Submission of Ireland

**Input for Oral Update by the High Commissioner at the 45th session of the Human Rights Council**

*COVID-19 and human rights*

**31 August 2020**

Ireland has mobilised resources from across Government to respond to the multiple and varied challenges of COVID-19, and has sought to ensure that all measures taken are in full compliance with our international human rights obligations.

Ireland’s plans in place to deal with public health emergencies such as COVID-19 are in line with global guidance provided by the World Health Organisation (WHO) and the European Centre for Prevention and Disease Control (ECDC). This submission provides an overview of some of the measures taken in response to the pandemic.

**A Rights-Based Approach to Public Health**

Respecting human rights and dignity is an integral part of the public health response to the COVID-19 pandemic. Ireland is committed to upholding the right to the enjoyment of the highest attainable standard of health and protecting the human rights and fundamental freedoms of vulnerable groups.

Responsibly managing a public health emergency requires a careful balancing of rights and has, in the current context of COVID-19, involved curtailments being placed on some individual rights and freedoms. The Irish Government and public health officials have sought to implement public health measures in a manner that is equitable, reasonable, and proportionate, in full compliance with national and international law and which does not discriminate against particular groups or individuals, especially those in vulnerable situations.

Given the volatility of a public health emergency, it is vital that good decision-making is ensured by using explicit and transparent processes and by having clear lines of accountability.

In recognition of these challenges, the Irish Government established the Pandemic Ethics Advisory Group as a subgroup of the National Public Health Emergency Team (NPHET) and published the *Ethical Framework for Decision-Making in a Pandemic* (March 2020). This document describes a number of substantive ethical principles and procedural values to guide decision-making and to ensure that all decisions are reasonable, transparent and justifiable. Each of the principles need to be applied and balanced in individual and specific contexts. The inclusion of procedural values should guide that process and support good decision-making. One of the key messages is that safeguards against unfair discrimination are required to ensure that there will be no systematic de-prioritisation or stigmatisation of any group.

One of the core principles in the Framework used to guide decision-making during the pandemic is proportionality. Where rights must be curtailed, the principle of proportionality requires that the least intrusive means of achieving the goals must employed, they must be proportionate to the risks identified and applied in a manner that avoids unfair discrimination and there must be a focus on the duration of the limitations. To that end, sunset clauses have been included in the Emergency Measures legislation that amended the Health Act 1947, *the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020*.

The *Ethical Framework* and its follow-up document *Ethical Consideration Relating to Critical Care in the Context of COVID-19* (April 2020) underscore the inappropriateness of prioritising access to medical intervention based on social status or other social value considerations e.g. income, ethnicity or gender and that no single factor, such as age or disability should be used to determine access to scarce resources. The ethics guidance for service providers and healthcare staff working in the long-term residential care (LTRC) sector (June 2020) makes clear that the provision of health and social care during a pandemic should continue to be person-centred and follow a rights-based approach. Individuals in LTRC settings have the same human rights as other people and must be treated with dignity and respect. The guidance expounds that decision-making involving people with intellectual disabilities or diminished capacity must promote inclusion, autonomy and participation to the greatest extent possible.

Furthermore, in terms of oversight bodies established to review the State’s response to the pandemic, an Oireachtas (Parliament) Special Committee on COVID-19 response was established on 6 May 2020 to consider and take evidence on the issue.

**Information and Communication**

In recognition that factual, relevant information on the COVID-19 pandemic and response should reach all people, without exception., the Irish Government has a dedicated COVID-19 webpage containing up-to-date statistics, information on public health measures in place, as well as information and guidance from across Government Departments. Regular press briefings are held with members of Government, senior civil service officials and public health officials that include sign-language interpretation. The Health Service Executive (HSE) has also made multilingual resources available on COVID-19 as part of ongoing public health communication campaigns, with materials available in over 25 languages.[[1]](#footnote-1)

The Health Protection Surveillance Centre (HPSC), part of the Health Service Executive (HSE), has issued guidance on a wide range of topics related to COVID-19, including guidance for healthcare settings and non-healthcare settings, and advice for vulnerable groups.[[2]](#footnote-2)

The HPSC provides daily updates on the number of confirmed cases of COVID-19 in the State and the total deaths.

The Government maintains a COVID-19 Data Hub with national statistics, information and data based on figures provided by the HPSC and the HSE, including statistics disaggregated by age and gender.[[3]](#footnote-3)

**Income Protection**

*Pandemic Unemployment Payment (PUP)*

In March 2020, the Irish Government introduced a series of emergency measures to combat the spread of the COVID-19 virus, which necessitated a temporary lockdown of non-essential businesses. It was recognised that there would be significant and unprecedented economic effects in terms of job losses and temporary layoffs, which would affect the incomes of a significant proportion of the workforce.

As part of the suite of measures, the COVID-19 Pandemic Unemployment Payment was introduced as a time-limited emergency income support measure to deal with the public health crisis and meet the dramatic surge in unemployment as a consequence. This emergency payment was aimed at supporting persons who had lost their employment due to the pandemic and where their employer was not paying them.

The emergency payment was initially due to last for 12 weeks and was paid at a flat rate of €350 per week, which is aligned with the jobseeker payment for a person in a two-person household with an adult dependent. In the case where a family would be entitled to a higher rate of payment, an applicant was advised to apply for a Jobseeker’s payment to ensure their income was maximised.

In June, the Irish Government approved the extension of the Pandemic Unemployment Payment from June until August 2020 and announced a two-level payment structure to link the payment to gross prior earnings. Where a person’s pre-pandemic gross weekly earnings from employment were €200 per week or higher they remained on €350 per week. Where a person’s pre-pandemic, gross weekly earnings, were under €200 per week, the rate of the pandemic unemployment payment was be adjusted to €203.

As certain business sectors may be closed for longer due to the current public health restrictions and the continued need for social distancing, the Irish Government announced a further extension of the COVID-19 Pandemic Unemployment Payment to April 2021. From September 2020 until January 2021, payment will be paid at three rates depending on prior earnings. The payment rates will be further calibrated in February and April next year.

In mid-August there were 232,400 recipients of the COVID-19 Pandemic Unemployment Payment which is a drop of 61% on its peak of almost 598,000 on the numbers in early May 2020.

Any person who may be experiencing financial hardship can also apply for financial assistance through the means-tested Supplementary Welfare Allowance scheme, which includes exceptional needs and urgent needs payments.

*Enhanced Illness Benefit*

Another measure introduced from March 2020 was an enhanced Illness Benefit payment.

The enhanced rate Illness Benefit payment was enacted as a short-term public health measure. The purpose was to encourage people to not attend work due to financial constraint when they should be in isolation. The Irish Government recognised the need to provide payments to people who were not covered by the existing Illness Benefit Scheme. For this reason the scheme was made available to economically vulnerable groups, for example, young people, students, and recent migrants with insufficient social insurance contributions to qualify for the existing scheme. It was also made available to self-employed people, as they are not covered under the existing scheme.

The enhanced Illness Benefit is paid at a higher rate than the standard illness benefit payment and requires no waiting days.

COVID-19 Illness Benefit is available to persons who are absent from work and confined to their home or a medical facility, having been –

(a) Diagnosed with COVID-19, or

(b) Certified by a medical practitioner or notified by the public health authorities as being a probable source of infection of COVID-19 and are self-isolating.

COVID-19 Illness Benefit is available to both employed and self-employed persons.

COVID-19 Illness Benefit does not depend on the level of social security contributions paid and is not subject to a means test. It is paid:

- From the first day of absence from work

- For 2 weeks where person is in medically-required self-isolation due to COVID 19

- For up to 10 weeks for a confirmed diagnosis of COVID 19

- at a personal rate of €350 a week (it was originally €305 a week, but was increased to €350 from 24th March 2020), with additional weekly payments of €147 for a qualified adult, €36 for each qualified child under 12 years and €40 for each qualified child aged 12 or over.

The COVID-19 Enhanced Illness Benefit is provided for in Part 2 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (No. 1 of 2020) and in Regulations made under those provisions.

The weekly rates of Illness Benefit comprise a personal rate, together with increases for qualified adults and qualified children. The weekly rate of payment in respect of qualified adults was temporarily increased to €147 from €134.70 from 24 March to 21 September 2020.

The Health Service Executive subsequently prepared lists of people who were at high risk and extremely high risk in relation to the virus and recommended that they cocoon (stay at home as much as possible and avoid physical contact with others). Where a person is not eligible for the enhanced rate of Illness Benefit, standard Illness Benefit payment may be payable to a person with a serious health condition, subject to normal certification and eligibility criteria. Standard Illness Benefit may be paid for an extended period (up to 2 years), depending on the person’s continued eligibility.

Employers have been asked to enable vulnerable workers to work from home where possible. The Return to Work Safely Protocol provides that if an at-risk or vulnerable worker cannot work from home and must be in the workplace, employers must make sure that they are preferentially supported to maintain a physical distance of 2 metres.

*Temporary Wage Subsidy Scheme (TWSS)*

A further measure announced in March by the Irish Government, was the Temporary Wage Subsidy Scheme (TWSS). This scheme enables employees, whose employers are affected by the pandemic, to receive significant financial supports directly from their employer through the payroll system.

The scheme was expected to last 12 weeks from 26 March 2020 but the scheme was extended to 31 August 2020.

The TWSS is available to employers who keep employees on the payroll throughout the COVID-19 pandemic, meaning employers can retain links with employees for when business resumes after the crisis.

Employers are encouraged to facilitate employees by operating the scheme, by retaining employees and by making best efforts to maintain a significant, or 100% income for the period of the scheme.

As part of a Jobs Stimulus Package announced in July 2020, a new Employment Wage Support Scheme will succeed the Temporary Wage Subsidy Scheme, and run until April 2021. Employers, whose turnover has fallen 30%, will receive a flat-rate subsidy of up to €203 per week, per employee, including for seasonal staff and new employees. New firms operating in impacted sectors will also be eligible. The new scheme is expected to support around 350,000 jobs into the beginning of 2021.

**Housing**

*Rental Market Policy Measures*

The broad social impacts of COVID-19 are closely interwoven with the adverse economic impacts, with a substantial and sudden increase in unemployment. Many in the residential rental sector have faced jobs losses, restricting their ability to pay rent and putting them at risk of losing their homes. There is a significant risk that some renters would have difficulty securing alternative rental accommodation and might end up in over-crowded accommodation at a time when the Irish Government is keenly focussed on suppressing the spread of COVID-19.

The Emergency Measures in the Public Interest (Covid-19) Act 2020, based on the need to restrict movement to curtail the spread of COVID-19, banned all rent increases and tenancy terminations, with limited exceptions, during the COVID-19 lockdown.

These measures meant that a notice of termination could not be served during the COVID-19 emergency period. All notices of termination that had been served before the emergency period were paused and tenants were not obliged to leave their rented accommodation during this time. While tenants were obliged to continue to pay rent during the COVID-19 emergency period, landlords were not permitted to increase the amount of rent payable during this period.

The emergency period expired on 1 August 2020, meaning that for all tenants who are not facing rent arrears, the usual protections under the existing legislation (*the Residential Tenancies Acts*) apply again.

Recognising the economic impact that COVID-19 is having on the ability of some tenants to pay their rent, the Irish Government introduced the Residential Tenancies and Valuation Act 2020, which became law on 1 August 2020 when the rental protections under the *Emergency Measures in the Public Interest (Covid-19) Act 2020* expired.

The *Residential Tenancies and Valuation Act 2020* introduced protections for those tenants who are facing rent arrears and are, as a result, at risk of losing their tenancy. If a tenant’s ability to pay rent has been impacted by COVID-19 and the tenant meets specific criteria, new procedures and protections apply. Tenants who follow these procedures cannot be made to leave their rental accommodation before 11 January 2021 and no rent increase may be applied to such tenants until 11 January 2021.

*Homeless Services*

A range of measures has been introduced to protect persons in Emergency Accommodation during the COVID-19 crisis. This has included the provision of significant additional accommodation to ensure compliance with health guidance on social distancing and to provide capacity for individuals in emergency accommodation to self-isolate when necessary. In addition to the accommodation arrangements, bespoke arrangements have also been implemented to ensure the delivery of wider health supports as well as specific arrangements for COVID-19 testing.

**Justice Sector**

A number of steps have been taken in the justice sector to respond to the pandemic as well as to mitigate the impact of COVID-19 on those in vulnerable situations. Human rights considerations have been taken into account in the development and implementation of these measures. This is consistent with our international human rights obligations, the Constitution of Ireland and an explicit statutory duty which applies to all public bodies to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services.

***Strict compliance with human rights requirements in relation to the additional (emergency) powers provided to An Garda Síochána (Ireland’s police service) in relation to restrictions on movement and gatherings***

In light of the urgent need for protection of human life and public health, some restrictions on movement and gatherings have been provided for in Ireland and associated enforcement powers have been provided for An Garda Síochána.

There has been strict compliance with requirements for the limitation of rights- any restrictions on movement and gatherings have been provided for by law, are necessary, are explicitly in the interests of protection of public health and the rights of others, and are temporary in nature – with a sunset clause provided for in the legislation.

No equivalent restrictions have been placed on online gatherings or association in the context of the pandemic- the emergency measures restricting gatherings which were introduced apply to physical gatherings only.

***Transparency and oversight in relation to the establishment and use of emergency policing powers***

A number of steps were also taken to ensure transparency and oversight in relation to the use by An Garda Síochána of these temporary, emergency powers.

* Legal enforcement of these restrictions through coercive power is not the starting point. Rather, An Garda Síochána (a largely unarmed police service) - in keeping with its tradition of policing by consent and its focus on community policing - has adopted and publicly confirmed a graduated policing response whereby Garda members engage, educate, encourage and only as a last resort enforce relevant emergency regulations.
* An Garda Síochána is making regular reports and public statements on the use of these powers, including statistics detailing the number of instances in which the powers are used in each reporting period.
* An independent statutory body – the Policing Authority – has assessed and reported on the exercise of these powers by An Garda Síochána. Each of these reports was published.
* In addition to the publication of materials as set out above, all pre-existing mechanisms for oversight of policing have continued, despite the pandemic. Arrangements have been made to adapt to the COVID-19 context, for example the public meetings of An Garda Síochána and the Policing Authority have continued throughout the pandemic, through use of remote (virtual) meetings, live-streamed online.

***Maintenance of rule of law and access to justice***

Despite the emergency measures required to protect human life and public health, a clear priority was maintained in the justice sector on preserving rule of law and access to justice, in accordance with human rights law.

The Courts Service took a number of steps to continue to facilitate this fundamental right of access to justice. Some of these steps were practical measures in relation to the introduction of social distancing measures in the courts through use of overflow courtrooms and so on. Others measures were strategic or innovative steps to adjust the manner in which services could be accessed, a number of which relied on ICT. For example;

* Prioritisation of applications relating to domestic violence in the home (to mitigate the added risk such victims were facing) and custody applications;
* Introduction of remote access to the courts, to reduce the requirement of people in custody to be produced before courts for routine applications (to mitigate against the added risk of COVID-19 in prison settings and to increase efficiency for prisoners and staff in relation to routine applications);
* Additional court sitting times in the afternoon, to stagger appearances and prevent build-up of cases; and implementation of an appointments systems, to reduce the number of persons in the courts at any given time and thereby reduce infection risks;
* Delivery of judgements online; and
* Facilitation of applications for adjournments by e-mail.

The Legal Aid Board also continued to provide its services to the public to support access to justice, including through maintenance of a national helpline.

More broadly and as noted previously, in addition to continuation of parliamentary business including the ability for questions to be put to Government Ministers, a special parliamentary committee has also been established.

***Special consideration was given to persons and groups in vulnerable situations and proactive steps to assist persons and groups in vulnerable situations***

Consistent with a human rights approach to the emergency, the needs and rights of groups who may be particularly vulnerable in the context of COVID-19 were considered and prioritised. As such, special consideration was given to those who, in the justice sector, might be in particularly vulnerable situations due to the COVID-19 pandemic or measures taken to respond to it.

Prisoners

Prisoners were identified as one such vulnerable group, in light of the general health profile of prisoners and the specific challenge of infection control in a congregated setting such as a prison. As such, a specific Emergency Response Planning Team was established in the Irish Prison Service to take the necessary steps to prevent the spread of the virus in Irish prisons (consistent with the prison-specific guidance for the management of COVID-19 by the World Health Organisation).

Measures adopted included:

* Temporary release of low risk prisoners, to reduce overcrowding and allow for a more effective infection control regime.
* Protection of the prison population through quarantining for up to 14 days for all newly committed prisoners; immediate medical attention for any prisoner with symptoms, along with isolation and testing where required; and a basic health check (including temperature) for all persons, including staff, accessing prisons.
* Replacement of physical visits with an electronic video visit system for a period of 4 months during the peak period of the pandemic (physical visits have now resumed on a phased basis and with appropriate safeguards, although the innovation of video visits continues).
* Establishment of contact tracing teams in each prison.
* Measures to safeguard and protect the rights and wellbeing of prisoners during these restrictions, including the introduction of tele-psychology to provide psychological support to prisoners.

Persons at risk of and/or experiencing domestic violence and sexual violence

An increase in domestic violence was identified as a significant risk during periods of restriction on movement during the pandemic. State organisations and agencies in the justice sector worked closely together and extensive and proactive steps were taken to mitigate this risk:

* An Garda Síochána established a special operation focused on the protection of victims of domestic violence during the pandemic. This included proactive outreach to persons who had previously been victims of this type of crime to identify any supports needed.
* The Courts Service gave priority to domestic violence and child protection cases, with each district maintaining a court available to hear applications for protection orders and emergency barring orders.
* The Legal Aid Board also gave priority to domestic violence and child protection cases and a phone helpline was established for those seeking assistance.
* A risk-based approach was taken by the Irish Prison Service in deciding temporary releases during the period. The risk assessment criteria applied took account of convictions relating to domestic violence and breaches of barring orders.

A proactive public awareness campaign was also delivered on this topic. The public awareness campaign ‘Still Here’ ([www.stillhere.ie](file:///C:/Users/Chitralekha%20Massey/AppData/Local/Temp/www.stillhere.ie)) was developed to ensure that victims were aware of the supports and services available to them; and to ensure that perpetrators also knew that the police and justice system continued to give the highest priority to domestic violence, even in the context of the pandemic. The Irish Government led campaign was conducted in full partnership with civil society organisations. It included TV, radio, social and print media nationally and locally across the country. Significant increases in the numbers of persons contacting Gardaí and domestic violence and sexual violence helplines were confirmed following roll-out of the campaign.

The Traveller and Roma Community

To mitigate the risk of a disproportionate impact of COVID-19 on the Traveller and Roma communities in Ireland; and in light of emergent needs, the Irish Government provided additional funding and other supports to partner Traveller and Roma organisations for the continued provision of necessary services during the COVID-19 crisis.

This included short-term funding for immediate needs for members of the Roma community without means of support, for interpretation services for healthcare providers and for the production of public health information materials in appropriate languages and formats for the Traveller and Roma communities.

Applicants for international protection

In the context of the pandemic, asylum seekers and refugees, in particular those who were availing of accommodation services provided by the State, were identified as a vulnerable group. This was due to factors including language issues and the challenge presented by social distancing in all congregated settings, and particularly in shared accommodation centres such as these, where residents leave every day to work, study and engage with the local community.

Extensive action was taken to mitigate those risks, with close and active cooperation between the various government bodies responsible to support the health and welfare of residents. Measures adopted include:

* Procurement by the State of a significant number of additional accommodation spaces, and significant relaxation of the rules concerning accessing accommodation outside centres, to allow greater social distancing and infection control;
* ‘Cocooning’ of all older residents and persons identified as having a health vulnerability;
* Provision for self-isolation facilities in accommodation centres and other locations, in particular to manage outbreaks within accommodation centres, and of quarantining facilities for new arrivals into the international protection system;
* Provision of a national clinical telephone service in place to provide public health advice to support staff and management in accommodation centres and an increase in the standard and frequency of cleaning, in particular communal areas of centres;
* Provision of public health information and support to residents through:
  + virtual meetings between residents and the responsible Government Department as well as distribution of regular newsletters (also available at www.accommodationcentres.ie) ;
  + distribution to all centres of information and posters with public health information in relation to COVID-19, including translations into other languages of the relevant public health information;
  + distribution of hygiene products; and
  + provision of a telephone support service (run by a civil society organisation) to support residents
* Additional supports in respect of children living in the centres.

More broadly and responding to ongoing concerns about the method of providing accommodation to asylum seekers in Ireland, the Government has established an Expert Group, led by Dr Catherine Day, to examine the system and provision of state supports (including accommodation), which is due to report in September 2020.

It should be noted that facilities for persons to claim international protection remained open throughout the period in question.

***Focus on participation and inclusivity, with adoption of a partnership approach with civil society organisations***

Active cooperation and partnership between the State and civil society actors was also a feature of the justice sector response to the pandemic. This included:

* Involvement of human rights NGOs in the process of oversight by the Policing Authority of enforcement action by An Garda Síochána;
* engagement by An Garda Síochána with representative groups of minority communities to deliver targeted information and support;
* A full partnership approach in delivery of targeted measures to support and protect victims of domestic violence. This included additional funding for civil society delivering services for victims; and joint delivery of a public awareness campaign on the topic;
* Engagement by the Irish Government with NGOs involved with migrants, asylum seekers and other vulnerable groups such as Travellers and Roma to deliver targeted information and support.

***Lessons learned exercise underway, with civil society organisations, to planning for the post-COVID-19 period***

While the pandemic continues, a focus of the justice sector is identifying lessons that can be learned from the emergency measures taken during the period of the strictest restrictions on movement and gathering in Ireland. This includes:

* A process to identify positive lessons from the action plan adopted on domestic violence with input from civil society;
* Examination of the benefits and efficiencies of innovative measures taken during that period in the Courts, for example the increase the significantly enhanced use of ICT;
* An internal review of the measures taken in respect of accommodation for applicants for international protection, to identify improvements for the next phase of the health emergency.

***Solidarity and sharing experience / support for other states***

Specifically in the justice sector, the Irish Prison Service has made time to share its positive experience and lessons learned through a paper co-authored with the World Health Organisation and Prison Health Collaborating Centre, published in the international Public Health Journal.

**ENDS**.

1. <https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/partner-resources/covid-19-translated-resources/> [↑](#footnote-ref-1)
2. <https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/> [↑](#footnote-ref-2)
3. <https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/> [↑](#footnote-ref-3)