**Special Rapporteur on the Human Rights of Migrants**

**After one and half year: the impact of COVID-19 on the human rights of migrants**

**Submission of Ireland**

**June 2021**

**Healthcare responses**

Under the provisions of the Health Act 1970 (as amended)[[1]](#footnote-1), eligibility for public health services in Ireland is based primarily on residency and means. All persons deemed ordinarily resident in the State are eligible for public health services, subject to certain charges. The Irish Public Health System provides for two categories of eligibility for all persons ordinarily resident in the country, i.e. full eligibility (medical card holders) and limited eligibility (all others). Full eligibility is determined primarily by reference to income limits. Determination of an individual’s eligibility status is the responsibility of the Health Service Executive (HSE).

International protection applicants in Direct Provision are, in the main, provided with a medical card, which gives them free access to a range of medical and dental services in a culturally appropriate way.

In addition, NGOs, funded by the HSE, offer support to migrants by raising awareness of the services which are available to them. They also provide information on how to avail of the services they may require.

It is Government Policy that all healthcare for the diagnosis and treatment of Covid-19 will be free of charge to all patients residing within the HSE’s functional areas[[2]](#footnote-2), irrespective of the ‘ordinarily resident’ status of the patient and the setting in which the treatment is provided.

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 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.

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.

The Irish Government established the National Public Health Emergency Team (NPHET) to lead the public health response to Covid-19.

NPHET established a Subgroup on Vulnerable People to provide oversight and assurance with regard to the specific preparedness, measures and actions that need to be taken to protect vulnerable groups and individuals in society in response to Covid-19.

At the beginning of the Covid-19 pandemic, preventative measures were introduced in congregated settings. These included public health advice on personal hygiene and social distancing. In addition, as part of contingency planning, measures were taken to reduce the density of individuals in congregated settings and to transfer individuals with underlying health conditions into separate accommodation.

The HSE introduced a range of targeted measures to help prevent the spread of Covid-19 amongst vulnerable groups. This included the development of guidance documents, which give general advice about preventing the spread of Covid-19 in vulnerable group settings. These can be applied in hostels, hubs or residential settings including those without clinic or in-house nursing, medical or healthcare support.

The guidelines set out measures to prevent the spread of Covid-19, including cocooning for extremely medically vulnerable people, triage and testing (case finding) of vulnerable people as a priority group, adapted clinical criteria for testing, self-isolation/quarantine, clinical case management, communications and outbreak response.

A number of additional public health measures were introduced for vulnerable groups such as a dedicated community assessment hub established in Dublin city and a mobile outreach testing service, national helplines and general information posters and information booklets in multiple languages.

The HSE also issued its National Guidance Document on Temporary Accommodation for Healthcare Workers during the COVID-19 crisis[[3]](#footnote-3). Healthcare workers living in direct provision are eligible to apply for accommodation under the scheme via a referral form to the HSE.

The HSE’s Intercultural Health Strategy[[4]](#footnote-4) provides an integrated approach to addressing the many unique health and support needs experienced by service users of diverse ethnic and cultural backgrounds who live in Ireland.

The Irish Government does not and will not seek any information from an immigration perspective for persons coming forward for social supports or medical attention. Any undocumented migrant should not hesitate about coming forward to access health care or social supports during the COVID-19 crisis.

**Racial discrimination, hate speech, xenophobia and related intolerance**

Ireland does not currently have specific legislation dealing with hate crime, however a hate motive is an aggravating factor that judges can take into account (on a non-statutory basis) at sentencing for any criminal offence.

The Prohibition of Incitement to Hatred Act, 1989[[5]](#footnote-5) prohibits certain threatening, abusive or insulting conduct intended or likely to stir up hatred against a group of persons on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation, however there is a clear need to deal in a more effective and targeted way with hate crime.

The Government has completed detailed research comparing the effectiveness of different approaches to hate crime legislation internationally. An extensive public consultation has also been completed, including an online survey and detailed engagement with stakeholders including civil society groups, experts, professional organisations, community groups and members of the public as well as a series of independently facilitated workshops.

The Government published this research and a report[[6]](#footnote-6) on the outcome of public consultations. There was also an opportunity for stakeholders to share views when the legislative proposals are published.

This legislation will create specific offences to ensure that those who target victims because of their association with a particular identity characteristic are identified as perpetrators of hate crime. This legislation will be on the basis of an aggravated offences model. This legislation will be supported by training across the criminal justice system, as well as victim supports.

**Emergency measures**

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 (the Irish police force).

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, explicitly in the interests of protection of public health and the rights of others, and are temporary in nature – with a sunset clause explicitly 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.

On 20 March 2020, the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020[[7]](#footnote-7) was signed into law. The Act gives the Government the power to make regulations to introduce measures to slow down the spread of the virus, including regulations, which restrict travel to and from Ireland; stop gatherings of people from taking place; and close premises, including schools.

On 27 March 2020, the Emergency Measures in the Public Interest (Covid-19) Act 2020[[8]](#footnote-8) was signed into law. The legislation includes measures to:

* Prevent the termination of residential tenancies and increases in rent;
* Allow for the disregard of certain time periods and deadlines in planning and building legislation;
* Extend the period that an employee must be temporarily laid off or on short time before they can claim redundancy;
* Simplify the registration process to help recruit retired health professionals;
* Facilitate the operation of the mental health tribunals during the pandemic;
* Introduce a temporary wage subsidy scheme; and
* Support re-enlisting of former members of the permanent defence forces.

An Garda Síochána is, at the request of the Government, 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.

Furthermore, an independent statutory body – the Policing Authority – has at the request of the Government, assessed and reported on the exercise of these powers by An Garda Síochána. Each of these reports was published.

A special parliamentary committee has also been established, chaired by an independent member of Dáil Éireann (Lower House of Parliament), which meets in public to “consider and take evidence on the State’s response to the Covid-19 pandemic”.

**Visa Applications**

On 20 March 2020, the decision was taken to temporarily cease accepting new visa applications due to travel restrictions and measures introduced as part of the Government’s efforts to interrupt the transmission of COVID-19. However since 26 March 2021, the processing of visa applications has resumed (with applications being made either online or through Garda stations).

A temporary extension of immigration permissions was provided for anyone who held a valid permission to be in the State in March 2020 meaning that they are legally permitted to remain in the Sate until 20 September 2021, even if their Irish Residence Permit (IRP) has expired.

A Frequently Asked Questions document on the impact of COVID-19 on immigration and international protection is available on the Immigration Service Delivery website[[9]](#footnote-9). This document is regularly updated.

**COVID-19 socio-economic recovery plan**

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

In recognition of this, the 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)[[10]](#footnote-10). 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 of the document 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. To that end, sunset clauses have been included in the emergency measures legislation; the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020,[[11]](#footnote-11) that amended the Health Act 1947[[12]](#footnote-12),

The Ethical Framework and its follow-up document Ethical Consideration Relating to Critical Care in the Context of COVID-19 (April 2020)[[13]](#footnote-13) 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 Ethical considerations relating to long-term residential care facilities (June 2020)[[14]](#footnote-14) 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.

Active cooperation and partnership between the State and civil society actors was also a feature of the Government’s 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;
* 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.

The Government enhanced rate Illness Benefit payment in March 2020, which was enacted as a short-term public health measure. The Government, in responding to the public health risk posed by the spread of COVID-19, amended and extended the Social Welfare Acts to provide for entitlement to illness benefit for persons who have been diagnosed with COVID-19 or who are a probable source of infection with COVID-19.

The rate of payment of the enhanced Illness Benefit payment in respect of COVID-19 is higher than the normal maximum personal rate for a limited period - €350. Increases are paid for dependant adult and children, where appropriate.

The measures were designed to ensure that where a registered medical practitioner or a HSE medical officer diagnoses a person with COVID-19 or identifies him or her as a probable source of infection of COVID-19, the person can comply with medical advice to isolate while having their income protected.  This is essential to limit and slow down the spread of the virus, to keep the number of people affected to a minimum, and to reduce a peak of cases, which would cause extreme pressure on the health system.

The enhanced rate of Illness Benefit is payable for 2 weeks where a person is isolating as a probable source of infection of COVID-19 and up to 10 weeks where a person has been diagnosed with COVID-19.

This emergency payment is available to support both employed and self-employed persons of working age between 18 and up to 66 years who have paid at least one social insurance contribution in the previous four weeks. It is not subject to a means test.

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 in respect of COVID-19 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)[[15]](#footnote-15) and in Regulations made under those provisions.

In general, if people have additional expenses related to an illness/disability or they are struggling financially, they can apply for extra financial support through the Supplementary Welfare Allowance, which is a means-tested payment. On 15 March 2020, Government announced the introduction of the Covid-19 Pandemic Unemployment (PUP). It was introduced as a time-limited emergency income response measure to deal with the public health crisis and meet the expected dramatic surge in unemployment. The scheme was since placed on a statutory footing as a social welfare benefit in its own right from 5 August 2020 under the Social Welfare (Covid-19) (Amendment) Act 2020[[16]](#footnote-16).

Where a protection applicant of working age accommodated under the system of Direct Provision or living in the community has lost their employment as a result of COVID-19 and they are not in receipt of employment income they would be eligible to receive the PUP. The payment was also made available to self-employed and part time workers, including students, who lost their part time employment.

To be eligible for PUP a person must

* be aged between 18 and 66 years old and
* are currently living in the Republic of Ireland and
* have lost their job due to the COVID-19 pandemic or
* have been temporarily laid off due to the COVID-19 pandemic or
* were self-employed and the trading income has ceased or reduced to €960 over a rolling 8 week period[[17]](#footnote-17) due to COVID-19 (They must be available to take up full-time employment) and
* are not in receipt of any income from an employer and
* are genuinely seeking work

To ensure that the PUP scheme was simple and accessible for the unprecedented number of applicants, a flat payment rate was introduced. This rate was the equivalent of the maximum rate of a Jobseekers payment for a two-person household which is €350. Changes have since been made to the payment rates and it is currently paid at 4 rates as follows; €203, €250, €300 and €350. The rates are linked to a person’s prior earning while in employment to ensure the payment is fair and sustainable over the scheme duration, which has been extended until 30 June 2021 with a gradual reduction in rates starting 7 September 2021. However, the scheme will close to new applicants from 1 July 2021.

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. An increase in domestic abuse 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.

The public awareness campaign ‘Still Here[[18]](#footnote-18)’ was developed to ensure that victims were aware of the supports and services available to them; and to ensure that perpetrators too knew that the police and justice system continued to give the highest priority to domestic abuse, even in the context of the pandemic. The campaign was led by the Government and 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 abuse and sexual violence helplines were confirmed following roll-out of the campaign.

1. [Health Act, 1970 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/1970/act/1/enacted/en/html) [↑](#footnote-ref-1)
2. which covers all of the Republic of Ireland [↑](#footnote-ref-2)
3. [Temporary accommodation for healthcare workers during COVID-19 - healthservice.ie](https://healthservice.hse.ie/staff/coronavirus/policies-procedures-guidelines/temporary-accommodation-for-healthcare-workers.html) [↑](#footnote-ref-3)
4. <https://www.hse.ie/eng/about/who/primarycare/socialinclusion/intercultural-health/intercultural-health-strategy.pdf> [↑](#footnote-ref-4)
5. [Prohibition of Incitement To Hatred Act, 1989 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/html) [↑](#footnote-ref-5)
6. [Legislating for Hate Speech and Hate Crime in Ireland Report - The Department of Justice](http://www.justice.ie/en/JELR/Pages/Legislating_for_Hate_Speech_and_Hate_Crime_in_Ireland_Report) [↑](#footnote-ref-6)
7. [Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/html) [↑](#footnote-ref-7)
8. [Emergency Measures in the Public Interest (Covid-19) Act 2020 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/2020/act/2/enacted/en/html) [↑](#footnote-ref-8)
9. [Home Page (inis.gov.ie)](http://www.inis.gov.ie/) [↑](#footnote-ref-9)
10. [gov.ie - Ethical framework for decision-making in a pandemic (www.gov.ie)](https://www.gov.ie/en/publication/dbf3fb-ethical-framework-for-decision-making-in-a-pandemic/) [↑](#footnote-ref-10)
11. [Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/html) [↑](#footnote-ref-11)
12. [Health Act, 1947 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/1947/act/28/enacted/en/html) [↑](#footnote-ref-12)
13. [gov.ie - Ethical considerations relating to critical care in the context of COVID-19 (www.gov.ie)](https://www.gov.ie/en/publication/13ead5-ethical-considerations-relating-to-critical-care-in-the-context-of-c/) [↑](#footnote-ref-13)
14. [gov.ie - Ethical considerations relating to long-term residential care facilities (www.gov.ie)](https://www.gov.ie/en/publication/37ef1-ethical-considerations-relating-to-long-term-residential-care-facilities/) [↑](#footnote-ref-14)
15. [Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/html) [↑](#footnote-ref-15)
16. [Social Welfare (Covid-19) (Amendment) Act 2020 (irishstatutebook.ie)](http://www.irishstatutebook.ie/eli/2020/act/12/enacted/en/html) [↑](#footnote-ref-16)
17. [gov.ie - COVID-19 Social Welfare Schemes available to a self-employed person (www.gov.ie)](https://www.gov.ie/en/publication/b41bb-covid-19-social-welfare-schemes-available-to-a-self-employed-person/#covid-19-pandemic-unemployment-payment) [↑](#footnote-ref-17)
18. [www.stillhere.ie](file://duhafv01/divisions/Political%20Div/Human%20Rights/International%20Organisations/UN/Human%20Rights%20Council/Questionnaires/Migrants/Impact%20of%20Covid-19%20on%20the%20human%20rights%20of%20migrants/www.stillhere.ie) [↑](#footnote-ref-18)