the decision of the respondent on 11 August 2020, and repeated on 27 August 2020, refusing to provide a calculated grade to the applicant. It declared that the refusal to provide a 'calculated grade, in any circumstances where the applicant is home schooled by a teacher(s) who is not a registered teacher(s), is irrational, arbitrary, unfair and unlawful'. ¹
Key quotation in original language and translated into English with reference details (max. 500 chars)	'The failure to provide a system for the awarding of an estimated percentage mark to a person in the position of the applicant is unreasonable and irrational and, thus, unlawful [...] In my view, this issue of unfairness could have been readily addressed by the respondent making provision for the involvement of an outside registered teacher in the process, which may result in the award of a calculated grade for a person in the applicant's position.' ²

¹ *N.P. (a minor) suing by her Mother and Next Friend B.P. and the Minister for Education and Skills* [2020] IEHC 479 Para 42

² *N.P. (a minor) suing by her Mother and Next Friend B.P. and the Minister for Education and Skills* [2020] IEHC 479, para. 36 Mr Justice Meenan For more information on the impact of COVID19 on children's education in Ireland see FRA Coronavirus pandemic in the EU – Fundamental Rights Obligations Ireland, Irish Centre for Human Rights at National University of Ireland Galway 4th May 2020 p 4 available at https://fra.europa.eu/sites/default/files/fra_uploads/ie_report_on_coronavirus_pandemic_may_2020_0.pdf .

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide the most relevant high court decision relating to the topics addressed in this chapter.
Decision date	11 March 2020.
Reference details	<i>S v. Minister for Justice and Equality</i> [2020] IECA 74.
Key facts of the case (max. 500 chars)	The appellant was a non-Irish/EU National who sought permission to remain in the State with independent immigration status (i.e., not dependent on his marriage to a Latvian national). He claimed being a victim of domestic violence. The application was rejected. The appellant challenged the refusal, pointing to Domestic Violence Immigration Guidelines 2012 issued by the Irish government. The original decision was upheld. The appellant sought judicial review, which was refused by the High Court. This case was an appeal against that refusal.
Main reasoning/argumentation (max. 500 chars)	The Domestic Violence Guidelines 2012 create a reasonable expectation that an application for an independent visa will be dealt with according to the Guidelines. Nevertheless, the applicant must establish the factual context required by the Guidelines, especially the fact of domestic violence, and the need for independent immigration status in order to escape the violent relationship. The Minister for Justice and Equality is entitled to critically review the evidence submitted by the applicant, and to conclude that the case has not been made.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Guidelines set out six forms of evidence that may be submitted to indicate domestic violence. There is no requirement that all six forms must be submitted, and there is no entitlement to succeed just because all six forms are submitted. It is the quality of the evidence, rather than its quantity that matters. The applicant must also be able to show either ongoing risk, or a future risk of abuse from which the applicant needs to escape.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Minister for Justice and Equality reviewed the evidence and engaged with it as set out in the Guidelines. He was entitled to conclude that the evidence was insufficient. The Minister was also entitled to have regard to the context envisaged by the Guidelines and their purpose. He was entitled to have regard to the fact that the abusive relationship had ended some time before the application had been made, and that he was not dependent on his wife. The High Court's refusal to grant judicial review was upheld.
Key quotation in original language and translated	`[I]t seems to me to be self-evident that some element of ongoing risk (as distinct from ongoing abuse) or some reasonable apprehension of future abuse must be present if the

into English with reference details (max. 500 chars)	protection of the Guidelines is to be triggered. If no such risk is present and in individual is free to live his or her life without fear of abuse, then why protection would be needed' (para.50).
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Thematic area	Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
Decision date	9/6/2020
Reference details	<i>Cunningham v. Irish Prison Service</i> [2020] IEHC 282 ³
Key facts of the case (max. 500 chars)	This High Court appeal case examined whether the Irish Prison Service (IPS) must provide reasonable accommodation to an injured prison officer who could not undertake general work duties due to his disability. The IPS argued they could not provide the accommodation of restricted duties, as he was unable to undertake control and restraint techniques (C&R) cited as fundamental to his role. They argued the IPS had an exemption under s.37 (3) 1998 Employment Equality Act. ⁴ The Court ruled the IPS did not have a blanket exemption to providing reasonable accommodations to disabled prison officers under Irish Domestic Law or EU Law. ⁵
Main reasoning/argumentation	The IPS argued that as Mr Cunningham was permanently unable to return to general duties as a prison officer, they had an exemption in regards to reasonable accommodations under the s.37 (3) 1998 Employment Equality Act. In regards to the exemption Mr Cunningham's counsel

³ The High Court, *Cunningham v Irish Prison Service* [2020] IEHC 282, 9 June 2020, [Record No. 2018/309MCA], available at: <https://lsi.ent.sirsidynix.net.uk/client/search/asset/1042285>.

⁴ Andrew McKeown, 'High Court: disability employment claim remitted to the Labour Court', *Irish Legal News*, 16 June 2020, available at: <https://www.irishlegal.com/article/high-court-disability-employment-claim-remitted-to-the-labour-court>.

⁵ Irish Legal News, 'Disabled prison officers have right to reasonable workplace accommodations', 9 June 2020, available at: <https://www.irishlegal.com/article/disabled-prison-officers-have-right-to-reasonable-workplace-accommodations#:~:text=Disabled%20prison%20officers%20have%20a,their%20work%2C%20judges%20have%20ruled.&text=This%20ruling%20is%20a%20positive,during%20the%20course%20of%20employment.%E2%80%9D>

(max. 500 chars)	stated the Employment Equality Act 1988 (Article 1) was enacted to implement Council Directive 2000/78/EC of 27 November, to combat discrimination on a number of grounds including disability. They discussed the EU and Ireland being signatories to the CRPD and cited the judgment in the Supreme Court in the 2019 <i>Nano Nagle School v Marie Daly</i> ⁶ that ruled that the Directive when related to disability had to align with the CRPD.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The case reaffirmed that access to work is an essential part of the human dignity of PWD's. It clarifies that while there are some limited exemptions allowed under Irish Equality Law, these need to be interpreted and applied narrowly. ⁷ This is particularly important in regards to PWD's who require special accommodations while working in emergency services. The most significant legal clarification of the case is that there is no blanket exemption to the IPS in regards to providing reasonable accommodations to disabled prison officers under Irish Domestic Law or EU Law. ⁸
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Mr Justice Anthony Barr stated that justice requires the PWD to be given the chance to make their case that they could perform the function required of them if reasonable accommodations were made. Although the judge could see 'the force of the argument' that C&R is an important requirement generally, he said that there may be alternative prison officer duties which could be undertaken by Mr Cunningham that would not involve C&R, and which would not adversely affect the IPS operational capacity. ⁹ The court said that everything will turn on the facts of a particular case and the size and nature of the emergency services concerned. The Court allowed the appeal and remitted the matter to the Labour Court for a consideration of all the factual evidence. ¹⁰

⁶ Supreme Court, *Nano Nagle School v Marie Daly* [2019] IESC 00031, July 2019, available at: https://www.courts.ie/acc/alfresco/404f4f32-284e-44d1-ab9391aadc4e4d09/2019_IESC_63_2.pdf/pdf#view=fitH.

⁷ Irish Human Rights and Equality Commission (2020), 'Human Rights and Equality Commission welcomes significant high court ruling in disability rights and employment case', press release, 9 June 2020, available at: <https://www.ihrec.ie/human-rights-and-equality-commission-welcomes-significant-high-court-ruling-in-disability-rights-and-employment-case/>.

⁸ Irish Human Rights and Equality Commission (2020), 'Human Rights and Equality Commission welcomes significant high court ruling in disability rights and employment case', press release, 9 June, 2020, available at: <https://www.ihrec.ie/human-rights-and-equality-commission-welcomes-significant-high-court-ruling-in-disability-rights-and-employment-case/>.

⁹ Andrew McKeown, 'High Court: disability employment claim remitted to the Labour Court', *Irish Legal News*, 16 June 2020, available at: <https://www.irishlegal.com/article/high-court-disability-employment-claim-remitted-to-the-labour-court>.

¹⁰ Andrew McKeown, 'High Court: disability employment claim remitted to the Labour Court', *Irish Legal News*, 16 June 2020, available at: <https://www.irishlegal.com/article/high-court-disability-employment-claim-remitted-to-the-labour-court>.

Key quotation in original language and translated into English with reference details (max. 500 chars)	'It is clear from the decision in the Nano Nagle case that there has been a paradigm shift in the way disability is viewed in European and Irish Law. This has been brought about by the implementation in Irish law of the Framework Directive in the Employment Equality Act (as amended), and in particular by the general duty of providing reasonable accommodation which is placed upon the employer by s16 of the Act. The judgment of the CJEU referred to earlier, and the judgment of the Supreme Court in the Nano Nagle case, makes it clear that the provisions of the CRPD are also relevant to the question of the correct interpretation of the Act. The court must interpret 37.3 of the 1988 Act in light of Article 27 of the CRPD to which both the EU and Ireland are signatories'. ¹¹
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¹¹ Judgment of Mr Justice Barr, 9th of June 2020, Para 63, [2020] IEHC 282, available at: https://lsi.ent.sirsidynix.net.uk/client/search/asset/1042285_768/927.