

# **Franet National contribution to the Fundamental Rights Report 2020**

**Ireland**

**Contractor's name:** Irish Centre for Human Rights, NUI Galway

**Authors' name:** Stefano Angeleri, James Carr, Conor Hanly, Connie Healy, TJ McIntyre, Catriona Moloney, Clíodhna Murphy, Stephen O'Hare, Niamh Reilly

**Senior Legal Expert:** Siobhán Mullally

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## Franet country study: policy and legal highlights 2019

<b>Issues in the fundamental rights institutional landscape</b>	<p><b>Entry into force of the Istanbul Convention:</b></p> <p>In 2019, the <a href="#">Council of Europe Convention on preventing and combating violence against women and domestic violence</a>, CETS No. 210/2011, was ratified and entered into force in Ireland.</p>
<b>EU Charter of Fundamental Rights</b>	<p><b>Retention of data:</b></p> <p>In January 2019, the High Court handed down the judgment in <a href="#">Dwyer vs The Commissioner of An Garda Síochána and others</a>, which declared that the domestic data retention act contravened EU law, citing articles 7, 8 and 52 (1) of the EU Charter of Fundamental Rights. An appeal before the Supreme Court is pending.</p>
<b>Equality and non-discrimination</b>	<p><b>Blasphemy:</b></p> <p>The <a href="#">Blasphemy (Abolition of Offences and Related Matters) Act 2019</a> was introduced to abolish the offences of blasphemy and blasphemous libel and bring related laws in line with this change.</p> <p><b>LGBTQI+ and RSE:</b></p> <p><a href="#">New policy recommendations</a> were introduced to reform relationship and sexuality education in schools to include LGBTQI+ experiences.</p> <p><b>Older workers:</b> An <a href="#">ESRI ageing and work report</a> examined obstacles to workforce participation by older people.</p>
<b>Racism, xenophobia &amp; Roma integration</b>	<p><b>Anti-Racism initiatives:</b></p> <p>An Garda Síochána announced that it had altered its <a href="#">uniform policy</a> to cater for greater (religious) diversity in Ireland. The <a href="#">European Network Against Racism Shadow Report</a>, the <a href="#">Fifth Report</a> by the European Commission against Racism and Intolerance (ECRI) and the concluding <a href="#">observations</a> of the CERD review on Ireland made observations and recommendations to address racism and xenophobia in the state.</p> <p><b>Cultural heritage and Travellers communities:</b></p> <p>On 18 July 2019, <a href="#">Cant/Gammon</a> (the traditional language spoken by Irish Travellers) and <a href="#">Traveller Tinsmithing</a> were among thirty cultural practices officially recognised within the Irish <a href="#">National Inventory of Intangible Cultural Heritage</a>.</p>
<b>Asylum &amp; migration</b>	<p><b>Migrant children:</b></p> <p>No significant developments in 2019.</p>
<b>Data protection and digital society</b>	<p><b>Data Protection Commission:</b></p> <p>Funding for the Data Protection Commission (DPC) continues to rise, <a href="#">though by less than was asked for in 2019</a>. As lead supervisory authority, the DPC, has opened investigations into numerous internet industry data breaches and systemic practices in 2019, <a href="#">with draft decisions on Twitter and WhatsApp due by end 2019</a>. The most significant other work of the DPC in 2019 was the <a href="#">finding that the Public Services Card scheme is largely without legal basis</a>. A Supreme Court hearing on the validity of domestic data retention law <a href="#">took place in December 2019</a> and judgment is expected in 2020.</p>
<b>Rights of the child</b>	<p><b>Criminal Justice:</b></p> <p>In 2019, the domestic criminal justice framework went under review by the <a href="#">Irish Penal Reform Trust</a> and the (national) <a href="#">Special Rapporteur for Child Protection</a>, that raised concerns regarding how domestic rules meet the specific needs of children in criminal proceedings. A report was published by the <a href="#">UN Special Rapporteur on the sale and sexual exploitation of children</a> on her visit to Ireland.</p>
<b>Access to justice, including</b>	<p><b>Implementation of measures for victims of crime and against gender-based violence:</b></p> <p>An Garda Síochána is <a href="#">continuing to roll out</a> divisional Protective Services Units throughout</p>

<b>victims of crime</b>	the country. A new <a href="#">Domestic Violence Act</a> entered into force on 1 January 2019 and it includes the new offence of coercive control.
<b>Convention on the Rights of Persons with Disability</b>	<b>Employment, Persons with disabilities and reasonable accommodation:</b> Supreme Court case <a href="#">Nano Nagle School -v- Daly [2019] IESC 63</a> established a higher standard for employers regarding their duty to take appropriate measures to provide reasonable accommodation and an expectation of employee consultation in the process.

# Chapter 1. Equality and non-discrimination

## Legal and policy developments in 2019 relevant to combating discrimination based on gender identity, religion or belief, disability, age or sexual orientation

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in Ireland on 1 July 2019. The Convention aims ‘to implement measures to protect the rights of victims [of gender-based violence] [...] without discrimination on any ground’ including sexual orientation and gender identity.<sup>1</sup> The Irish Human Rights and Equality Commission (IHREC), Ireland’s national human rights and equality institution, noted obstacles to monitoring implementation of the Convention including inadequate data and research, and chronic under-reporting of gender-based violence (GBV), especially by victims from marginalised communities.<sup>2</sup> The Department of Justice and Equality (DoJE) and Central Statistics Office (CSO) committed to undertake a national survey on the prevalence of sexual violence.<sup>3</sup> The IHREC called for the survey to ‘document the incidences of violence against specific groups [...] including women with disabilities [...] and] from the LGBTQI+ community.’<sup>4</sup> The Domestic Violence Act 2018 came into effect in 2019, significantly strengthening the rights of victims. The Domestic Violence (Amendment) Bill 2019 provides for the establishment and conduct of domestic homicide reviews and the Domestic Violence (No-contact order) (Amendment) Bill 2019 aims to prohibit communication from a respondent where harassment has taken place against an applicant. Both IHREC and the Law Reform Commission include tackling persistent deficiencies in access to justice in relation to sexual and gender-based violence as key programmatic priorities in 2019.<sup>5</sup> The Redress for Women Resident in Certain Institutions (Amendment) Act 2019, which primarily benefits older female survivors of institutional abuse, extends the benefits of the original 2015 redress act to women who had worked in Magdalene laundries while residing in different institutions.

The Gender Pay Gap Information Bill 2019 aims to require employers of more than 50 people to publish data on the remuneration of their employees by gender and to address any inequalities. A new Parental Leave (Amendment) Act 2019 increases unpaid parental leave weeks from 18 to 26 with respect to children up to 12 years, and up to 16 years for children with disabilities. More generally, a parliamentary motion was agreed to convene a Citizens’ Assembly to formulate proposals ‘to advance gender equality’.<sup>6</sup> In the field of education, the parliamentary Joint Committee on Education and Skills Report on Relationships and Sexuality Education (RSE) recommended that the RSE programme be updated ‘to produce a gender equality-based [...] curriculum.’<sup>7</sup> It calls for ‘any updated [...] RSE programme [to be] fully inclusive of LGBTQI+ relationships and experiences’ and for the creation of a mechanism

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<sup>1</sup> Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No. 210, 2011, Art. 4(3).

<sup>2</sup> IHREC (2019), ‘Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence’, July 2019, p. 2 available at: [www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Combating-Violence-Against-Women-and-Domestic-Violence.pdf](http://www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Combating-Violence-Against-Women-and-Domestic-Violence.pdf).

<sup>3</sup> Ireland, Department of Justice and Equality (2019), ‘Department of Justice and Equality and the Central Statistics Office sign Memorandum of Understanding on the Undertaking of a National Sexual Violence Prevalence Study’, press release, 10 January 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000007](http://www.justice.ie/en/JELR/Pages/PR19000007).

<sup>4</sup> IHREC (2019), ‘Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence’, p. 3.

<sup>5</sup> IHREC (2019), ‘Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence’, p. 8; Law Reform Commission (2019), ‘Report: Fifth Programme of Law Reform’, LRC120, 4 June 2019, p. 7, available at: [www.lawreform.ie/news/fifth-programme-of-law-reform.857.html](http://www.lawreform.ie/news/fifth-programme-of-law-reform.857.html).

<sup>6</sup> Ireland, Dáil Éireann (2019), ‘Citizens’ Assembly on Gender Equality: Motion’, 9 July 2019.

<sup>7</sup> Ireland, Houses of the Oireachtas (2019), ‘Joint Committee on Education and Skills Report on Relationships and Sexuality Education’, 32/ES/20, January 2019, p. 26.

to monitor the collection of data in schools regarding homophobic and transphobic bullying.<sup>8</sup> Regarding participation in culture and the arts, the Arts Council's 'Equality, Human Rights and Diversity Policy and Strategy (2019-2021)' asserts the national body's 'absolute commitment [...] to take positive policy measures to promote equality of opportunity, access and outcomes for all those living in Ireland regardless of their gender, sexual orientation, [...] religion, age, [or] disability.'<sup>9</sup>

Ireland's third national action plan on women, peace and security reasserts the centrality of rights, equality and inclusion in policy efforts to achieve peace and address the effects of conflict. It recognises that women 'face many and varied forms of discrimination including being a member of religious, [...] LGBTQI+ and migrant communities and as a result of experiencing a disability' and that 'women who have come from conflict contexts are now living in Ireland and require a diversity of services in order to aid the recovery process.'<sup>10</sup> On matters relating to religious diversity, a parliamentary debate on Church-State relations took place on 21 May 2019, during which the Taoiseach indicated the Government's policy approach to 'build a new relationship between church and State in Ireland [...] in 'which religion is no longer at the centre of our society but in which it can still play an important part.'<sup>11</sup> A plenary meeting with members of the government and representatives of almost 30 different churches, faith communities and non-confessional organisations followed in Dublin on 4 July 2019.<sup>12</sup> The Blasphemy (Abolition of Offences and Related Matters) Act 2019 was introduced to abolish the offences of blasphemy and blasphemous libel and bring related laws in line with this change.<sup>13</sup>

### **Research findings, studies or surveys on either experiences of discrimination or rights awareness**

*Future Jobs Ireland 2019* sets a Government target to increase the employment participation rate among older people over 55 from 34.3% currently to over 38 % by 2025.<sup>14</sup> A report by the Economic and Social Research Institute (ESRI) explores the retention of older workers in Ireland, drawing on several sources of qualitative and quantitative data, including from the Central Statistics Office and relevant government departments.<sup>15</sup> The report notes that social ageing biases can lead to forms of age-based discrimination whereby 'despite older workers routinely displaying the same work capacity as younger workers, employers and managers often see them as less efficient and costlier.'<sup>16</sup> It finds that workers who exit the workforce in their 50s do so for four main reasons: retirement, dismissal or redundancy, caring responsibilities, and illness or disability', noting that 'Women are much more likely than men to

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<sup>8</sup> Ireland, Houses of the Oireachtas (2019), 'Joint Committee on Education and Skills Report on Relationships and Sexuality Education', 32/ES/20, January 2019, 32/ES/20, p. 27.

<sup>9</sup> The Arts Council (2019), *Arts Council Equality, Human Rights & Diversity Policy & Strategy (2019-2021)*, Dublin, p. 5, available at: <http://www.artscouncil.ie/uploadedFiles/EHRD%20Policy%20English%20version%20Final.pdf>.

<sup>10</sup> Government of Ireland (2019), *Women, Peace and Security Ireland's Third National Action Plan for the implementation of UNSCR 1325 and related resolutions, 2019-2024*, Dublin, pp. 16, 19, available at: <https://www.dfa.ie/media/dfa/ourrolepolicies/womenpeaceandsecurity/Third-National-Action-Plan.pdf>.

<sup>11</sup> Ireland, Dáil Éireann (2019), 'Church-State Relations (Debate)', 21 May 2019.

<sup>12</sup> Ireland, Department of the Taoiseach (2019), 'Church State Dialogue - Plenary Meeting with Churches, Faith Communities and Non-Confessional Organisations', press release, 4 July 2019, available at: <https://www.gov.ie/en/press-release/9374bc-church-state-dialogue-plenary-meeting-with-churches-faith-communitie/>.

<sup>13</sup> Ireland, Houses of the Oireachtas (2019), 'Blasphemy (Abolition of Offences and Related Matters) Act', 21 December 2019, available at: <https://www.oireachtas.ie/en/bills/bill/2019/59/>.

<sup>14</sup> Government of Ireland (2019), *Future Jobs Ireland 2019*, Dublin, p. 60, available at: <https://dbei.gov.ie/en/Publications/Publication-files/Future-Jobs-Ireland-2019.pdf>.

<sup>15</sup> Privalko, I., Russell, H. and Maître B. (2019), 'The Ageing Workforce in Ireland: Working Conditions, Health and Extending Working Lives', *Research Series*, No. 92, October 2019, available at: [www.esri.ie/system/files/publications/RS92\\_0.pdf](http://www.esri.ie/system/files/publications/RS92_0.pdf).

<sup>16</sup> Privalko, I., Russell, H. and Maître B. (2019), 'The Ageing Workforce in Ireland: Working Conditions, Health and Extending Working Lives', *Research Series*, No. 92, October 2019, available at: [www.esri.ie/system/files/publications/RS92\\_0.pdf](http://www.esri.ie/system/files/publications/RS92_0.pdf), p. 4.

cite caring responsibilities as the reason for early exit.<sup>17</sup> The report recommends measures 'to retain workers who develop a disability or illness [...] [to] address one source of involuntary early exits among older workers' and highlights 'a significant portion of older workers [are in] low-quality jobs with poor pay and conditions', which are factors associated with early workforce exit.<sup>18</sup>

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<sup>17</sup> Privalko, I., Russell, H. and Maître B. (2019), 'The Ageing Workforce in Ireland: Working Conditions, Health and Extending Working Lives', *Research Series*, No. 92, October 2019, available at: [www.esri.ie/system/files/publications/RS92\\_0.pdf](http://www.esri.ie/system/files/publications/RS92_0.pdf), pp. xi, xiii.

<sup>18</sup> Privalko, I., Russell, H. and Maître B. (2019), 'The Ageing Workforce in Ireland: Working Conditions, Health and Extending Working Lives', *Research Series*, No. 92, October 2019, available at: [www.esri.ie/system/files/publications/RS92\\_0.pdf](http://www.esri.ie/system/files/publications/RS92_0.pdf), pp. 12, 42.

## Chapter 2. Racism, xenophobia and related intolerance

### Legal, policy developments and measures relating to the application of the Racial Equality Directive

#### 1.1. An Garda Síochána opens recruitment competition for Garda trainees - Uniform policy

On 4 April 2019, it was announced in the context of a recruitment drive that An Garda Síochána (AGS) had altered its uniform policy to cater for greater diversity in Ireland. In particular, this alteration permits members of religious minorities to join the AGS and maintain dress code requirements. For example, Muslim women in Ireland can wear the hijab and Sikh men can wear the turban. As noted in the AGS press release, the inability to wear items of religious significance has heretofore acted as a barrier to members of minority faiths joining the AGS. AGS acknowledged the ‘need to become a much more diverse organisation so that we properly reflect the society we serve’.<sup>19</sup>

#### 1.2. Irish Human Rights and Equality Commission strategy statement 2019-2021

The Irish Human Rights and Equality Commission (IHREC) released its Strategy Statement (henceforth Statement) for 2019-21 on 6 February 2019.<sup>20</sup> The Statement outlines four strategic priorities:

- 1) *Protect the rights of individual persons who face the greatest barriers to justice.* For example, through raising awareness of rights, public outreach between IHREC and those in need of support, engaging as *amicus curiae* in cases of strategic litigation.
- 2) *Influence legislation, policy and practice.* For example, by holding government and public bodies accountable, engaging in research, ensuring effective compliance through use of enforcement powers of ‘Public Sector Equality and Human Rights duty’.<sup>21</sup>
- 3) *Engage with key organisations to address discrimination and human rights abuses.* To include reaching out to civil society, strengthening relationships and ‘advancing mandate’ with same.
- 4) *Raise the quality and broaden the extent of dialogue on human rights and equality issues.* Encouraging a culture of human rights and equality through education inter alia, promoting human rights as multifaceted and inter-connected phenomena identify and respond to human rights and equality issues in the State.

#### 1.3. Implementing the Public Sector Equality and Human Rights Duty

On 1 March 2019, the Irish Human Rights and Equality Commission (IHREC) published a guidance document on the implementation of the Public Sector Equality and Human Rights Duty (henceforth the Duty).<sup>22</sup> The Duty has been in Irish law since 2014 and ‘places a statutory obligation on public bodies to eliminate discrimination, promote equality of opportunity and protect human rights’ of staff and

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<sup>19</sup> An Garda Síochána (2019), ‘An Garda Síochána Opens Recruitment Competition for Garda Trainees’, 4 April 2019, available at: [www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2019/april/an-garda-siochana-opens-recruitment-competition-for-garda-trainees.html](http://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2019/april/an-garda-siochana-opens-recruitment-competition-for-garda-trainees.html).

<sup>20</sup> Irish Human Rights and Equality Commission (2019), *Strategy Statement 2019-2021*, IHREC Dublin, 6 February 2019, available at: [www.ihrec.ie/app/uploads/2019/02/Final-Strategy-Statement-ENG-VERSION.pdf](http://www.ihrec.ie/app/uploads/2019/02/Final-Strategy-Statement-ENG-VERSION.pdf); see also Irish Human Rights and Equality Commission (2019), ‘Be Heard: Ending racial discrimination in Ireland’, event 20 March 2019, available at: [www.ihrec.ie/events/be-heard-ending-racial-discrimination-in-ireland/](http://www.ihrec.ie/events/be-heard-ending-racial-discrimination-in-ireland/).

<sup>21</sup> See information on this ‘guidance document’ below at section 1.3.

<sup>22</sup> Irish Human Rights and Equality Commission (2019), ‘Implementing the Public Sector Equality and Human Rights Duty’, Guidance Document, 1 March 2019, available at: [www.ihrec.ie/documents/implementing-the-public-sector-equality-and-human-rights-duty/](http://www.ihrec.ie/documents/implementing-the-public-sector-equality-and-human-rights-duty/).

service users. The Duty extends to third parties financed in part or wholly by public money. The guidance provides an ‘initial framework for public bodies to embark on implementing’ their statutory responsibilities vis the Duty.

#### **1.4. Committee on the Elimination of Racial Discrimination (CERD): Concluding observations on the combined fifth to ninth reports of Ireland**

Review meetings on the Government of Ireland’s performance vis tackling racial discrimination were held on the 2<sup>nd</sup> and 3<sup>rd</sup> of December. The IHREC (independent public body accountable to the legislature), the Irish Centre for Human Rights and a number of civil society organisations submitted reports detailing their perspectives on Ireland’s performance as an alternative to the official position.<sup>23</sup> In response to all submissions, the CERD published concluding observations among which, and relevant to the Directive include:

- A) that a review be undertaken of the Equal Status Acts to ensure that they are comprehensively incorporating intersectionality for example;
- B) that legislation is introduced in relation to racial profiling;
- C) that the State take measures to combat discrimination against people of African descent, including challenging stereotypes about same;
- D) the State must take measures to challenge discrimination against members of the Traveller Community and Roma in relation to housing;
- E) that the State take measures to improve the employment, education and accommodation conditions for members of the Traveller Community and Roma;
- F) that the State “strengthen” human rights and equality training for police officers.<sup>24</sup>

#### **Legal, policy developments and measures relating to the application of the Framework Decision on Racism and Xenophobia**

##### **2.1. Department of Justice and Equality: Ministerial announcement of new Anti-Racism Committee (relevant to section one above also)**

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<sup>23</sup> Irish Human Rights and Equality Commission (2019), ‘Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5<sup>th</sup> to 9<sup>th</sup> Report’, available at: [www.ihrec.ie/app/uploads/2019/11/IHREC\\_CERD\\_UN\\_Submission\\_Oct\\_19.pdf](http://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf); Irish Centre for Human Rights, National University of Ireland, Galway (2019), ‘Shadow Report submitted in response to Ireland’s Joint 5<sup>th</sup> to 9<sup>th</sup> Periodic Report to the United Nations Committee on the International Convention on the Elimination of All Forms of Racial Discrimination’, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_NGO\\_IRL\\_38607\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_38607_E.pdf); Irish Network Against Racism (2019), ‘Alternative Report on Racial Discrimination in Ireland’, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_NGO\\_IRL\\_39711\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_39711_E.pdf); Shweppe, J. and Haynes, A. (2019) ‘Alternative Report on Hate Crime and Related Issues: In response to Ireland’s Fifth, Sixth and Seventh Periodic Reports to the Committee on the Elimination of All Forms of Racial Discrimination’ *Coalition Against Hate Crime*, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_NGO\\_IRL\\_38606\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_38606_E.pdf).

<sup>24</sup> Committee on the Elimination of Racial Discrimination (2019), Advance Unedited Version: Concluding observations on the combined fifth to ninth reports of Ireland, 12 December 2019, [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_COC\\_IRL\\_40806\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf).

On the 28 June 2019, the Minister of State with responsibility for Equality, Immigration and Integration announced the establishment of a new Anti-Racism Committee (ARC) for later in the year.<sup>25</sup> The ARC will have two ‘strands’:

- A. A public sector strand to allow for more in-depth discussions of what needs to be done by public sector organisations and how it can be done;
- B. An expert strand that will consider how to develop a clear understanding of racism, where it occurs, and what can be done to combat it, drawing on international experience.

Membership of the ARC will include ‘representatives from the public, private and voluntary sector and expert views’ and ‘will hold a stakeholder dialogue to assess the latest evidence and to identify the views of wider civil society, the business sector, media and other relevant parties’.

## **2.2. Hate Speech Legislation Consultation and Hate Crime Research**

In October 2019, the Department of Justice and Equality (DoJE) sought responses/submissions from institutional/community stakeholders and the broader public as part of a consultative review of hate speech legislation with the aim of improving its effectiveness.<sup>26</sup> Inter alia, the IHREC made a submission to the review in December.<sup>27</sup> In announcing the consultation, the Minister of State David Stanton noted that the DoJE was engaged in comparative international research on effective hate crime legislation that would inform efforts to draft and implement same in Ireland. The research is to be published in 2020 and then opened for public consultation.<sup>28</sup>

## **2.3. The Migrant Integration Strategy 2017-2020 and the 2019 Progress Report.**

Furthermore, on 28 June 2019, the Minister of State with responsibility for Equality, Immigration and Integration submitted the Progress Report (henceforth Report) on the National Migrant Integration Strategy (MIS). On the public policy theme of ‘Promoting Intercultural Awareness and Combatting Xenophobia’, the Report documents and commends actions such as the funding of integration and anti-racism orientated activities with various parties.<sup>29</sup> The Report notes three action areas of the MIS whose status in terms of development is ‘minor problems/delays’, including:

- A. Only 10 (22%) of Government agencies/departments provide intercultural awareness training;
- B. Despite efforts to increase reporting, reported figures on hate crime remain low;
- C. With specific reference to the EU Framework Decision 2008/913/JHA, the Report notes the ongoing review of the Prohibition of Incitement to Hatred Act and ongoing considerations of legislative change vis-à-vis hate crime.

In reference to point C, the Report notes that the ‘Department [of Justice and Equality] has included in its research plan for 2019 a project to consider approaches taken to hate crime in other jurisdictions [...] the outcome of that will inform any future legislative reform’. Finally, the Report notes that only four

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<sup>25</sup> Ireland, Department of Justice and Equality (2019), ‘Ministerial Announcement of new Anti-Racism Committee’, press release, 28 June 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000174](http://www.justice.ie/en/JELR/Pages/PR19000174).

<sup>26</sup> Ireland, Department of Justice and Equality (2019), ‘Hate Speech Consultation’, available at: [www.justice.ie/en/JELR/Pages/Hate\\_Speech\\_Public\\_Consultation](http://www.justice.ie/en/JELR/Pages/Hate_Speech_Public_Consultation).

<sup>27</sup> Irish Human Rights and Equality Commission (2019). ‘Review of the Prohibition of Incitement to Hatred Act 1989’, available at: [www.ihrec.ie/app/uploads/2019/12/Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989.pdf](http://www.ihrec.ie/app/uploads/2019/12/Review-of-the-Prohibition-of-Incitement-to-Hatred-Act-1989.pdf).

<sup>28</sup> Ireland, Department of Justice and Equality (2019), ‘Ministers Flanagan and Stanton launch consultation on hate speech’, 24 October 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000263](http://www.justice.ie/en/JELR/Pages/PR19000263).

<sup>29</sup> Ireland, Department of Justice and Equality (2019), ‘The Migrant Integration Strategy 2017-2020 - Progress Report to Government – Office for the Promotion of Migrant Integration, June 2019, available at: [www.justice.ie/en/JELR/The%20Migrant%20Integration%20Strategy%202017-2020.pdf/Files/The%20Migrant%20Integration%20Strategy%202017-2020.pdf](http://www.justice.ie/en/JELR/The%20Migrant%20Integration%20Strategy%202017-2020.pdf/Files/The%20Migrant%20Integration%20Strategy%202017-2020.pdf).

of twenty-two (18%) Government agencies/departments with public offices display information on how to report racist activity/experiences.

#### **2.4. European Network Against Racism Shadow Report (2014-2018)**

The launch of the European Network Against Racism Shadow Report (2014-2018) took place on 12 September 2019.<sup>30</sup> Key points relevant to Ireland, as noted in the Shadow Report, include:

- A. Despite having the facility, ‘evidence suggests that the police do not take reports of racist crime seriously or they do not believe victims of racially motivated crimes’;
- B. Relatedly, ‘evidence suggests [...] a lack of training and clarity of when to apply the [MacPherson] definition’ across the police, and there is ‘extensive evidence of racist motives not being recorded with criminal offences because of inadequate understanding on the part of police officers’;
- C. The Shadow Report notes insufficient allocation of police resources (‘training, expertise or staffing’) as a ‘key problem’;
- D. ‘The European Commission should assess [...] Ireland’s implementation of the Council Framework Decision 2008/913/JHA and provide direct support to ensure compliance’;
- E. Finally, contributions by members of the Irish public evidence a distrust on the part of the police because of a perceived practice of racial profiling (**relevant to section one above also**).

#### **2.5. An Garda Síochána Diversity and Integration Strategy (2019-2021)**

October 9<sup>th</sup> witnessed the launch of the Garda Síochána Diversity and Integration Strategy (2019-21). The Strategy presents a number of promising practices relating to the Framework Decision. In particular, the Strategy provides working definitions of what constitutes both a hate crime and a hate incident. The Garda Commissioner notes in the Strategy will ‘facilitate enhanced reporting, recording, investigating and prosecuting mechanisms in respect of hate crime and the introduction of a Pulse record for non-crime hate incidents’.<sup>31</sup> The Strategy emphasises the multifarious grounds upon which people can be the target of hate crimes/incidents, as well as the legal requirement of An Garda Síochána as a public body to eliminate discrimination and promote human rights.<sup>32</sup> The Strategy notes that ‘a significant focus of this strategy over the next three years is aimed at enhancing the identification, reporting, investigation and prosecution elements of hate crime’.<sup>33</sup> This will necessitate training for staff as well as updates to relevant information technology systems. In addition to recording hate crimes and incidents, the Strategy refers to the introduction of an online tool to capture reports of hate crime. Finally, the Strategy notes a commitment on the part of An Garda Síochána to inform the public of trends in hate crime and the publication of annual reports.<sup>34</sup>

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<sup>30</sup> European Network Against Racism (2019), ‘Racist Crime and Institutional Racism in Europe: Shadow Report (2014-2018)’, 12 September 2019, available at [www.enar-eu.org/IMG/pdf/shadowreport2018\\_final-embargoed\\_12-09-2019.pdf](http://www.enar-eu.org/IMG/pdf/shadowreport2018_final-embargoed_12-09-2019.pdf).

<sup>31</sup> An Garda Síochána (2019), ‘An Garda Síochána Diversity and Integration Strategy 2019-2021,’ 9 October 2019, p.3, available at: [www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-national-diversity-integration-unit/diversity-and-integration-strategy-2019-2021-english-v1-1.pdf](http://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-national-diversity-integration-unit/diversity-and-integration-strategy-2019-2021-english-v1-1.pdf).

<sup>32</sup> An Garda Síochána (2019), ‘An Garda Síochána Diversity and Integration Strategy 2019-2021,’ 9 October 2019.

<sup>33</sup> An Garda Síochána (2019), ‘An Garda Síochána Diversity and Integration Strategy 2019-2021,’ 9 October 2019, p.5.

<sup>34</sup> An Garda Síochána (2019), ‘An Garda Síochána Diversity and Integration Strategy 2019-2021,’ 9 October 2019.

## **2.6. Data on hate crime submitted by An Garda Síochána to OSCE’s ODIHR Hate Crime Reporting**

The latter part of 2019 saw the first publication of data on hate crime in Ireland on the OSCE’s ODIHR Hate Crime Reporting figures (since 2015).<sup>35</sup> These data are disaggregated across a number of identity grounds and their submission is a very promising development.

## **2.7. Council of Europe: European Commission against Racism and Intolerance: Fifth Report on Ireland.**

The Fifth Report on Ireland by the European Commission against Racism and Intolerance (ECRI), published on 2 April 2019, identified a number observations and recommendations to address racism and xenophobia in the State.<sup>36</sup> These are addressed in detail in the ECRI Report and the following list refers to some key recommendations of interest here.

- A. New hate crime and hate speech legislation be enacted, informed by consultation civil society actors;
- B. An improved mechanism for the collection of disaggregated data on hate crime and hate speech be established;
- C. All police to be trained on ‘identifying, recording and investigating hate crime’;
- D. A third party, alternative, hate crime reporting mechanism be created;
- E. Ethnic’ profiling by police be both defined and legally prohibited;
- F. Ireland develop a new National Action Plan Against Racism;
- G. Finally, the reference to Muslims in the context of ‘radicalisation’ in the Migrant Integration Strategy be removed.
- H. **Of relevance to section one above**, the Fifth Report also notes Equal Status and Employment Acts be amended to include ‘segregation, inciting another to discriminate and aiding another to discriminate as forms of discrimination’. Furthermore, efforts should be taken by the State to support the accommodation and education needs of the Traveller Community.

## **2.8. Committee on the Elimination of Racial Discrimination (CERD): Concluding observations on the combined fifth to ninth reports of Ireland**

As noted in section 1.4, the Irish State’s performance vis-à-vis racism was subject to review by the CERD in December. A number of recommendations were also made that relate to the Framework Decision. These can be read in detail in the CERD conclusions and include:<sup>37</sup>

- A) Strengthen hate speech legislation;
- B) Endeavour to address online hate speech;
- C) Investigate and prosecute hate speech;<sup>38</sup>

In relation to hate crime:

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<sup>35</sup> Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (2019), ‘Hate Crime Reporting: Ireland,’ November 2019.

<sup>36</sup> Council of Europe, European Commission against Racism and Intolerance (2019), *Fifth Report on Ireland*, 2 April 2019, Strasbourg, available at: [www.coe.int/en/web/european-commission-against-racism-and-intolerance/ireland](http://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ireland).

<sup>37</sup> United Nations (UN). Committee on the Elimination of Racial Discrimination (2019), (CERD/C/IRL/CO/5-9), *Concluding observations on the combined fifth to ninth reports of Ireland*, 12 December 2019, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT\\_CERD\\_COC\\_IRL\\_40806\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf)

<sup>38</sup> United Nations (UN). Committee on the Elimination of Racial Discrimination (2019), (CERD/C/IRL/CO/5-9), *Concluding observations on the combined fifth to ninth reports of Ireland*, 12 December 2019.

- A) Introduce legislation that addresses racism as an “aggravating circumstance” with an associated facility for increased penalties in such cases;
- B) Take efforts to promote the recording and reporting of racist hate crime;
- C) Provide training for members of the judiciary and the police vis recognising, registering, investigation and prosecution of racist hate crime;
- D) Legislate to declare and ‘illegal and prohibit racist organisations’.<sup>39</sup>

In relation to both the Decision and the Directive, the CERD also recommend that the Irish State draft and implement a new National Action Plan Against Racism.

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<sup>39</sup> United Nations (UN). Committee on the Elimination of Racial Discrimination (2019), (CERD/C/IRL/CO/5-9), *Concluding observations on the combined fifth to ninth reports of Ireland*, 12 December 2019.

## Chapter 3. Roma integration

### Measures and developments addressing Roma/Traveller segregation

On 23 September 2019, the Minister for Education and Skills announced that schools will be required to give formal notification of the use of *reduced timetables* (for example, reduced school hours) to the Child and Family Agency (Tusla).<sup>40</sup> This followed concerns expressed by the Ombudsman for Children about the inappropriate use of reduced timetables as an informal suspension to deal with perceived difficult behaviour in the classroom.<sup>41</sup> Young people that are disproportionately affected include those from the Traveller and Roma communities and those with disabilities.<sup>42</sup> The Minister is currently seeking the views of education partners on the proposed guidelines, which are intended to provide clarity to schools around reduced timetables and to set out the procedures to be followed by schools where such an option is being considered and used. Among other things, the proposals would require schools to provide a rationale for the reduced timetable. The consent of the parent or guardian would also be required.<sup>43</sup> However, the proposed guidelines do not appear to require that the ethnicity of the young person be recorded and reported on.

### Policy and legal measures and developments directly or indirectly addressing Roma/Traveller inclusion

In June 2019, the Irish Human Rights and Equality Commission (IHREC) announced a ‘national review of local authorities’ provision of Traveller accommodation’. The statutory equality reviews,<sup>44</sup> requested each county and city council to focus on failures to draw down capital budget and meet obligations on Traveller-specific accommodation. The review will also oblige councils to examine specifically whether any such failings may be due to discriminatory practices or policies under the Housing Act 1998 and the Equal Status Acts 2000-2015. IHREC currently awaits responses from the local authorities. If the Commission is not satisfied with the outcome of an equality review, its statutory powers allow it to take further compliance and/or enforcement actions.

In July 2019, the ‘Traveller Accommodation Expert Review report’ was published. This was prepared by an independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government. It concludes that the arrangements established by the Housing (Traveller Accommodation) Act 1998 have significant strengths and have enabled the delivery of significant amounts of accommodation for Travellers, but they have failed to meet the full scale of the accommodation need among this community. It recommends the overhaul of the 1998 Act and other relevant legislation and policies which impact on accommodation provision for Travellers.

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<sup>40</sup> Ireland, Department of Education and Skills (2019), ‘Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables’, press release, 23 September 2019, available at: [www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html](http://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html) .

<sup>41</sup> Ombudsman for Children, ‘Ombudsman for Children expresses concern at inappropriate use of reduced timetables in schools’, press release, 13 June 2019, available at: [www.oco.ie/news/ombudsman-for-children-expresses-concern-at-inappropriate-use-of-reduced-timetables-in-schools/](http://www.oco.ie/news/ombudsman-for-children-expresses-concern-at-inappropriate-use-of-reduced-timetables-in-schools/).

<sup>42</sup> Pavee Point – Traveller and Roma Centre (2019), ‘Submission to the Joint Oireachtas Committee on Education and Skills’, March 2019, para. 2.8, available at: [www.paveepoint.ie/wp-content/uploads/2015/04/Submission-to-the-Committee-on-Education-and-Skills-March-19.pdf](http://www.paveepoint.ie/wp-content/uploads/2015/04/Submission-to-the-Committee-on-Education-and-Skills-March-19.pdf) .

<sup>43</sup> Ireland, Department of Education and Skills (2019), ‘Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables’, press release, 23 September 2019, available at: [www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html](http://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html) .

<sup>44</sup> Undertaken pursuant to the Irish Human Rights and Equality Commission Act 2014, no. 25/2014, available at: [www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html](http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html).

In July 2019, the Government approved the Census 2021 form. This followed a period of work by the Census Advisory Committee, which included a representative of Pavee Point, a national non-governmental organisation representing the needs of Travellers and Roma. An amendment to the ethnicity question will include Roma as an individual category. A free text box will also be included which will allow for other ethnic descriptions to be used, including for persons of mixed backgrounds.<sup>45</sup>

On 18 July 2019, Cant/Gammon (the traditional language spoken by Irish Travellers) and Traveller Tinsmithing were among thirty practices officially recognised within the National Inventory of Intangible Cultural Heritage.<sup>46</sup> The National Inventory of Ireland's Intangible Cultural Heritage is part of the Department of Culture, Heritage and the Gaeltacht's work under the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which requires signatory States to recognise, protect and promote the living cultural heritage of their countries.

On 10 October 2019, a three-day festival of nomadic cultures - "Misleór" - was held in Galway. This festival was funded by Galway 2020 European Capital of Culture – Small Town Big Ideas.

In 2019, the Health Services Executive (HSE), is consulting on a draft 'National Traveller Health Action Plan'.<sup>47</sup> In September 2019, Pavee Point called for the publication and implementation of the Action Plan as a matter of urgency, including the establishment of an independent implementation body with ring-fenced budgets to drive delivery and implementation.<sup>48</sup>

Two parliamentary committees are specifically considering Traveller issues in 2019. The Joint Committee on Key Issues Affecting the Traveller Community was established on 30 May 2019 and held its first public meeting on 24 September 2019. The Committee is to make its final report to both Houses of the Oireachtas within six months of its first meeting in public.<sup>49</sup> On 27 May 2019, the Seanad Public Consultation Committee commenced a research and public consultation process on 'Travellers Towards a more equitable Ireland post-recognition'. The Seanad Public Consultation Committee will draft and publish a report in which it will make findings and recommendations.<sup>50</sup>

In 2019, the European Commission against Racism and Intolerance (ECRI) published a report on Ireland.<sup>51</sup> It noted that despite the positive potential of the National Traveller and Roma Integration Strategy, 'little tangible progress has been made so far and these groups continue to be the most marginalised communities in Ireland'.<sup>52</sup>

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<sup>45</sup> Information available at the 'Central Statistics Office' website [www.cso.ie/en/census/census2021consultation/](http://www.cso.ie/en/census/census2021consultation/).

<sup>46</sup> MerrionStreet.ie - Irish Government News Service (2019), 'Minister Madigan Announces State Recognition of Key Elements of Ireland's Living Cultural Heritage', press release, 18 July 2019, available at: [https://merrionstreet.ie/en/News-Room/Releases/Minister\\_Madigan\\_Announces\\_State\\_Recognition\\_of\\_Key\\_Elements\\_of\\_Ireland%E2%80%99s\\_Living\\_Cultural\\_Heritage.html](https://merrionstreet.ie/en/News-Room/Releases/Minister_Madigan_Announces_State_Recognition_of_Key_Elements_of_Ireland%E2%80%99s_Living_Cultural_Heritage.html).

<sup>47</sup> HSE Inclusion Office (2019), 'National Traveller Health Action Plan', news, available at: [www.hse.ie/eng/about/who/primarycare/socialinclusion/travellers-and-roma/irish-travellers/national-traveller-health-action-plan.html](http://www.hse.ie/eng/about/who/primarycare/socialinclusion/travellers-and-roma/irish-travellers/national-traveller-health-action-plan.html).

<sup>48</sup> Pavee Point – Traveller and Roma Centre (2019), 'Opening Statement to the Special Joint Committee on key issues affecting the Traveller Community', 24 September 2019, available at: [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_key\\_issues\\_affecting\\_the\\_traveller\\_community/submissions/2019/2019-09-24\\_opening-statement-patrick-reilly-pavee-point-traveller-mental-health\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_key_issues_affecting_the_traveller_community/submissions/2019/2019-09-24_opening-statement-patrick-reilly-pavee-point-traveller-mental-health_en.pdf).

<sup>49</sup> Ireland, Houses of the Oireachtas (2019), 'Committee on Key Issues affecting the Traveller Community (2019)', press release, 23 September 2019, available at: [www.oireachtas.ie/en/committees/32/committee-on-key-issues-affecting-the-traveller-community/](http://www.oireachtas.ie/en/committees/32/committee-on-key-issues-affecting-the-traveller-community/).

<sup>50</sup> Ireland, Houses of the Oireachtas (2019), 'Seanad Public Consultation Committee begins consultation on "Travellers Towards a more equitable Ireland post-recognition"', 27 May 2019, available at: [www.oireachtas.ie/en/press-centre/press-releases/20190527-seanad-public-consultation-committee-begins-consultation-on-travellers-towards-a-more-equitable-ireland-post-recognition/](http://www.oireachtas.ie/en/press-centre/press-releases/20190527-seanad-public-consultation-committee-begins-consultation-on-travellers-towards-a-more-equitable-ireland-post-recognition/).

<sup>51</sup> Council of Europe, European Commission against Racism and Intolerance (2019), *Fifth Report on Ireland*, 2 April 2019, Strasbourg, available at: [www.coe.int/en/web/european-commission-against-racism-and-intolerance/ireland](http://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ireland).

<sup>52</sup> Council of Europe, European Commission against Racism and Intolerance (2019), *Fifth Report on Ireland*, 2 April 2019, p. 21.

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

### Unaccompanied children reaching the age of majority

Area of support	Description
<p><b>Residence permit</b></p> <p><b>Reception conditions Directive (article 6 and 7) and Qualification Directive (articles 24 and 31)</b></p>	<p><i>Please explain whether unaccompanied children (non-asylum seekers and asylum seekers) get temporary permits and if they expire when turning 18. Please elaborate on which type of permit is granted when they reach 18 years and under which conditions (e.g. being enrolled in education, or having an employment contract.)</i></p> <p>Under Irish law, a person aged 16 or over from outside the EU/EEA/Swiss national is required to register with the immigration authorities to receive a residence permit. <a href="#">Children under the age of 16 are not required to apply for a residence permit.</a><sup>53 54</sup> In 2014, section 35(b) of the Employment Permits (Amendment) Act 2014 provided for the removal of the exemption for those under 16 to register, but this provision has not yet been commenced.<sup>55</sup> On registration non-EEA nationals are allocated several documents which together comprise a residence permit: one of several ‘stamps’ is placed on the passport (stamps indicate the type of residency permitted and the conditions attached); a Certificate of Registration; and if the residence permission has been granted by Irish Naturalisation and Immigration Service (INIS), a letter containing more detailed conditions attached to the holder's permission to remain in Ireland.</p> <p>In Ireland there is no specific legal status for unaccompanied children. Under Section 14 of the International Protection Act 2015, a child under the age of 18, arriving at a port of entry or at the International Protection Office (IPO), and who is not in the custody of an adult, will be referred to the Child and Family Agency (Tusla).<sup>56</sup> An unaccompanied child who is not a protection applicant, holder of refugee or subsidiary protection status, or a victim of trafficking, <a href="#">has no specific immigration permission to be in the State and remains at the discretion of the Minister for Justice and Equality.</a><sup>57</sup> Children who arrive in Ireland and who are classified as unaccompanied children (UAMs) may apply for protection or alternative immigration status (e.g. family reunification).<sup>58</sup></p>

<sup>53</sup> Irish Naturalisation and Immigration Service (INIS), ‘Irish Residence Permit’, available at: <http://www.inis.gov.ie/en/INIS/Pages/irish-residence-permit>.

<sup>54</sup> Ireland, Houses of the Oireachtas (2004), Immigration Act 2004, Section 9(6), available at: <http://www.irishstatutebook.ie/eli/2004/act/1/section/9/enacted/en/html#sec9>.

<sup>55</sup> Ireland, Houses of the Oireachtas (2014), Employment Permits (Amendment) Act 2014, Section 35b, available at: [www.irishstatutebook.ie/eli/2014/act/26/enacted/en/print.html](http://www.irishstatutebook.ie/eli/2014/act/26/enacted/en/print.html).

<sup>56</sup> Ireland, Houses of the Oireachtas (2015), International Protection Act 2015, Section 14, available at: [www.ipo.gov.ie/en/IPO/International%20Protectin%20Act%202015.pdf/Files/International%20Protectin%20Act%202015.pdf](http://www.ipo.gov.ie/en/IPO/International%20Protectin%20Act%202015.pdf/Files/International%20Protectin%20Act%202015.pdf).

<sup>57</sup> Ireland, Houses of the Oireachtas (2015) International protection Act 2015, Section 49, available at: [www.irishstatutebook.ie/eli/2015/act/66/enacted/en/print#sec49](http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/print#sec49)

<sup>58</sup> Groarke S, and Arnold S (2018), ‘Approaches to Unaccompanied Minors Following Status Determination in Ireland’, *ESRI Research Series No.83*, available at: [www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf).

	<p>An unaccompanied child, whose claim for asylum is successful, is granted refugee status and has (depending on age) full access to the labour market. He or she may also be granted a Stamp 4 residence permission. Stamp 4 indicates permission to stay in Ireland for a specific period subject to conditions. An unaccompanied child (aged 16 and over) who has been issued with a Stamp 4 residence permit may begin to accrue the minimum legal residence necessary in order to apply for naturalisation (usually five years). The residence of unaccompanied children who do not hold a Stamp 4 permit, including asylum seeking unaccompanied children, is not usually allowable for this purpose.<sup>59</sup></p> <p>Persons identified at the point of entry or later as unaccompanied children under the age of 18 are usually referred to the Social Work Team for Separated Children Seeking Asylum (SWTSCSA) of the Child and Family Agency (Tusla) which is responsible for the care of unaccompanied children in Ireland. The SWTSCSA (Dublin) is tasked with providing initial intake and assessment for separated children from outside the EU.<sup>60</sup></p> <p>The International Protection Office (IPO) cannot statutorily accept an asylum application directly from an unaccompanied child. Applications for protection for a child under the age of 18 must be made by a Tusla social worker on behalf of the child.<sup>61</sup></p> <p>The SWTSCSA has indicated that they are satisfied that a child’s status, including residence permission, is secure while they are under the care of the State, by way of the powers afforded under the Child Care Act 1991<sup>62</sup>.</p> <p>Unaccompanied children granted temporary residence permission under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking are granted Stamp 4 permission.<sup>63</sup></p>
<p><b>Guardianship (representative under Reception)</b></p>	<p>In the Irish context there are generally two types of guardianship. A <i>guardian ad litem</i> is a purely legal advocate who represents a child in Court proceedings, whereas a child’s Tusla social worker currently fills the role of a guardian in the broader sense, as a person supporting and assisting a child in a more general way as well as acting <i>in loco parentis</i> (in place of parents).<sup>64</sup></p>

<sup>59</sup> Groarke S, and Arnold S. (2018), ‘Approaches to Unaccompanied Minors Following Status Determination in Ireland’, *ESRI Research Series No.83*, available at:

[www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf).

<sup>60</sup> Quinn, E. Corona, J. and Gusciute, E. (2014), ‘Policies and Practices on Unaccompanied Minors in Ireland’, *European Migration Network*, available at: [http://emn.ie/files/p\\_201611160221452014%20UAMs%20in%20Ireland\\_final.pdf](http://emn.ie/files/p_201611160221452014%20UAMs%20in%20Ireland_final.pdf).

<sup>61</sup> Groarke S, and Arnold S. (2018), ‘Approaches to Unaccompanied Minors Following Status Determination in Ireland’, *ESRI Research Series No. 83*, available at:

[www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf); Ireland, Houses of the Oireachtas (2015), International Protection Act 2015, Section 15(4), available at: <http://www.irishstatutebook.ie/eli/2015/act/66/section/15/enacted/en/html>.

<sup>62</sup> Ireland, Houses of the Oireachtas (1991), Child Care Act 1991, available at: [www.irishstatutebook.ie/eli/1991/act/17/enacted/en/print#sec13](http://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/print#sec13).

<sup>63</sup> Irish Naturalisation and Immigration Service (2011), Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, available at: [www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf](http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf); [Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf](http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf).

<sup>64</sup> Groarke S, and Arnold S. (2018), ‘Approaches to Unaccompanied Minors Following Status Determination in Ireland’, *ESRI Research Series No. 83*, available at:

[www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf).

<p><b>Conditions Directive Article 24.1)</b></p>	<p>In June 2018, the Government opted Ireland into the recast Reception Conditions Directive (2013/33/EU), which was transposed into national law with the adoption of the European Communities (Reception Conditions) Regulations 2018 (2018 Regulations).<sup>65</sup> The 2018 Regulations provide for the appointment of a Tusla employee or other individual to represent and assist the unaccompanied child in line with the Directive.</p> <p>Tusla’s ability to exercise legal capacity for unaccompanied children, where necessary, depends on the section of the Child Care Act 1991, as amended utilised by Tusla to take them into its care. Typically, the SWTSCSA takes unaccompanied children into care based on section 4 of the 1991 Act.<sup>66</sup> Under section 4, parental consent for the child to be taken into care must be provided. In contrast, where the SWTSCSA takes the child into its care based on a full care order granted by the court under section 18 of the 1991 Act, the SWTSCSA has ‘the like control over the child as if it were his parent’. Tusla is therefore entitled to make all decisions concerning the welfare of the child until the child reaches the age of 18.</p> <p><a href="#">Section 45 of the Child Care Act 1991 places a duty on Tusla</a><sup>67</sup> to decide whether each person leaving care has a need for assistance and, if so, to provide services in accordance with the legislation and subject to resources. Young people who have had a care history with Tusla are entitled to an aftercare service based on their assessed needs. The core eligible age range for aftercare is from 18 years up to 21 years. This can be extended until the completion of a course of education in which a young person is engaged, up to the age of 23 years.</p> <p>The Child Care (Amendment) Act 2015 strengthens the legislative provisions regarding aftercare, imposing a statutory duty on Tusla to prepare an aftercare plan for an eligible child or eligible young person.<sup>68</sup> The aim is to create an explicit, as opposed to implicit, statement of Tusla’s duty to satisfy itself as to the child’s or young person’s need for assistance by preparing a plan that identifies those needs for aftercare supports.<sup>69</sup> An aftercare plan must be prepared six months prior to the child’s 18th birthday.</p> <p>The aftercare provisions of the Act of 2015 impose an obligation on Tusla:</p> <ul style="list-style-type: none"> <li>➤ To prepare an aftercare plan for an eligible child before they reach the age of 18;</li> <li>➤ To prepare aftercare plans, on request, for an eligible adult aged 18, 19 or 20;</li> <li>➤ In relation to an eligible adult, to review the operation of an aftercare plan where there has been a change in that adult’s circumstances or additional needs have arisen.</li> </ul>
<p><b>Accommodation</b></p>	<p>Since 2010, the SWTSCSA has provided care to unaccompanied children based on an ‘equity of care’ principle, according to which all unaccompanied children receive care on a par with other children in the care system up to the age of 18. In line with this approach,</p>

<sup>65</sup> Ireland, Dail Éireann (2018), ‘Motion to Opt Into the EU (recast) Reception Conditions Directive (2013/33/EU) – Minister’s statement’, available at: <http://justice.ie/en/JELR/Pages/SP18000030>.

<sup>66</sup> Ireland, Houses of the Oireachtas (1991), Child Care Act 1991, Section 4, available at: [www.irishstatutebook.ie/eli/1991/act/17/enacted/en/print#sec4](http://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/print#sec4).

<sup>67</sup> Ireland, Houses of the Oireachtas (1991), Child Care Act 1991, available at: <http://www.irishstatutebook.ie/eli/1991/act/17/section/45/enacted/en/html#sec45>.

<sup>68</sup> Ireland, Houses of the Oireachtas (2015), Child Care Amendment Act 2015, Section 7, available at: [www.irishstatutebook.ie/eli/2015/act/45/enacted/en/print#sec7](http://www.irishstatutebook.ie/eli/2015/act/45/enacted/en/print#sec7).

<sup>69</sup> Tusla – Child and Family Agency, ‘National Aftercare Policy for Alternative Care’, available at: [www.tusla.ie/uploads/content/4248-TUSLA\\_National\\_Policy\\_for\\_Aftercare\\_v2.pdf](http://www.tusla.ie/uploads/content/4248-TUSLA_National_Policy_for_Aftercare_v2.pdf).

<p><b>Reception Conditions Directive Article 24.2</b></p>	<p>all unaccompanied children are assigned a social worker and placed in foster care, supported lodgings or residential units.</p> <p>A child without status who turns 18 and is seeking international protection, and not afforded other arrangements, may be placed in Direct Provision accommodation from a previous care setting. When an unaccompanied child in the care of the Tusla reaches 18 years of age ("aged-out child"), he or she may be referred by Tusla to the former Reception and Integration Agency (RIA) - now referred to as International Protection Accommodation Service (IPAS) - for transfer to adult accommodation and service provision. <a href="#">In circumstances where Tusla deems such a person to be particularly vulnerable, the period in care can be extended beyond 18 years of age at the discretion of Tusla.</a><sup>70</sup></p> <p>Aged out children will be accommodated in centres which are profiled by RIA/IPAS as 'family centres'. However, the aged-out child may be accommodated in an all-male centre if so requested. Where possible, aged-out children will be accommodated in towns and cities where there is easy access to education facilities and other support services e.g. Cork, Limerick, Sligo, Galway, Waterford and Portlaoise. RIA/IPAS will take account of representations made on grounds of education (but not Third Level education), medical and/or welfare needs. It must be recorded here that, on occasion, pressure on RIA spaces may in some instances require aged out children to be temporarily accommodated other than in the towns and cities cited.</p>
<p><b>Return Return Directive, Article 10</b></p>	<p>A smaller number of unaccompanied children reunite with family through voluntary return to their country of origin. While no legislative prohibition exists for the deportation (forced return) of unaccompanied children, and while unaccompanied children can be issued with a negative international protection decision and deportation order on the same basis as all persons seeking international protection, in practice deportations of unaccompanied children do not normally take place.<sup>71</sup></p>
<p><b>Others</b></p>	<p><i>e.g. special permissions to stay based on education or employment programme, etc.</i></p> <p>Unlike ordinarily resident young people in Ireland, unaccompanied children aged 18 and over are not automatically entitled to access free third-level education. As part of aftercare policy, Tusla may cover fees for Post Leaving Certificate courses, which offer National Framework of Qualifications level 5 and level 6 qualifications aimed at vocational and technological skills (Tusla, 2017c).<sup>72</sup></p> <p>Aged-out children with refugee status, subsidiary protection status or other residence permission may be entitled to free third-level education under the Free Fees Initiative led</p>

<sup>70</sup> Ireland, Houses of the Oireachtas (2015), Child Care Amendment Act 2015, Section 5, available at: [www.irishstatutebook.ie/eli/2015/act/45/enacted/en/print#sec7](http://www.irishstatutebook.ie/eli/2015/act/45/enacted/en/print#sec7)

<sup>71</sup> Groarke S, and Arnold S. (2018), 'Approaches to Unaccompanied Minors Following Status Determination in Ireland', *ESRI Research Series No. 83*, available at:

[www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf).

<sup>72</sup> Groarke S, and Arnold S. (2018), 'Approaches to Unaccompanied Minors Following Status Determination in Ireland', *ESRI Research Series No. 83*, available at:

[www.olaireland.ie/files/2915/5109/8282/Approaches\\_to\\_Unaccompanied\\_Minors\\_ESRI\\_Dec\\_18.pdf](http://www.olaireland.ie/files/2915/5109/8282/Approaches_to_Unaccompanied_Minors_ESRI_Dec_18.pdf).

	<p>by the Department of Education and Skills and administered by Student Universal Support Ireland (SUSI). However, many unaccompanied children may be precluded from receiving the grant as they are unlikely to have spent the required three years in the Irish State with a legal immigration status.</p> <p>Pursuant to section 53(a) of the International Protection Act 2015, beneficiaries of international protection are entitled to seek and enter employment.<sup>73</sup></p> <p>Unaccompanied children granted temporary residence permission under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking are granted Stamp 4 permission and are entitled to access employment.<sup>74</sup></p>
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<sup>73</sup> Ireland, Houses of the Oireachtas (2015), International Protection Act 2015, Section 53, available at: [www.irishstatutebook.ie/eli/2015/act/66/enacted/en/print.html](http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/print.html).

<sup>74</sup> Irish Naturalisation and Immigration Service (2011), Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, available at: [www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf](http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf).

## Chapter 5. Information society, data protection

### Activities developed and launched by national data protection supervisory authorities (SAs) to implement and enforce the GDPR

#### *Resources*

In 2019, the Data Protection Commission (DPC) planned to increase staff from approximately 133 to approximately 170 by the end of the year.<sup>75</sup> This is a significant increase from 80 at the start of 2018, and reflects continued increases in funding from central government following a 2014 commitment to establish ‘best in class’ data protection regulation as a support to economic development.<sup>76</sup> It should be noted, however, that the DPC has stated that a complement of 200 is the minimum necessary to ensure effective regulation.<sup>77</sup> The 2020 Budget saw funding for the DPC increased from €15.3 million to €16.9 million; however, in a statement the DPC said that it was disappointed with that increase which was less than one third of the amount sought:

The DPC is disappointed that the additional funding allocated is less than one third of the funding that the DPC requested in its budget submission. The submission reflected a year of experience of regulating under the General Data Protection Regulation (GDPR) and highlighted the increased volumes and complexities involved. The DPC must now reassess its planned expenditure for 2020, particularly in relation to foreseen “non-pay” expenditure for which the DPC has received a zero increase in allocation.<sup>78</sup>

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<sup>75</sup> Data Protection Commission (2019), 'Statement of Strategy 2019', p. 9, available at [www.dataprotection.ie/en/corporate-governance/strategy-statement](http://www.dataprotection.ie/en/corporate-governance/strategy-statement).

<sup>76</sup> MerrionStreet.ie - Irish Government News Service (2014), 'Minister Murphy Sets out Data Protection Roadmap after Cabinet Decision', press release, 7 October 2014, available at: [https://merrionstreet.ie/en/News-Room/Releases/Minister\\_Murphy\\_sets\\_out\\_Data\\_Protection\\_Roadmap\\_after\\_Cabinet\\_Decision.html](https://merrionstreet.ie/en/News-Room/Releases/Minister_Murphy_sets_out_Data_Protection_Roadmap_after_Cabinet_Decision.html); Ireland, Department of Justice and Equality (2014), 'Murphy Announces Doubling of Funding for Office of the Data Protection Commissioner', press release, 18 December 2014, available at: [www.justice.ie/en/JELR/Pages/PR14000373](http://www.justice.ie/en/JELR/Pages/PR14000373).

<sup>77</sup> Carswell S. (2018), 'Fit for Purpose? Can the Data Regulator Handle GDPR?', *The Irish Times*, 25 May 2018, available at: [www.irishtimes.com/business/technology/fit-for-purpose-can-the-data-regulator-handle-gdpr-1.3507144?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ftechnology%2Ffit-for-purpose-can-the-data-regulator-handle-gdpr-1.3507144](http://www.irishtimes.com/business/technology/fit-for-purpose-can-the-data-regulator-handle-gdpr-1.3507144?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ftechnology%2Ffit-for-purpose-can-the-data-regulator-handle-gdpr-1.3507144).

<sup>78</sup> Data Protection Commission (2019), 'Data Protection Commission statement on increased funding of €1.6 million in 2020 Budget', available at: [www.dataprotection.ie/news-media/press-releases/data-protection-commission-statement-increased-funding-eu16-million-2020](http://www.dataprotection.ie/news-media/press-releases/data-protection-commission-statement-increased-funding-eu16-million-2020).

### *Internet industry*

The technology sector continued to dominate the headlines with the DPC launching formal investigations on foot of a series of high profile and large-scale data breaches and complaints of unlawful processing. In 2019, new investigations were opened into:

- Twitter (data breach);<sup>79</sup>
- Facebook (data breach);<sup>80</sup>
- Quantcast (targeted advertising and user profiling);<sup>81</sup> and
- Google Ireland (targeted advertising and data retention).<sup>82</sup>

Several investigations from 2018 are ongoing including in relation to Facebook (data breaches)<sup>83</sup> and Twitter (data breaches).<sup>84</sup>

### *Public Services Card*

In October 2017, the DPC commenced a statutory investigation into the Public Services Card, a card adopted by the Department of Employment Affairs and Social Protection (the social welfare department) but which was made mandatory for other state services such as passports and driving licences. Civil rights

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<sup>79</sup> Data Protection Commission (2019), 'Data Protection Commission Opens Statutory Inquiry into Twitter', press release, 25 January 2019, available at: [www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-twitter-0#targetText=The%20Data%20Protection%20Commission%20\(DPC,the%20personal%20data%20it%20processes.](http://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-twitter-0#targetText=The%20Data%20Protection%20Commission%20(DPC,the%20personal%20data%20it%20processes.)

<sup>80</sup> Data Protection Commission (2019), 'Data Protection Commission Opens Statutory Inquiry into Facebook', press release, 25 April 2019 available at: [www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-facebook-0](http://www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-facebook-0).

<sup>81</sup> Data Protection Commission (2019), 'Data Protection Commission Opens Statutory Inquiry into Quantcast International Limited', press release, 2 May 2019, available at: [www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-quantcast](http://www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-quantcast).

<sup>82</sup> Data Protection Commission (2019), 'Data Protection Commission Opens Statutory Inquiry into Google Ireland Limited', press release, 22 May 2019, available at: [www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-google-ireland-limited](http://www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-google-ireland-limited).

<sup>83</sup> Data Protection Commission (2018), 'Data Protection Commission Opens Statutory Inquiry into Facebook', press release, 17 December 2018, available at: <https://www.dataprotection.ie/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-facebook>; Data Protection Commission, 'Facebook Data Breach – Commencement of Investigation', press release, 3 October 2018 available at: [www.dataprotection.ie/news-media/press-releases/facebook-data-breach-commencement-investigation](http://www.dataprotection.ie/news-media/press-releases/facebook-data-breach-commencement-investigation).

<sup>84</sup> Data Protection Commission (2018), 'Data Protection Commission Opens Statutory Inquiry into Twitter', press release, 19 December 2018, available at: [www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-twitter](http://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-twitter).

advocates accused the Irish state of moving towards a *de facto* national ID card, indirectly compelling individuals to use a biometric ID card without a proper legal basis by withholding essential services from individuals who do not register<sup>85</sup>

In October 2017, the DPC commenced a statutory investigation into the scheme and, in August 2019, the DPC issued a final report on the issues of legal basis and transparency.<sup>86</sup> Other issues, including the use of biometrics in the card system, have been held over for further investigation.

That report largely confirmed the criticisms of the scheme, finding that there was no legal basis for the card to be required by any state body other than the Department of Employment and Social Protection in administering social welfare, that the Department had failed to meet its duty of transparency in relation to the card, and that the Department had retained data relating to cardholders for an excessive period.<sup>87</sup>

The government has refused to accept the findings of the DPC and has said that it will challenge any enforcement proceedings.<sup>88</sup> An enforcement notice was issued by the DPC in December 2019.<sup>89</sup> There has been extensive media coverage of the matter including criticisms that the government has undermined the authority of the DPC and its ability to regulate the technology sector.<sup>90</sup>

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<sup>85</sup> McIntyre, T.J. (2017) 'Mandatory but Not Compulsory' - What Exactly Is the Justification for the Public Services Card?' *Irish Independent*, 30 October 2017, available at: [www.independent.ie/irish-news/comment-mandatory-but-not-compulsory-what-exactly-is-the-justification-for-the-public-services-card-36083216.html](http://www.independent.ie/irish-news/comment-mandatory-but-not-compulsory-what-exactly-is-the-justification-for-the-public-services-card-36083216.html).

<sup>86</sup> Data Protection Commission (2019), 'DPC Statement on Matters Pertaining to the Public Services Card', 16 August 2019 available at: [www.dataprotection.ie/dpc-statement-matters-pertaining-public-services-card-0](http://www.dataprotection.ie/dpc-statement-matters-pertaining-public-services-card-0); Data Protection Commission (2019), 'Final Investigation Report: An Investigation by the Data Protection Commission in Respect of the Processing of Personal Data by the Department of Employment Affairs and Social Protection in Relation to the Public Services Card ('PSC') - Examining Compliance with the Obligations in Relation to Legal Basis and Transparency', August 2019 available at: [www.welfare.ie/en/pdf/pr170919.pdf](http://www.welfare.ie/en/pdf/pr170919.pdf).

<sup>87</sup> Data Protection Commission (2019), 'DPC Statement on Matters Pertaining to the Public Services Card', 16 August 2019 available at: [www.dataprotection.ie/dpc-statement-matters-pertaining-public-services-card-0](http://www.dataprotection.ie/dpc-statement-matters-pertaining-public-services-card-0).

<sup>88</sup> Ireland, Department of Employment and Social Protection (2019), 'Report of the Data Protection Commission on the Public Services Card Published', press release, 17 September 2019, available at [www.welfare.ie/en/pressoffice/Pages/pr170919.aspx](http://www.welfare.ie/en/pressoffice/Pages/pr170919.aspx); Horgan-Jones, J. (2019), 'Government "Will Not Comply" with Findings on Public Services Card', *The Irish Times*, 17 September 2019, available at: [www.irishtimes.com/news/ireland/irish-news/government-will-not-comply-with-findings-on-public-services-card-1.4021397](http://www.irishtimes.com/news/ireland/irish-news/government-will-not-comply-with-findings-on-public-services-card-1.4021397).

<sup>89</sup> Brennan, C. (2019), 'Data Commissioner Issues Enforcement Notice in Respect of Public Services Card', *Irish Examiner*, 7 December 2019, available at: <https://www.irishexaminer.com/breakingnews/ireland/data-commissioner-issues-enforcement-notice-in-respect-of-public-services-card-968977.html>.

<sup>90</sup> Horgan-Jones, J. (2019), 'Q&A: What's next for the Public Services Card?', *The Irish Times*, 17 September 2019, available at: [www.irishtimes.com/news/ireland/irish-news/q-a-what-s-next-for-the-public-services-card-1.4021407](http://www.irishtimes.com/news/ireland/irish-news/q-a-what-s-next-for-the-public-services-card-1.4021407); McIntyre, T.J. (2019), 'Public Services Card a Flawed Fiasco in All Its Aspects', *The Irish Times*, 21 September 2019, available at: [www.irishtimes.com/opinion/public-services-card-a-flawed-fiasco-in-all-its-aspects-1.4025010](http://www.irishtimes.com/opinion/public-services-card-a-flawed-fiasco-in-all-its-aspects-1.4025010).

## Artificial intelligence and big data

MS	Actor*	Type**	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned?( yes/no)	Reference
IE	Academia	Other	<p><i>SFI Centre for Research Training in AI.</i></p> <p>This was established in March 2019 as a joint initiative between University College Cork, Dublin City University, National University of Ireland Galway, Trinity College Dublin, and the University of Limerick. It will offer PhD training for approximately 120 students over four years.</p>	Yes	No	<a href="http://www.crt-ai.ie">www.crt-ai.ie</a>
IE	Government	Report	<p><i>Future Jobs Ireland.</i></p> <p>In March 2019 Department of the Taoiseach (Prime Minister) published the report <i>Future Jobs Ireland</i> which includes a commitment to extensive state support for a range of technology initiatives including the use of artificial intelligence and big data, and moves towards digital</p>	No	No	Government of Ireland (2019), <i>Future Jobs Ireland</i> , Dublin, March 2019, <a href="https://dbei.gov.ie/en/Publications/Publication-files/Future-Jobs-Ireland-2019.pdf">https://dbei.gov.ie/en/Publications/Publication-files/Future-Jobs-Ireland-2019.pdf</a> .

			transformation of public services and e-health.			
IE	Government	Report	<p><i>National Artificial Intelligence Strategy.</i></p> <p>Following on from the <i>Future Jobs Ireland</i> report, the Department of Business, Enterprise and Innovation is currently consulting on developing a National AI Strategy which is expected to be in place by end 2019.</p>	No	No	Ireland, Dáil Éireann (2019), ‘Science, Technology and Innovation Strategy - Parliamentary Questions’, 23 July 2019, <a href="http://www.oireachtas.ie/en/debates/question/2019-07-23/992">www.oireachtas.ie/en/debates/question/2019-07-23/992</a> .

### **Data retention**

The December 2018 judgment in *Dwyer v. Commissioner of An Garda Síochána*,<sup>91</sup> which found the core retention and access provisions of Irish data retention regime to be incompatible with European Union law, has been appealed by the state parties. In May 2019 the Supreme Court agreed to hear the matter as a ‘leapfrog appeal’, so that the case bypasses the Court of Appeal and is heard directly by the Supreme Court, noting that the case ‘raises complex and novel

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<sup>91</sup> Ireland, *Dwyer v. Commissioner of An Garda Síochána* [2018] IEHC 685.

questions of constitutional and EU law, with significant implications that affect many others apart from the parties'.<sup>92</sup> The hearing took place in December 2019 and the declaration of the High Court has been stayed pending the appeal, so the relevant provisions of the legislation remain in force in the meantime.<sup>93</sup>

There was one significant decision on admissibility of evidence obtained as the result of data retention, *People (DPP) v. Doherty*,<sup>94</sup> which is described further in Annex 2.

There have been no domestic legislative developments during 2019 in relation to data retention.

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<sup>92</sup> Ireland, *Dwyer v. Commissioner of An Garda Síochána* [2019] IESCDET 108, available at: [www.courts.ie/Judgments.nsf/0/7F05379B4BFC3F308025840A0038CFA0](http://www.courts.ie/Judgments.nsf/0/7F05379B4BFC3F308025840A0038CFA0).

<sup>93</sup> Carolan, M. (2019), 'State Appeals against Key Ruling in Favour of Convicted Murderer Graham Dwyer', *The Irish Times*, 16 December 2019, available at: [www.irishtimes.com/news/crime-and-law/courts/supreme-court/state-appeals-against-key-ruling-in-favour-of-convicted-murderer-graham-dwyer-1.4116732](http://www.irishtimes.com/news/crime-and-law/courts/supreme-court/state-appeals-against-key-ruling-in-favour-of-convicted-murderer-graham-dwyer-1.4116732).

<sup>94</sup> Ireland, *People (DPP) v. Doherty* [2019] IECA 209.

## Chapter 6. Rights of the child

### Procedural safeguards for children who are suspects in criminal proceedings

<p><b>Legislative changes</b></p>	<p>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, Ireland is not taking part in the adoption of the <a href="#">Directive 2016/800 on procedural safeguards for children</a> and is therefore not bound by it or subject to its application.</p> <p>Thus, no legislative measures have been taken during 2019 for the transposition of the Directive.</p> <p>The position remains as per the provisions of The Child Care Act 2001, as amended by the Criminal Justice Act 2006.</p>
<p><b>Policy developments</b></p>	<p>A review was undertaken by the Irish Penal Reform Trust, as to extent to which children in care are represented in the criminal justice system. It was noted that there was a lack of data and support, and the need for interagency development. It was recommended that the Youth Justice Action Plan should consider ‘the specific needs of care-experienced young people’ and that protocols / standards and better sharing of data to include a universal identifier for cases would result in better outcomes.<sup>95</sup> It was recommended that the Bail Supervision System should be extended to children in care.<sup>96</sup> It was also recommended that The Irish Youth Justice Service in conjunction with An Garda Síochána should implement the recommendation of the Strategic Review Group of Penal Policy (2014) to extend the remit of the Garda Youth Diversion Programme to young adults. This may require an amendment to the Children Act 2001’.<sup>97</sup></p> <p>On 18 September 2019, the UN Committee on the Rights of the Child issued <i>General Comment No. 24 (2019) on children’s rights in the child justice system</i>. Specific recommendations made include investment to address prevention and early intervention, the adoption of a multidisciplinary approach taking into account the child’s particular circumstances / needs and changes to the age of criminal responsibility. Significantly, in an Irish context, it notes that: ‘Child justice systems should also extend protection 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.’<sup>98</sup> This is not the position under Irish law. This has been criticised by Judge John O’Connor noting that the provisions are ‘construed narrowly’ resulting children losing</p>

<sup>95</sup> Carr, N. and Mayock, P. (2019), ‘Care and Justice. Children and Young People in Care and Contact with the Criminal Justice System’, Dublin, Irish Penal Reform Trust, available at: [www.iprt.ie/site/assets/files/6489/care-and-justice-web.pdf](http://www.iprt.ie/site/assets/files/6489/care-and-justice-web.pdf).

<sup>96</sup> Ireland, Department of Children and Youth Affairs (2019), ‘Shannon, G. - Eleventh Report of the Special Rapporteur on Child Protection (2018)’ 2 September 2019, available at: [www.gov.ie/en/collection/51fc67-special-rapporteur-on-child-protection-reports/?referrer=/documents/2017120710threportspecialrappchild\\_protection.pdf](http://www.gov.ie/en/collection/51fc67-special-rapporteur-on-child-protection-reports/?referrer=/documents/2017120710threportspecialrappchild_protection.pdf).

<sup>97</sup> Carr, N. and Mayock, P. (2019), ‘Care and Justice. Children and Young People in Care and Contact with the Criminal Justice System’, Dublin, Irish Penal Reform Trust, p. 7, available at: [www.iprt.ie/site/assets/files/6489/care-and-justice-web.pdf](http://www.iprt.ie/site/assets/files/6489/care-and-justice-web.pdf).

<sup>98</sup> United Nations (UN), Committee on the Rights of the Child (2019), (CRC/C/GC/24)(2019) *General Comment No. 24 on children’s rights in the child justice system*, 18 September 2019, para 31, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en).

	the protections under the 2001 Act and specifically, section 95(6) (best interests). <sup>99</sup>
<b>Other measures or initiatives</b>	Again, the need for data and integrated case management systems was highlighted and the importance for persons in contact with youth crime to have an understanding of the contextual issues and take a multidisciplinary approach in research undertaken by the REPPP at the University of Limerick. <sup>100</sup>

### **Legal and policy measures or initiatives developed about child internet safety**

#### **Consultation Process undertaken with regard to child internet safety, transposing the Audio-Visual Media Services Directive, and the regulation of ‘harmful content’ online**

On 4<sup>th</sup> March 2019, Minister Richard Bruton,<sup>101</sup> announced that he would introduce new legislation to regulate ‘harmful content’ online, stressing the importance of seeking an approach that would be ‘achievable, proportionate and effective.’<sup>102</sup> Views gathered through a consultation will inform specific legislation with regard to online safety for Irish citizens (Online Safety & Media Regulation Bill) and the transposition of the Audio Visual Media Services Directive (AVMSD), by 19<sup>th</sup> September 2020. Specific questions raised included: the definition of ‘harmful content’, how should it be dealt with, what kind of services should be covered, and what type of regulatory framework should be in place?

#### **Results of the Consultation Process**

Eighty-four submissions, including submissions from the ISPCC, the Ombudsman for Children and Cybersafe Ireland, were received. Key issues highlighted included the need for a clear definition of ‘harmful content’ to include criminal content (child sex abuse) and serious cyberbullying, material that promotes self-harm or encourages nutritional deprivation.<sup>103</sup> Additional matters raised included dangers associated with homophobic or transphobic bullying. The recommendations noted the need for balance: children have the ‘same range of fundamental rights as adults, including freedom of expression and the right to access information.’<sup>104</sup> Protection from harm is not an absolute right.

<sup>99</sup> O’Connor, J. (2019), ‘Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System’, *Irish Judicial Studies Journal*, vol. 3, p. 26.

<sup>100</sup> Reddy, J. and Redmond, S. (2019), ‘Improving the measurement of effectiveness in the Irish youth justice system’, *Research Evidence into Policy, Programmes and Practice (REPPP) Project*, University of Limerick available at: <https://ulir.ul.ie/handle/10344/7684>.

<sup>101</sup> Ireland, Department of Communications, Climate Action and Environment.

<sup>102</sup> Ireland, Department of Communications, Climate Action and Environment, ‘Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive - Explanatory Note’, available at: [www.matheson.com/images/uploads/documents/Public\\_Consultation\\_on\\_the\\_Regulation\\_of\\_Harmful\\_Content\\_on\\_Online\\_Platforms\\_and\\_the\\_Implementation\\_of\\_the\\_Revised\\_Audiovisual\\_Media\\_Services\\_Directives.pdf](http://www.matheson.com/images/uploads/documents/Public_Consultation_on_the_Regulation_of_Harmful_Content_on_Online_Platforms_and_the_Implementation_of_the_Revised_Audiovisual_Media_Services_Directives.pdf).

<sup>103</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, available at: [www.dccae.gov.ie/en-ie/communications/publications/Documents/87/Thematic%20Analysis%20-%20Public%20Consultation.pdf](http://www.dccae.gov.ie/en-ie/communications/publications/Documents/87/Thematic%20Analysis%20-%20Public%20Consultation.pdf).

<sup>104</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 11.

The recommendations cautioned against ‘blanket monitoring of online content’<sup>105</sup> and stressed the importance of meeting the tests of ‘legality, necessity and proportionality.’<sup>106</sup> There was a difference of opinion as to whether the provisions should apply equally to adults and children. Some were of the view that the ‘scale and the balance of rights where children are directly involved is weighted more towards safety [...]’.<sup>107</sup> Importantly, any additional legislative provisions must not interfere with the work of An Garda Síochána, Hotline.ie; INTERPOL, INHOPE or other international organisations and the existing requirements of the e-commerce Directive.<sup>108</sup>

In relation to Video Sharing Platform Services (VSPS), it was noted that additional guidance is to be given by the European Commission (by December 2019) as to the interpretation of ‘essential functionality’. The lack of clarity, to-date, has created ‘uncertainty in how the VSPS provisions can be implemented in Irish law’.<sup>109</sup> While it is widely agreed that there is a need for consistency across the EU in terms of implementation and regulation, concern was raised that ‘under Article 29.8 of the Irish Constitution’ Ireland may only exercise extraterritorial jurisdiction in accordance with ‘generally recognised principles of international law’.<sup>110</sup> The Audio-visual Directive imposes obligations on VSPS to ensure through their terms and conditions for users uploading content that: there is a flagging system in place to highlight instances of breach; user-led content rating systems and adequate provisions in place to require parental control and age verification. Overall, those that made submissions to the Minister during the consultation process, favoured the establishment of a Media Commission, incorporating the Broadcasting Authority of Ireland, with responsibility for all four strands of regulation with, one commissioner designated as an Online Safety Commissioner and another for VSPS. The regulator will provide ‘systemic oversight’ to ensure compliance with the revised AVMSD and develop a Code (to be updated regularly) which VSPS can use as a reference point. The powers of the regulator should be proportionate, there should be a right of reply for users whose content is going to be removed and importantly, only those to whom the content related could seek removal. The regulation process must be transparent and cognisant of potential ‘bad actors’ attempting to game the system. Allowances should be made for error (human and machine). These recommendations will be considered with a view to drafting Irish legislation and the transposition of the Directive. On 3 October 2019, the National Advisory Council for Online Safety launched a survey of internet users to a sample of 2,500 users (children, parents and adults) to identify internet use, safety practices and how parents moderate the use of the internet by their children. Results are expected in the first half of 2020.<sup>111</sup> In her report on Ireland, the UN Special

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<sup>105</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 10.

<sup>106</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 10.

<sup>107</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 17.

<sup>108</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 18.

<sup>109</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 27.

<sup>110</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Thematic Analysis - Public Consultation on the Regulation of Harmful Online Content and the Transposition of the Audiovisual Media Services Directive’, 25 July 2019, p. 29.

<sup>111</sup> Ireland, Department of Communications, Climate Action and Environment (2019), ‘Minister of State for Community Development, Natural Resources and Digital Development Seán Canney T.D., announces the launch of a national survey of internet users in Ireland’, 3 October 2019, available at: [www.dccae.gov.ie/en-ie/news-and-media/press-](http://www.dccae.gov.ie/en-ie/news-and-media/press-)

Rapporteur on the sale and sexual exploitation of children welcomed initiatives by the Irish Government including the Action Plan for Online Safety 2018–2019 and the creation of an ‘online hub for Internet safety information called “Be Safe Online”’<sup>112</sup> The Special Rapporteur also recommended that Ireland consider legislation to expand the protection of children from Information and communications technology (ICT) related abuse.<sup>113</sup>

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[releases/Pages/Minister-of-State-for-Community-Development,-Natural-Resources-and-Digital-Development-Seán-Canney-T-D,-announces-the-laun.aspx.](#)

<sup>112</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, on her visit to Ireland, 15 November 2019, p.16, available at: <https://undocs.org/A/HRC/40/51/Add.2> .

<sup>113</sup> Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, on her visit to Ireland, 15 November 2019, p.17, available at: <https://undocs.org/A/HRC/40/51/Add.2> .

## Chapter 7. Access to justice including crime victims

### Victims' Rights Directive

Ireland completed the transposition of the Victims' Rights Directive with the enactment of the Criminal Justice (Victims of Crime) Act 2017.<sup>114</sup> The Act came into force (with the exception of two provisions) on 30 May 2018.<sup>115</sup> A variety of measures have been implemented since 2017 by executive agencies as a result, including the creation of Protective Services Units in different divisions of An Garda Síochána (the Irish national police force). These units are intended to provide specialist investigation of certain types of crime including sexual crime, child abuse and domestic abuse. This initiative began in 2018, in January 2019, new units were established in six Garda divisions, bringing the total number to ten (Dublin Metropolitan Region South Central, Dublin Metropolitan Region West, Waterford, Kerry, Kilkenny, Carlow, Limerick, Galway, Louth, and Cork City). Other units were due to be established in the remaining Garda divisions in the course of 2019.<sup>116</sup> As of mid-January, however, no new units have been announced. A recent press release from the Minister for Justice and Equality indicates that the completion date has been pushed back to the end of Quarter 1, 2020.<sup>117</sup>

The Courts Service, which has responsibility for the running of the courts in Ireland, has launched a Long-Term Strategy Development process, and invited submissions from interested groups. Both the Dublin Rape Crisis Centre (DRCC) and the Rape Crisis Network Ireland (RCNI) made submissions. The DRCC emphasised the need for an efficient and streamlined process that minimises the stresses involved.<sup>118</sup> The DRCC points to the potential of digital technology to assist in the running of cases, such as videoconferencing to facilitate expert witnesses and foreign-based witnesses. RCNI suggested that the Courts Service consider establishing a specialist court for sexual crime.<sup>119</sup> RCNI argued that the nature of sexual violence is such that specialisation is required to enable victims 'to give their best evidence with the minimum risk of further trauma arising from the court process itself'.<sup>120</sup> RCNI also recommended that judges receive ongoing training in victim-related specific topics, including impacts of sexual violence; the training on sexual violence 'should be trauma-informed and should include input from specialist victim support workers, such as specially trained counsellors and accompaniment staff'.<sup>121</sup> Finally, RCNI recommended that the Courts Service continue its efforts to ensure that victims of crime, prosecution witnesses and

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<sup>114</sup> Ireland, Minister for Justice and Equality (2019), '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>.

<sup>115</sup> Ireland, Criminal Justice (Victims of Crime) Act 2017 (Commencement) Order 2017, SI 530/2017, available at: [www.irishstatutebook.ie/eli/2017/si/530/made/en/print?q=criminal+justice+victims+of+crime](http://www.irishstatutebook.ie/eli/2017/si/530/made/en/print?q=criminal+justice+victims+of+crime); Criminal Justice (Victims of Crime) Act (Commencement) Order 2018, SI 173/2018, available at: [www.irishstatutebook.ie/eli/2018/si/173/made/en/print?q=criminal+justice+victims+of+crime](http://www.irishstatutebook.ie/eli/2018/si/173/made/en/print?q=criminal+justice+victims+of+crime).

<sup>116</sup> Ireland, Minister for Justice and Equality (2019), 'Answer to PQ 302 from Deputy Róisín Shortall', 9 July 2019, available at: [www.justice.ie/en/JELR/Pages/PQ-09-07-2019-302](http://www.justice.ie/en/JELR/Pages/PQ-09-07-2019-302).

<sup>117</sup> Ireland, Minister for Justice and Equality (2019), 'Minister Flanagan notes release of CSO Crime Statistics for Q3 2019', 18 December 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000324](http://www.justice.ie/en/JELR/Pages/PR19000324).

<sup>118</sup> Dublin Rape Crisis Centre (2019), 'Submission on the Development of a Long-term Strategy for Court Services', February 2019, available at: [www.drcc.ie/wp-content/uploads/2019/02/Submission-on-the-Development-of-a-Long-Term-Strategy-for-Court-Services.pdf](http://www.drcc.ie/wp-content/uploads/2019/02/Submission-on-the-Development-of-a-Long-Term-Strategy-for-Court-Services.pdf).

<sup>119</sup> Rape Crisis Network Ireland (2019), 'Submission on Courts Service Long-Term Strategy 2019-2025', available at: [www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf](http://www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf).

<sup>120</sup> Rape Crisis Network Ireland (2019), 'Submission on Courts Service Long-Term Strategy 2019-2025', p. 2, available at: [www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf](http://www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf).

<sup>121</sup> Rape Crisis Network Ireland (2019), 'Submission on Courts Service Long-Term Strategy 2019-2025', p. 3, available at: [www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf](http://www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf).

applicants in domestic violence cases are informed about court accompaniment and support services, and that these services should be accommodated within court buildings as far as possible.<sup>122</sup>

Government funding for victims of crime has remained constant for 2019. Tusla, the Child and Family Agency, has statutory responsibility for the care and protection of victims of domestic, sexual and gender-based violence, and is allocating € 25.3 million for those services in 2019. Further, the Department of Justice and Equality's Victims of Crime Office has provided € 1.712 million for victims of crime in 2019 (same as 2018), and a further € 50,000 is being made available to fund the Rape Crisis Network Ireland's legal coordination service.<sup>123</sup>

### **Violence against women**

Ireland ratified the Istanbul Convention on 8 March 2019.<sup>124</sup> The ratification process took a long time, mainly due to the need to draft and to enact new legislation. The Domestic Violence Act 2018 was the main such legislation; among other things, this Act updated the orders that victims of domestic violence can seek, criminalised forced marriages, and create a new offence of coercive control.<sup>125</sup> The 2018 Act came into effect on 1 January 2019.<sup>126</sup> The terms of this statute have been covered in last year's submission. No data yet exists as to the impact of this legislation. The Oireachtas (the Irish parliament) also enacted the Criminal Law (Extraterritorial Jurisdiction) Act 2019, which allows for the prosecution of violent crimes committed abroad by Irish citizens and residents. With this legislation in place (it took effect on 29 April 2019),<sup>127</sup> the Istanbul Convention took effect for Ireland on 1 July 2019.<sup>128</sup>

In May 2019, Minister for Justice and Equality announced an independent study on familicide and domestic homicide review, led by Norah Gibbons, a social worker and former Chair of Tusla (the Child and Family Agency).<sup>129</sup> The study has its own website ([www.fsdhr.ie](http://www.fsdhr.ie)), and is based around two so-called pillars: Pillar A on familicide, and Pillar B on identifying international best practice in domestic homicide reviews. Women's Aid, a leading advocacy group, has been monitoring femicide in Ireland since 1996; its most recent report (for 2018), found that 225 women have died violently since 1996, with 137 of them (61%) being killed in their own homes.<sup>130</sup> The Report showed that seven women died violently in 2018, compared with nine the previous year and two

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<sup>122</sup> Rape Crisis Network Ireland (2019), 'Submission on Courts Service Long-Term Strategy 2019-2025', available at: [www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf](http://www.rcni.ie/wp-content/uploads/RCNI-Courts-Service-Long-Term-Strategy-2019-2025-February-2019-submission-final.pdf).

<sup>123</sup> Ireland, Minister for Justice and Equality (2019), 'Answer to Parliamentary Query 321 from Deputy Peadar Tóibín', 2 July 2019, available at: [www.justice.ie/en/JELR/Pages/PQ-02-07-2019-321](http://www.justice.ie/en/JELR/Pages/PQ-02-07-2019-321).

<sup>124</sup> Ireland, Minister for Justice and Equality (2019), 'Minister Flanagan announces ratification of the Istanbul Convention on International Women's Day', press release, 8 March 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000066](http://www.justice.ie/en/JELR/Pages/PR19000066).

<sup>125</sup> Ireland, Domestic Violence Act 2018, n. 6/2018, section 39, available at: <http://www.irishstatutebook.ie/eli/2018/act/6/section/39/enacted/en/html>.

<sup>126</sup> Ireland, Domestic Violence Act 2018 (Commencement) Order 2018, SI 532/2018, available at: [www.irishstatutebook.ie/eli/2018/si/532/made/en/print?q=domestic+violence+act](http://www.irishstatutebook.ie/eli/2018/si/532/made/en/print?q=domestic+violence+act).

<sup>127</sup> Ireland, Criminal Law (Extraterritorial Jurisdiction) Act 2019 (Commencement) Order 2019, SI 173/2019, available at: [www.irishstatutebook.ie/eli/2019/si/173/made/en/print?q=extraterritorial](http://www.irishstatutebook.ie/eli/2019/si/173/made/en/print?q=extraterritorial).

<sup>128</sup> Ireland, Minister for Justice and Equality (2019), 'Minister Flanagan announces entering into force of Istanbul Convention', press release, 1 July 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000180](http://www.justice.ie/en/JELR/Pages/PR19000180).

<sup>129</sup> Government of Ireland (2019), 'Minister Flanagan announces independent specialist in-depth research study on familicide and domestic homicide reviews', press release, 14 May 2019, available at: [https://merriestreet.ie/en/News-Room/News/Minister\\_Flanagan\\_announces\\_independent\\_specialist\\_in-depth\\_research\\_study\\_on\\_familicide\\_and\\_domestic\\_homicide\\_reviews.html](https://merriestreet.ie/en/News-Room/News/Minister_Flanagan_announces_independent_specialist_in-depth_research_study_on_familicide_and_domestic_homicide_reviews.html).

<sup>130</sup> Women's Aid (2019), *Breaking the Pattern of Male Violence: Femicide Watch 2018*, Dublin, WA, available at: [www.womensaid.ie/download/pdf/womens\\_aid\\_femicide\\_watch\\_2018\\_republic\\_of\\_ireland\\_embargoed\\_231118.pdf](http://www.womensaid.ie/download/pdf/womens_aid_femicide_watch_2018_republic_of_ireland_embargoed_231118.pdf).

the year before that. Women's Aid made a submission to the study in July 2019,<sup>131</sup> and recommended:

- The introduction of guidelines on reporting femicide and domestic violence to ensure that bereaved families are not further traumatised by insensitive media reports;
- The prevention of killers benefitting from their crimes, especially as regards the inheritance of jointly held property;
- The provision of free long-term counselling for families affected by femicide.

The Minister for Justice and Equality announced in 2018 an independent review of the law concerning the investigation and prosecution of sexual offences. The review was expected to be submitted in the third quarter of 2019,<sup>132</sup> but this deadline has been moved to the end of 2019.<sup>133</sup>

The Law Reform Commission issued a report in November on the *mens rea* of rape.<sup>134</sup> The Commission recommended the amendment of the current subjective test that requires the prosecution to prove either that the defendant knew that the woman was not consenting or that he was reckless as to her consent (i.e., he realised that she might not be consenting but continued regardless). The Commission recommended that it should be sufficient for a conviction that the prosecution proved that the defendant did not have a reasonable belief that the woman was consenting. This is an objective standard, and the jury should have regard to any steps that the defendant took to ascertain whether the woman was consenting. The jury should also be required to have regard to a specific list of factors affecting the defendant's person capacity such as their age and maturity, and any disability or mental illness. Finally, the Commission recommended that the current law that renders the defendant's self-induced intoxication irrelevant as regards guilt in a rape case should be retained.

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<sup>131</sup> Women's Aid (2019), 'Submission to the Study on Familicide and Domestic Homicide', July 2019, available at: [www.womensaid.ie/download/pdf/womens\\_aid\\_submission\\_to\\_the\\_study\\_on\\_familicide\\_and\\_domestic\\_homicide.pdf](http://www.womensaid.ie/download/pdf/womens_aid_submission_to_the_study_on_familicide_and_domestic_homicide.pdf).

<sup>132</sup> Ireland, Minister for Justice and Equality (2019), 'Answer to Parliamentary Query 321 from Deputy Peadar Tóibín', 2 July 2019, available at: [www.justice.ie/en/JELR/Pages/PQ-02-07-2019-321](http://www.justice.ie/en/JELR/Pages/PQ-02-07-2019-321).

<sup>133</sup> Ireland, Minister for Justice and Equality (2019), 'Minister Flanagan welcomes the publication of the Law Reform Commission's Report on Knowledge and Belief concerning Consent in Rape Law', press release, 8 November 2019, available at: [www.justice.ie/en/JELR/Pages/PR19000273](http://www.justice.ie/en/JELR/Pages/PR19000273).

<sup>134</sup> Ireland, Law Reform Commission, Report on Knowledge and Belief concerning Consent in Rape Law (LRC 122-2019), available at: [www.lawreform.ie/fileupload/Reports/LRC%20122-2019%20Knowledge%20or%20Belief%20Concerning%20Consent%20in%20Rape%20Law.pdf](http://www.lawreform.ie/fileupload/Reports/LRC%20122-2019%20Knowledge%20or%20Belief%20Concerning%20Consent%20in%20Rape%20Law.pdf).

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

## CRPD policy & legal developments

Ireland formally ratified the CRPD on the 19 April 2018. The most recent updates on the rights of persons with disabilities since Ireland's ratification of the CRPD were delivered by the Minister for State at the Department of Justice and Equality, with special responsibility for disability on the 2 July 2019 during Dáil Éireann debates.<sup>135</sup> The Disability (Miscellaneous Provisions) Bill 2016 has completed Committee Stage, the third stage within the legislative process in Dáil Éireann and will move to the fourth stage of this process.<sup>136</sup> The provisions on deprivation of liberty have been decoupled from the Disability (Miscellaneous Provisions) Bill 2016 and will now be enacted via a standalone Bill.<sup>137</sup> The purpose of Deprivation of Liberty Safeguard legislation is to meet obligations under article 14 of the Convention on the Rights of Persons with Disabilities (CRPD). The Advisory Group supporting the development of the Deprivation of Liberty Safeguards legislation convened a meeting on 13 June 2019, however, no Bill has been published to date.<sup>138</sup> In addition, work is ongoing on the introduction of a Mental Health (Amendment) Bill to amend the Mental Health Act 2001 thus bringing Irish law in line with international human rights obligations, including those under the CRPD.<sup>139</sup>

The Mental Health Commission's Annual Report 2018<sup>140</sup> outlines the progress on the development of a number of draft codes of practice for implementation of the Assisted Decision Making (Capacity) Act 2015. The National Disability Authority is responsible for drafting the eleven non-health codes of practice, five of these were presented to the Director of the Disability Support Service (DSS) in November 2018.<sup>141</sup> The Advance Healthcare Directives Multi-Disciplinary Working Group commissioned by the Minister for Health submitted three draft codes to the Director of the DSS in December 2018.<sup>142</sup> The most recent update from the HSE programme on implementation of the Assisted Decision Making (Capacity) Act 2015, notes that the HSE Assisted Decision Making and Consent Office will be hosting a number of masterclasses to support practice in this area.<sup>143</sup>

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<sup>135</sup> Ireland, Houses of the Oireachtas (2019), Dail Eireann debate, Tuesday, 2 July 2019, available at: [www.oireachtas.ie/en/debates/debate/dail/2019-07-02/8/#spk\\_292](http://www.oireachtas.ie/en/debates/debate/dail/2019-07-02/8/#spk_292)

<sup>136</sup> Ireland, Disability (Miscellaneous Provisions) Bill 2016, no. 119/2016, available at: [www.oireachtas.ie/en/bills/bill/2016/119/](http://www.oireachtas.ie/en/bills/bill/2016/119/).

<sup>137</sup> Government of Ireland (2019), Legislative Programme 2019, available at: [https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/20190402\\_Legislation\\_Programme\\_published.pdf](https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/20190402_Legislation_Programme_published.pdf).

<sup>138</sup> Department of Health, recent update on the Advisory Group includes representation from across the Department of Health, the Department of Justice and Equality, HSE, Director of the Decision Support Service, National Disability Authority (NDA) and Sage Advocacy.

<sup>139</sup> Government of Ireland (2019), Legislative Programme 2019, available at: [https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/20190402\\_Legislation\\_Programme\\_published.pdf](https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/20190402_Legislation_Programme_published.pdf)

<sup>140</sup> Mental Health Commission (2019), 'Annual Report 2018', 20 June 2019, available at: [www.mhcirl.ie/File/2018\\_AR\\_Incl\\_OIMS.pdf](http://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf)

<sup>141</sup> Mental Health Commission (2019), 'Annual Report 2018', 20 June 2019, available at: [www.mhcirl.ie/File/2018\\_AR\\_Incl\\_OIMS.pdf](http://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf), p. 44.

<sup>142</sup> Mental Health Commission (2019), 'Annual Report 2018', 20 June 2019, available at: [www.mhcirl.ie/File/2018\\_AR\\_Incl\\_OIMS.pdf](http://www.mhcirl.ie/File/2018_AR_Incl_OIMS.pdf).

<sup>143</sup> Health Service Executive, 'Latest news on the HSE Assisted Decision-Making Implementation Programme', available at: [www.hse.ie/eng/about/who/qid/other-quality-improvement-programmes/assisteddecisionmaking/assisted-decision-making.html](http://www.hse.ie/eng/about/who/qid/other-quality-improvement-programmes/assisteddecisionmaking/assisted-decision-making.html).

The independent monitoring framework in Ireland includes the Irish Human Rights and Equality Commission (IHREC) and the National Disability Authority. IHREC set up a Disability Advisory Committee with 11 representatives composed of a diverse group of persons with lived experience of disability.<sup>144</sup> The Advisory Committee will assist IHREC in its role monitoring implementation of the CRPD.<sup>145</sup>

**CRPD monitoring at national level**

Table: Structures set up for the implementation and monitoring of the CRPD

<b>EUMS</b>	<b>Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)</b>	<b>Coordination mechanism – Article 33 (1)</b>	<b>Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)</b>
<b>IE</b>	Department of Justice and Equality, Equality Division		<a href="#">Irish Human Rights and Equality Commission</a> supported by the National Disability Authority  Disability Advisory Committee established to support independent monitoring role of IHREC.

<sup>144</sup> For biographies of the members please see the organisations website: [www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/](http://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/).

<sup>145</sup> For further information, see the organisations website: [www.ihrec.ie/crpd/members-of-the-disability-advisory-committee/](http://www.ihrec.ie/crpd/members-of-the-disability-advisory-committee/).

## Annex 1 – Promising Practices

Thematic area	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one example of a rights awareness campaign held in your country in 2019 relevant to equality and non-discrimination, preferably one conducted by a national equality body. Where no such campaign was held, please provide an example of a promising practice implemented in 2019 in your country (this could include innovative initiatives at local level) to combat discrimination on any one of the following grounds: religion or belief, disability, age, sexual orientation, gender identity or sex characteristics. Where relevant, always highlight any relevance or reference to multiple discrimination..
Title (original language)	HSE National Domestic, Sexual and Gender-Based Violence Training Resource Manual Recognising and Responding to Victims of Domestic, Sexual and Gender-Based Violence (DSGBV) in Vulnerable or At-Risk Communities
Title (EN)	
Organisation (original language)	Health Services Executive
Organisation (EN)	
Government / Civil society	Department of Health
Funding body	
Reference (incl. url, where available)	<a href="https://www.hse.ie/eng/about/who/primarycare/socialinclusion/other-areas/domestic-violence/dsgbv-training-resource-manual.pdf">https://www.hse.ie/eng/about/who/primarycare/socialinclusion/other-areas/domestic-violence/dsgbv-training-resource-manual.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2019
Type of initiative	
Main target group	Victims of domestic, sexual and gender-based violence in vulnerable or at-risk communities
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	This innovative training manual is aimed at state health service providers to equip them with the information and know-how to intervene appropriately in response to sexual, domestic and gender-based violence (SDGBV) experienced by members of vulnerable and at-risk communities. It is organised under the headings of Recognise, Respond and Refer. It recognises that 'domestic violence takes many forms and can affect anyone, irrespective of age, educational background, culture, gender, or sexual orientation' (p. 12). Specifically, regarding LGBTI+ persons who experience SDGBV, it highlights that this group 'can experience particularly high levels of stress due to the stigma and discrimination they may face as a result of their cultural backgrounds'(p. 54). The manual adopts an 'equality and diversity' approach, which 'means treating everyone equally, regardless of their colour, age, gender, ethnicity, sexual orientation or disability' while also 'recognising individual as well as group differences, and changing how ... [service providers] behave in order to accommodate the unique and distinct needs of different groups'. (p. 52)
Highlight any element of the actions that is	The action of creating a training manual of this type, which targets service providers whose role is to assist persons who are member of vulnerable

transferable (max. 500 chars)	and at-risk communities who are experiencing SDGBV, is highly transferable and relevant to many country contexts.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	This development of this training resource manual is relevant to the fulfilment of commitments contained in multiple national actions plans and strategies including the National Sexual Health Strategy 2015 - 2020, the Second National Strategy on Domestic, Sexual and Gender-based Violence (2016-2021) and the Second National Intercultural Health Strategy–2018-202. As such, it is a tool that is embedded in Ireland's wider health policy terrain and therefore likely to continue to be utilised and further developed as relevant actions plans and strategies are reviewed and renewed.
Give reasons why you consider the practice as having concrete measurable impact	The manual is being disseminated widely and is the basis for ongoing organised training by the Health Services Executive.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Training manuals are amenable to adaptation and translation across different countries
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The involvement of beneficiaries and stakeholders in the process of consultation undertaken to produce the manual is outlined in the resource (p. 8) and is evident in 'guiding principles' that it advocates in the development of best-practice responses to DSGBV when working with vulnerable and at-risk communities. These are: human rights-based, focus on safety, welfare and protection, empowerment, privacy and confidentiality, accountability, participation and collaboration, skills and awareness, respect, evidence-informed, early intervention and prevention, and cultural competence (pp. 8-9)
Explain, if applicable, how the practice provides for review and assessment.	Because the manual and its utilisation form part of the implementation of multiple national strategies, its impact will be subject to review in the monitoring and evaluation processes of the relevant strategies.

Thematic area	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> Please provide one example of a promising practice to address discriminatory ethnic profiling within law enforcement agencies and other relevant national authorities. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	An Garda Síochána Opens Recruitment Competition for Garda Trainees
Title (EN)	An Garda Síochána Opens Recruitment Competition for Garda Trainees
Organisation (original language)	An Garda Síochána
Organisation (EN)	An Garda Síochána (Irish Police Service)
Government / Civil society	Government.
Funding body	
Reference (incl. url, where available)	<a href="https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2019/april/an-garda-siochana-opens-recruitment-competition-for-garda-trainees.html">https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2019/april/an-garda-siochana-opens-recruitment-competition-for-garda-trainees.html</a>

Indicate the start date of the promising practice and the finishing date if it has ceased to exist	04/04/2019
Type of initiative	Police recruitment drive and, in particular, changes to uniform policy.
Main target group	Minority religious communities in Ireland.
Indicate level of implementation: Local/Regional/National	National.
Brief description (max. 1000 chars)	On 4 April 2019, it was announced in the context of a recruitment drive that An Garda Síochána (AGS) had altered its uniform policy to cater for greater diversity in Ireland. In particular, this alteration permits members of religious minorities to join the AGS and maintain dresscode requirements. For example, Muslim women in Ireland can wear the hijab and Sikh men can wear the turban. As noted in the AGS press release, the inability to wear items of religious significance had acted as a barrier to members of minority faiths joining the AGS. AGS Commissioner Drew Harris acknowledged the “need to become a much more diverse organisation so that we properly reflect the society we serve.”
Highlight any element of the actions that is transferable (max. 500 chars)	All.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	Once implemented, changes will become part of standard uniform. Reversals of decision would potentially violate Equality legislation.
Give reasons why you consider the practice as having concrete measurable impact	Diversity in the Irish police service is quite low, this measure should increase representation from minority religious communities in Ireland.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	In making such changes, Ireland will be one of only a few EU MSs that will allow for such. In doing so, Ireland can add to the momentum of accepting diversity in police dress.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	

Thematic area	<b>ROMA INTEGRATION</b> Please provide one example of promising practice in relation to addressing a Roma/Travellers segregation at either national, regional or local. These could be (not limited to) in the area of segregation in education, residential segregation, segregation in healthcare services or in employment.
Title (original language)	Monitoring of reduced timetables within primary and secondary schools
Title (EN)	Monitoring of reduced timetables within primary and secondary schools
Organisation (original language)	
Organisation (EN)	
Government / Civil society	Department of Education and Skills, Department of Children and Youth Affairs, and TUSLA Educational Welfare Service.
Funding body	
Reference (incl. url, where available)	Information available at <a href="https://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html">https://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	23 September 2019
Type of initiative	Education
Main target group	Children subject to reduced timetables (including Traveller and Roma children)
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	On 23 September 2019, the Minister for Education and Skills announced that schools will be required to give formal notification of the use of reduced timetables (e.g. reduced school hours). This followed concerns expressed about the inappropriate use of reduced timetables and the disproportionate effect on young people from the Traveller and Roma communities and those with disabilities. <sup>146</sup> The Minister is currently seeking the views of education partners on the proposed guidelines, which are intended to provide clarity to schools around reduced timetables and to set out the procedures to be followed by schools where such an option is being considered and used. Among other things, the proposals would require schools to provide a rationale for the reduced timetable. The consent of the parent or guardian would also be required. <sup>147</sup> However, the proposed guidelines do not appear to require that the ethnicity of the young person be recorded and reported on.
Highlight any element of the actions that is transferable (max. 500 chars)	The concept of formally monitoring and notifying any reduction in school hours for an individual pupil or informal exclusion would appear to be a useful one which would be transferable across national settings.

<sup>146</sup> See Pavee Point Submission to the Joint Oireachtas Committee on Education and Skills (March 2019), at 2.8. Available at <https://www.paveepoint.ie/wp-content/uploads/2015/04/Submission-to-the-Committee-on-Education-and-Skills-March-19.pdf>.

<sup>147</sup> See information available at <https://www.education.ie/en/Press-Events/Press-Releases/2019-press-releases/PR19-09-23.html>

Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It appears that this initiative intends to establish a permanent set of guidelines to inform practice on an ongoing basis.
Give reasons why you consider the practice as having concrete measurable impact	The procedures established by the guidelines will have the concrete impact of providing a new accountability mechanism. The data provided to the national Child and Family Agency (Tusla) will provide a basis to analyse trends in the use of reduced timetables going forward.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	The concept of formally monitoring and notifying any reduction in school hours for an individual pupil or informal exclusion would appear to be a useful one which would be transferable across national settings.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The Department of Education and Skills is inviting observations from education stakeholders until 18 October 2019.
Explain, if applicable, how the practice provides for review and assessment.	This is a 'work-in-progress' so it remains to be seen how the final guidelines provide for review and assessment.

Thematic area	<b>Asylum, visas, migration borders and integration</b> Please provide a promising practice on the support provided to unaccompanied children when reaching majority.
Title or short description of promising practice in original language and in English	Immigration registration renewal system for 3rd level students
Organisation (Government / Civil society) in charge of promising practise (original language/English )	Department of Justice and Equality – Irish Naturalisation and Immigration Service
Funding body	Department of Justice and Equality
Reference (incl. url, where available)	<a href="http://www.justice.ie/en/JELR/Pages/PR19000208">http://www.justice.ie/en/JELR/Pages/PR19000208</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	26 August 2019
Main target group	Non EEA third level students
(around 1000 characters)	The measure sees the introduction of an online application process which will enable third level students from outside Europe who live in the greater Dublin area to renew their immigration registration with INIS without the need to present in person. This will benefit over 8,000

	students in the coming academic year and will free up in-person appointments for other customers.
Indicate level of implementation: Local/Regional/National	Regional – Greater Dublin Area
Indicate success factors – why has the practice effectively promoted integration?	The practice will streamline the registration process for students, meaning that they do not have to seek an appointment at the main Dublin office of the Irish Naturalisation and Immigration Services on Burgh Quay in Dublin City Centre. This will free up space for other service users.
If the initial funding of the initiative ended, how has the initiative been continued/followed-up?	Funding is ongoing.
Explain, if applicable, how the practice is being reviewed and assessed.	N/A
Does the initiative apply to both asylum seekers and protection status holders – and/or support the transition from one to the other?	Y/N Yes
Does the initiative specifically support persons in need of international protection as they turn 18? If so, which type of support is provided?	Y/N + description of support if relevant  Yes, the initiative is open to persons in need of protection who turn 18 and are in or intending to participate in third level education including students who arrived as unaccompanied children and are facilitated to attend third level education.

Thematic area	<b>INFORMATION SOCIETY, DATA PROTECTION</b> Please provide one example of a promising practice in relation to one of the topic addressed in this Chapter
Title (original language)	No promising practice has been identified for this thematic area.

Thematic area	<b>RIGHTS OF THE CHILD</b> Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter.
Title (original language)	Government of Ireland, Action Plan for Online Safety 2018-2019
Title (EN)	Government of Ireland, Action Plan for Online Safety 2018-2019
Organisation (original language)	English
Organisation (EN)	Government of Ireland : Department of Education and Skills, the Department of Justice and Equality, the Department of Communications, Climate Action and Environment, the Department of Health, the Department of Business, Enterprise and Innovation and the Department of Children and Youth Affairs.
Government / Civil society	Government
Funding body	Irish Government

Reference (incl. url, where available)	<a href="https://dcaae.gov.ie/en-ie/communications/topics/Internet-Policy/online-safety/national-advisory-council-/Pages/Publications-of-the-Council.aspx">https://dcaae.gov.ie/en-ie/communications/topics/Internet-Policy/online-safety/national-advisory-council-/Pages/Publications-of-the-Council.aspx</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2018-2019
Type of initiative	The Taoiseach launched the Action Plan for Online Safety 2018-2019 and noted that “as the internet affects all aspects of our lives, the only approach that will truly be effective is one that involves all stakeholders playing their part”. Part of this initiative includes the establishment of the National Council for Online Safety with a role that includes: Data gathering, education and research.
Main target group	Users of online services to include parents and children
Indicate level of implementation: Local/Regional/National	National Implementation
Brief description (max. 1000 chars)	The aim of the National Council for Online Safety is to take ‘a robust, joined up and wide-ranging approach to implementing or substantially progressing 25 actions to improve online safety in Ireland before the end of 2019’ <sup>148</sup> . These aims include education, providing guidance and awareness training around safe online practices for vulnerable people including children. Central to this will be hearing the views of children and young adults. In February 2019, the Council confirmed the establishment of two subgroups: one to examine issues relating to online safety guidance, another to examine online safety research. Data gathered and research undertaken will provide a repository of information through which comparisons across jurisdictions may be undertaken.
Highlight any element of the actions that is transferable (max. 500 chars)	The development of education programmes/ Guide for Online Safety may be transferable to other jurisdictions across the EU. Research will establish ‘baseline information’ on: children; youth and risks/safety in use of the internet; parents and online safety; adults and e-safety; how children in Ireland access the internet; their digital skills, the prevalence of online risks and abuse and how parent’s monitor children’s online activity.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	It is important to maintain and keep up with developments in online services and the establishment of a council involving six Government Departments and key stakeholders to include, amongst others, the Ombudsman for Children’s office, the ISPCC, Cybersafe Ireland and the Data Commissioner would indicate that a structured approach is being taken. The value of this council will be in the fact that it will continue to monitor and develop in line with new trends and that it will report on an annual basis.
Give reasons why you consider the practice as having concrete measurable impact	The Council’s terms of reference include developing ‘clear and easy to understand Online Safety guidance materials for all internet users, including targeted material for children and young people, parents,

<sup>148</sup> National Council for Online Safety, Progress Report, February 2019 at p 5 Available at: <https://dcaae.gov.ie/documents/National%20Advisory%20Council%20for%20Online%20Safety%20Progress%20Report%20February%202019.pdf>

	persons with learning disabilities, and older people.’ <sup>149</sup> It is also proposed that the body will undertake EU research and review international research with a view to advising Government by means of an annual report.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Data gathered and research undertaken will provide a repository of information through which comparisons across jurisdictions may be undertaken. The Code for online safety may potentially be used as a model of best practice for other jurisdictions across the EU.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	A panel of experts has been established. The Council has a chairperson and 20 members. Those involved are drawn from children's and parents' organisations, major online platforms, and experts on online safety issues to include representatives from the Ombudsman for Children, ISPC, the Data Protection Commissioner, and the Gardaí etc. Importantly, the Council will hear the views of children and young people.
Explain, if applicable, how the practice provides for review and assessment.	In addition to the work the council undertakes, it will develop a ‘framework for monitoring and reporting on implementation progress in line with agreed schedule, publish biannual progress reports on Action Plan implementation on each Department’s Website / Gov.ie and ensure a coordinated, whole of Government approach to Online Safety, including working on a collaborative basis, with commitment from each Department, to review, consolidate and augment resources to support on-line safety; develop and maintain a single online point of contact; initiate and roll out a national communications campaign directed at all users’ <sup>150</sup> with key user groups including children and young people; parents and guardians’. <sup>151</sup>  It is proposed that the Chair of the Group will rotate between Departments over the course of the project.

<sup>149</sup> <sup>149</sup> National Council for Online Safety, Progress Report, February 2019 at p 10 Available at: <https://dcca.gov.ie/documents/National%20Advisory%20Council%20for%20Online%20Safety%20Progress%20Report%20February%202019.pdf>

<sup>150</sup> Government of Ireland, Action Plan for Online Safety 2018-2019 at p 43-44 Available at : [file:///C:/Users/0114844s/AppData/Local/Packages/Microsoft.MicrosoftEdge\\_8wekyb3d8bbwe/TempState/Downloads/120718132737-7082532-ONLINE%20SAFETY%20ACTION%20PLAN%202018-2019%20\(1\).pdf](file:///C:/Users/0114844s/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/120718132737-7082532-ONLINE%20SAFETY%20ACTION%20PLAN%202018-2019%20(1).pdf)

<sup>151</sup> Government of Ireland, Action Plan for Online Safety 2018-2019 at p 43-44 Available at : [file:///C:/Users/0114844s/AppData/Local/Packages/Microsoft.MicrosoftEdge\\_8wekyb3d8bbwe/TempState/Downloads/120718132737-7082532-ONLINE%20SAFETY%20ACTION%20PLAN%202018-2019%20\(1\).pdf](file:///C:/Users/0114844s/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/120718132737-7082532-ONLINE%20SAFETY%20ACTION%20PLAN%202018-2019%20(1).pdf) at p 51,52

Thematic area	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter
Title (original language)	N/A
Title (EN)	External Training on Domestic Violence
Organisation (original language)	An Garda Síochána
Organisation (EN)	Irish National Police Force
Government / Civil society	Government
Funding body	Government
Reference (incl. url, where available)	Minister of Justice and Equality, Answer to Parliamentary Query 543 from Deputy Mary Lou McDonald, 8 May 2019, available at <a href="http://www.justice.ie/en/JELR/Pages/PQ-08-05-2019-543">http://www.justice.ie/en/JELR/Pages/PQ-08-05-2019-543</a> (accessed 5 September 2019).
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	February 2019 – exact date unknown
Type of initiative	Training
Main target group	Members of An Garda Síochána, especially members of Divisional Protective Services Units
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Academic staff of the University of Gloucestershire has been engaged to provide a series of training courses on domestic abuse at the Garda College in Templemore (the police training college). Three-day courses were provided to 107 members of the Garda Divisional Protective Services Units. Further training on the new Domestic Violence Act 2018 was provided to 206 trainee Gardaí and 158 probationer Gardaí. The Garda authorities have approved a Continuous Professional Development programme for 2019, and the 2018 Act, including the offence of coercive control, will form a part of that programme.
Highlight any element of the actions that is transferable (max. 500 chars)	The training is focussed on domestic legislation, but the notion of specialist, external training for police officers is easily transferable. It is important to note that the training is being offered by an expert from outside the jurisdiction.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	The Domestic Violence Act 2018 is part of Ireland’s criminal code, and therefore there will be an ongoing need to ensure that Ireland’s police are fully versed in the new legislation. They must also be familiar with the reality of domestic abuse.
Give reasons why you consider the practice as having concrete measurable impact	This is difficult – the initiative is designed to ensure that members of An Garda Síochána are familiar with the new legislation. By its nature, the impact of such an initiative is difficult to measure.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Police officers must be trained to respond to incidents of domestic violence. Having the training done by an independent external body ensures impartiality in the delivery and is a defence against the development of “group-think”.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning,	N/A

evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b> Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	Disability Advisory Committee
Title (EN)	
Organisation (original language)	Irish Human Rights and Equality Commission (IHREC)
Organisation (EN)	
Government / Civil society	Independent National Human Rights Institution
Funding body	Funding provided by Oireachtas with consent of the Minister for Public Expenditure and Reform
Reference (incl. url, where available)	<a href="https://www.ihrec.ie/crpd/">https://www.ihrec.ie/crpd/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Start date: 28-01-2019 End date: January 2022
Type of initiative	Mechanism for monitoring the CRPD
Main target group	Persons with Disabilities
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Disability Advisory Committee (DAC or the Committee) was appointed in January 2019. There are eleven people serving for a three-year term on the first ever statutory advisory committee in Ireland to support monitoring of Ireland's implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD). The DAC are appointed to their roles by the Irish Human Rights and Equality Commission (IHREC). The Committee is composed of a majority of people with disabilities and its role is to support the statutory function of IHREC in monitoring Ireland's implementation of the CRPD.
Highlight any element of the actions that is transferable (max. 500 chars)	The following actions are transferable: The incorporation in law of a statutory disability advisory committee; the support function of DAC in the monitoring role of the independent mechanism set up to comply with state obligations under article 33 of the CRPD.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It is sustainable as it is a statutory requirement that the national human rights institution must establish such a committee to support its role in monitoring implementation of the CRPD.
Give reasons why you consider the practice as having concrete measurable impact	It allows the DAC the majority of whom are people with disabilities to provide advice based on lived experience, to have direct involvement in monitoring the impact of laws, policies and practices by providing up to date information from the grassroots level. This will allow early intervention to identify human rights violations or potential barriers to the

	exercise of human rights. The participation of DAC in these various processes can be tracked and evaluated to measure impact of their involvement in law and policy development towards the implementation of the CRPD in Ireland.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	This practice is transferrable to other member states as the Irish Human Rights and Equality Commission holds an “A” status as a NHRI. Therefore, the Commission and its monitoring mechanism are fully compliant with the Paris Principles and are given voting, seating and speaking rights at UN human rights treaty bodies.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Setting up DAC means that people with disabilities will be involved in all stages of monitoring implementation of the CRPD.
Explain, if applicable, how the practice provides for review and assessment.	The IHREC has statutory duty to appoint an advisory committee for a period of time (s. 18 IHREC Act 2014) and therefore the composition of the DAC will change thus allowing for a diverse range of lived experience of different kinds of disabilities.

## Annex 2 – Case law

Thematic area	<p><b>EQUALITY AND NON-DISCRIMINATION</b></p> <p>Please provide one high court decision addressing discrimination on any one of the following grounds: gender identity, religion or belief, disability, age, or sexual orientation. Where relevant, always highlight any relevance or reference to multiple discrimination in the case you report</p>
Decision date	17 October 2019
Reference details	<a href="#"><i>A.C. &amp; Ors v Cork University Hospital and Ors &amp; A.C. v Fitzpatrick and Ors</i> [2019] IESC 73</a>
Key facts of the case (max. 500 chars)	A.C. is an elderly 96-year-old woman who was hospitalised twice over a period of a few months after breaking both of her hips. During the second hospitalisation, health care staff decided not to release her because she was deemed moderately incapable of making decisions in her best interest and because her post-release accommodation was considered unsuitable for her needs. She was then placed in a nursing home and prevented from leaving it. Her son, P.C., challenged the lawfulness of his mother’s deprivation of liberty in the court system. The High Court rejected the challenge and began an inquiry into A.C.’s legal capacity, which eventually led to her being made a ward of courts. The resultant proceedings before the Court of Appeal (CoA) found that A.C.’s first detention was unlawful, but made no orders concerning her release from the nursing home. After several other unsuccessful legal initiatives to challenge his mother’s status as a ward of courts and deprivation of liberty, P.C. resorted to an exceptional leapfrog appeal to the Supreme Court. (The Health Service Executive appealed against the CoA’s decision).
Main reasoning/argumentation (max. 500 chars)	Regarding the pre-wardship restriction of liberty, “It must be clearly understood that the hospital has no overriding legal right to appoint itself as a substitute decision-maker for the patient, no legal power to decide how the right to liberty”; It has however a duty of care / to persuade the patient of what deemed necessary for her wellbeing. “However, if the hospital concludes that the patient lacks capacity to make the decision, it must, if it has serious concerns for her welfare, seek the assistance of the court within a reasonably short time [...] two weeks in most cases would be too long [a period]”. Concerning the legality of the wardship order, the Supreme Court argued that the “process lacked certain fundamental safeguards for the interests of the proposed ward”, in particular the right to be heard and the right to legal aid of an especially vulnerable person like Mrs. A.C.. Therefore, the original wardship “order of the 19th August 2016 breached the constitutional rights of Mrs. A.C. to fair procedures”.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CoA’s assessment paid “insufficient attention (to the totality of the evidence relating) to the actual wishes of Mrs. C. A.”, which is something hospitals need to consider when preventing the release of a person. Concerning the proceedings that led to the wardship order, “one of the most salient aspects of that process was the absence of Mrs. C.’s voice, whether speaking for herself, or through a legal representative, or through a person such a guardian ad litem”.
Results (sanctions) and key consequences or	The High Court should revisit the order made in August 2016. The claim of unlawful deprivation of liberty is not made out.

implications of the case (max. 500 chars)	
Key quotation in original language and translated into English with reference details (max. 500 chars)	Para 396: “the procedures applied to the making of the wardship order in August 2016 were flawed in that Mrs. C.’s fair procedure rights were not vindicated. The notice given of the hearing date was, I believe, too short. She should have been furnished with the evidence that was to form the basis for the Court’s decision, and should have had an adequate opportunity to challenge it. The absence of legal aid for such cases is a matter of real concern, given the consequences of a wardship order, and it seems to me that if a person is not in a position to get legal representation it may be necessary to appoint a guardian ad litem to protect her interest”.

Thematic area	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b>  Please provide the most relevant high court decision concerning the application of either the Racial Equality Directive, the Framework Decision on racism and xenophobia, or relevant to addressing racism, xenophobia and other forms of intolerance more generally.
	No case law has been identified for this thematic area.

Thematic area	<b>ROMA INTEGRATION</b>  Please provide the most relevant high court decision addressing violations of fundamental rights of Roma in the context of education, employment, health, housing, etc. In particular, focus on cases where discrimination or segregation (not limited to segregation in education or housing) are addressed.
Decision date	7 May 2019
Reference details	Dinu v Chief Appeals Officer, Social Welfare Appeals Officer & Minister for Employment Affairs and Social Protection [2019] IEHC 337
Key facts of the case (max. 500 chars)	The applicant was a national of Romania of Romani origins who resided in Ireland from 1996-2013 and Romania from 2013-2017. He returned to Ireland in 2017 and his application for welfare was refused as he was deemed not to satisfy the habitual residence condition. The Chief Appeals Officer refused the applicant’s request to reconsider his appeal and also refused to make a preliminary reference to the Court of Justice of the EU. The applicant sought judicial review of this decision. The question arising for decision by the High Court was whether or not the Social Welfare Appeals Office is a “tribunal” for the purposes of Article 267 of the Treaty on the Functioning of European Union.
Main reasoning/argumentation (max. 500 chars)	It was submitted on behalf of the applicant that this question is of fundamental and systemic importance because Appeals Officers are sometimes faced with complex legal issues which require determination by the CJEU, yet the Social Welfare Appeals Office has never made a preliminary reference. It was submitted that this practice means that appellants (who are often impecunious) are unnecessarily forced to issue expensive and lengthy proceedings in order to have the issue determined by the CJEU.

	However, the Court agreed with the respondents that these proceedings should be dismissed without addressing the question raised, as the issue of a reference to the CJEU was academic and theoretical in the circumstances of this case.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The High Court declined to consider the important practical question of whether the Social Welfare Appeals Office is a “tribunal” for the purposes of Article 267 of the Treaty on the Functioning of European Union and consequently may make a preliminary reference to the Court of Justice of the EU. The decision confirms that the High Court will not consider this issue unless an individual case presents a substantive EU law question. In this case, the applicant had not referred to specific EU provisions that would be at issue but rather raises EU Law in a general manner.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The right to access to welfare payments is an ongoing issue for the Roma community in Ireland, and the legal question of whether the Social Welfare Appeals Office may make a preliminary reference to the CJEU is an important one. However, this case demonstrates that the High Court will only consider this matter where a case raises a concrete question of EU Law.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“In my opinion, the respondents are correct in their arguments that the Court is being asked to address an academic question the answer to which can be of no benefit to the applicant. There is no substantive dispute between the parties on any question of EU law, and the question before the Court has at all times been moot as between the parties.”

Thematic area	<b>Asylum, visas, migration, borders and integration</b>
	Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter
	No case law has been identified for this thematic area.

Thematic area	<b>INFORMATION SOCIETY, DATA PROTECTION</b>
	Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter
Decision date	31 May 2019
Reference details	People (DPP) v. Doherty [2019] IECA 209 <a href="http://www.bailii.org/ie/cases/IECA/2019/CA209.html">http://www.bailii.org/ie/cases/IECA/2019/CA209.html</a>
Key facts of the case (max. 500 chars)	The appellant was convicted of harassment. The conviction was based on retained information regarding the allocation of IP addresses revealing that she had sent threatening emails from an internet cafe. She alleged that in light of the caselaw from Digital Rights Ireland onwards, this information was wrongfully retained and disclosed, and should have been excluded from evidence. She claimed that her constitutional rights, in addition to her rights under the Charter of Fundamental Rights, had been violated by the retention and disclosure.
Main reasoning/argumentation (max. 500 chars)	The Court of Appeal held that the IP addresses concerned related to the internet café rather than the appellant’s own device and therefore “the data in question was not personal data, and that the appellant's privacy rights were not breached” (para. 124). It followed that she was not entitled to rely on the mandatory exclusionary rule which applies in Irish law to breaches of constitutional rights; instead, she could, at best, rely on the discretionary exclusionary rule which applies to illegally obtained

	evidence. The court held that it would exercise its discretion to admit the evidence.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court of Appeal took a very restrictive view of the right to privacy online where wrongdoing is alleged, holding that “the appellant could have had no expectation of privacy while in the internet café... in the circumstances of the case. In so far as the emails sent on that occasion and on earlier occasions utilising hush mail email accounts were concerned, the only rights to privacy engaged, were those of the complainant and possibly those of the internet café owner. Moreover, it is well established... that the right to privacy cannot extend to participation in criminal activity” (para. 127).
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	There are three key implications from this judgment. First, it shows reluctance to apply the findings from the Digital Rights Ireland line of cases retroactively so as to exclude evidence where the retention laws were still in force at the time of the retention and access. Second, the court takes a restrictive understanding of personal data to hold that the appellant did not have a privacy interest in the IP address. Third, it continues a trend in earlier cases which hold that there is no expectation of privacy in civil or criminal wrongdoing, but with little or no analysis of how that principle might interact with ECHR or Charter rights.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“[T]here was a clear basis in this case for exercising the discretion in favour of admitting the evidence [...] The data at issue had been retained... under a statute which was the law of the land at the material time [...] Moreover, that domestic statute had been enacted to transpose, in part, Directive 2006/24/EC [...] Moreover, the requests under s. 6(1) of the Act of 2011 made by the Chief Superintendents were also made before Directive 2006/24/EC had been impugned. In so far as both the service providers, and the Gardaí, were concerned, there was lawful authority for their actions. They were not to know that the legal uncertainty that subsequently developed would transpire” (para. 126).

Thematic area	<b>RIGHTS OF THE CHILD</b> Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter.
Decision date	28 June 2019.
Reference details	L.E. -v- The Director of Public Prosecutions [2019] IEHC 471
Key facts of the case (max. 500 chars)	The applicant was accused of a crime that occurred when she was 15. She alleged that due to ‘prosecutorial delay’ she had been prejudiced as she was 18 by the time the case was heard and therefore lost the protections available to minors under s92 of the Children Act 2001. The Supreme Court has noted that there is a special duty to expedite proceedings involving minors, but this must be balanced against public interest, taking into account the seriousness of the crime. 152
Main reasoning/argumentation (max. 500 chars)	The applicant argued that due to the delay, she had been deprived of the protections normally afforded under the Children Act 2001 namely, loss of anonymity and that the length of time taken to bring the proceedings had impacted on her mental health. The prosecution argued that the delay

<sup>152</sup> *B.F. v. Director of Public Prosecutions* [2001] 1 I.R. 656; *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762

	was caused partly by the fact that her mother advised she had left the jurisdiction and that a trial date had been set for December 2017, which would have gone ahead, but for the judicial review proceedings.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Simons J. noted that he had to be balance his decision based on the principles laid down by the Supreme Court in <i>Donoghue</i> <sup>153</sup> . Any prejudice to the applicant has to be balanced against the public interest considering the seriousness of the crime. The Judge quoted <i>Independent Newspapers (Ireland) Ltd. v. I.A.</i> [2018] IEHC 120 [t]here may be good policy reasons to vest in a court a discretion to extend the protections of anonymity in cases which overlap the transition between childhood and adulthood but this has not been addressed by the Oireachtas. <sup>154</sup>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	No prosecutorial delay. The applicant benefits from s258 of the Children Act 2001; s92 does not apply. The courts have no discretion; the Oireachtas stipulate. This needs to be addressed. General Comment No 24 (2019) on children’s rights in the child justice system 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”. <sup>155</sup> The developing needs of the child are also relevant. In this case, medical reports indicated that the applicant was making progress.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“ [...] it should be noted that if this is the correct interpretation of the interaction between the Children Act 2001 and the Framework Decision on a European Arrest Warrant, then it gives rise to a Catch-22 situation whereby the surrender of a suspected child offender who has left the jurisdiction cannot be sought until the child has first been interviewed within the jurisdiction [...] it is a condition precedent to an application for surrender that the child be available for questioning within the jurisdiction. Of course, if the child were available, then surrender would not be required”

Thematic area	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide the most relevant high court decisions in relation to one of the topic ad-dressed in this Chapter..
Decision date	3 April 2019
Reference details	X v. Director of Public Prosecutions [2019] IEHC 221
Key facts of the case (max. 500 chars)	Applicant was charged with 105 counts of historic sexual offences alleged to have been committed between 1971 and 1983. Applicant sought judicial review of the prosecution, but being two months late in doing so, he required an extension of time. The High Court considered whether or not to grant this extension.
Main reasoning/argumentation (max. 500 chars)	The Rules of the Superior Courts require an application for judicial review within three months, but also allows the court to extend that time if there is a “good and sufficient reason for doing so”. The test is the interests of justice. One of the factors involved in this test is the right of a complainant to have his or her complaint dealt with in good time. This right is set out in the Criminal Law (Victims of Crime) Act 2017, the

<sup>153</sup> *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762

<sup>154</sup> *Donoghue v. Director of Public Prosecutions* [2014] 2 I.R. 762 (McDermott J.) paras. 43, 44

<sup>155</sup> United Nations (UN) Committee on the Rights of the Child (CRC/C/GC/24) (2019): *General Comment No 24 (2019) on children’s rights in the child justice system* 18 September 2019 para.31, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en).

	principal vehicle for the transposition of the Victims' Directive into Irish law.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The factors involved in deciding the interests of justice in an application to extend the time to seek judicial review; recognition and application of the complainant's right under the 2017 Act to an expeditious disposal of his/her complaint.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The High Court rejected the application for an extension of time to seek judicial review, on the basis of the interests of justice test. The complainant's right to an expeditious disposal of his or her criminal complaint is a factor to be considered in such cases.
Key quotation in original language and translated into English with reference details (max. 500 chars)	16(6) "[T]he complainant enjoys the right under the Criminal Justice (Victims of Crime) Act 2017 to a timely disposal of his complaints and an expeditious prosecution, rights that fall to be factored in when deciding whether to exercise the discretion to grant leave"

Thematic area	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b>  Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
Decision date	31/07/2019
Reference details	Nano Nagle School -v- Daly [2019] IESC 63
Key facts of the case (max. 500 chars)	This decision is an appeal from the Court of Appeal to the Supreme Court. The case involved a Special Needs Assistant (SNA) who acquired a disability over the course of her employment and her employers, a school for people with disabilities, duty to reasonably accommodate her under the Equality Act 2004. The employer contended that because the respondent could not complete a number of duties required for the post and that no adaptations could be made to make her capable of doing so she was unfit for work.
Main reasoning/argumentation (max. 500 chars)	The case is brought under Section 16 of the Employment Equality Acts. The main arguments centre around the interpretation of Section 16. The Supreme Court clarifies this interpretation and reverses the decision of the lower court. The Supreme Court approached the reasoning for its decision based on the construction of s.16 by making reference to and considering the recitals to Council Directive 2000/78/EC of 27 November 2000 which the Equality Act was enacted to give effect to in Irish law. The Court also referred to EU case law, which states that Directive 2000/78/EC, insofar as it related to disability, is to be interpreted in harmony with the Convention on the Rights of Persons with Disability.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Court clarifies the duties of an employer under Section 16 of the Employment Equality Acts, including their duty regarding the concept of reasonable accommodation. In the Courts interpretation of s.16 it establishes a higher standard for employers regarding their duty to take appropriate measures to provide reasonable accommodation and an expectation of employee consultation in the process. The SC stated that the: "the test is one of reasonableness and proportionality: an employer cannot be under a duty entirely to re-designate or create a different job to

	facilitate an employee” and that in most cases “removing all the duties which a disabled person is unable to perform” could become a disproportionate burden. [2019] IESC 63, para 89.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Court overturned the Court of Appeal decision by setting out that reasonable accommodation can include the redistribution of any task or duty provided it is not a disproportionate burden on the employer. The decision sets out an expectation of participation in decisions made around reasonable accommodation to include the relevant employee and other employees related to the role. The decision also brings focus on the State’s obligations under the Convention on the Rights of Persons with Disabilities. The case has been sent back to the Labour Court for hearing, therefore the outcome of this case is still pending.
Key quotation in original language and translated into English with reference details (max. 500 chars)	“the United Nations Convention on the Rights of Persons with Disabilities, ratified by both the State and the EU, is part of the necessary backdrop to this appeal...State parties to the Convention have an obligation under [Article Number 27 of the Convention] to ‘safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment’ through measures such as reasonable accommodation and prohibition of discrimination.” [2019] IESC 63, para 3 (dissenting, Charelton J)