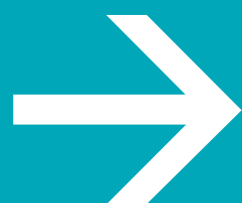


## Children in Detention

### Immediate Actions for 2016



**SUPPORT THE OPENING OF ADDITIONAL UNITS IN THE NATIONAL CHILDREN DETENTION FACILITY TO ACCOMMODATE 17 YEAR OLDS SERVING A CUSTODIAL SENTENCE.**

Provide all necessary supports, including staffing recruitment, to facilitate the opening of additional units in the National Children Detention Facility to allow for the transfer of responsibility for 17 year olds serving a custodial sentence, currently detained in Wheatfield Place of Detention.

**FULLY COMMENCE THE CHILDREN (AMENDMENT) ACT 2015 AND THE PRISONS ACT 2015.**

Fully commence the Children (Amendment) Act 2015 and the Prisons Act 2015 at the earliest opportunity to ensure that no child under 18 years is detained in an adult prison.

**WITHDRAW THE RESERVATION TO ARTICLE 10(2)(B) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.**

Once the transfer of responsibility for 17 year old males to the Oberstown campus has been completed, the Government should withdraw the reservation to Article 10(2)(b) of the International Covenant on Civil and Political Rights.

# 6. RIGHT TO EQUALITY AND NON-DISCRIMINATION

Chapter Grade

**D+**

“

The Children and Family Relationships Act (2015) for the first time recognises and gives legal status to the broad range of families in Ireland of the 21st century. This important Act has brought much needed security to thousands of children in Ireland and is a very welcome reform to Irish family law. Children from all family types can now enjoy the security and care of a legal relationship with their parents that heretofore was not possible”

**Sandra Irwin-Gowran**, Director of Education Policy, GLEN - Gay and Lesbian Equality Network

## Right to Equality and Non-Discrimination

Every child has the right to equal treatment, without discrimination of any kind, irrespective of the race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or the child's parents or guardian.

*Summary of Article 2 of the UN Convention on the Rights of the Child*



## 6.1

**Traveller and Roma Children****GOVERNMENT COMMITMENT**

The *Programme for Government 2011-2016* commits to promoting greater co-ordination and integration of delivery of services to the Traveller community across Government, using available resources more effectively to deliver on principles of social inclusion, particularly in the area of Traveller education.

**Progress: Unsatisfactory**

**'Traveller and Roma Children' is awarded an 'E-' grade in Report Card 2016, a decrease from last year's 'E+' grade. The lower grade reflects the Government's persistent failure to implement their commitment to recognise the ethnic minority status of Travellers and the missed opportunity presented by the Carrickmines fire tragedy to uphold the rights of Traveller children. Traveller and Roma children continued to face educational disadvantage in 2015.**

This is the final year being analysed in the Report Card series under the *Programme for Government 2011-2016*. A commitment was made to promote greater co-ordination and integration of delivery of services to Travellers. The coordination of delivery of services for Travellers remains very weak. In many cases whilst policies and strategies have been put in place, there is limited implementation, monitoring, evaluation or accountability. For example, the National Traveller Health Advisory Committee (NTHAC) entrusted with developing a

strategy to respond to the All-Ireland Traveller Health Study in 2010 has not met since 2012.<sup>552</sup> Between 2008 and 2013, funding for interagency activities relating to Travellers was cut completely and has not been reinstated.<sup>553</sup> Of serious concern is that the adoption of integrated services has resulted in a mainstreaming approach which fails to address the specific experiences of Traveller and Roma children as members of communities who experience high levels of marginalisation, discrimination, educational disadvantage and poverty. In the area of education for example, additional supports for Travellers to assist the process of mainstreaming have not been put in place.<sup>554</sup>

There are 14,913 Traveller children living in Ireland.<sup>555</sup> The Traveller community has a very young population with 42 per cent of Travellers under the age of 15 years.<sup>556</sup> At the end of the *Programme for Government*, outcomes for Traveller and Roma children continue to be among the worst for children in Ireland in areas such as equality and

552 Communication received by the Children's Rights Alliance from Pavee Point, 10 February 2016.

553 Brian Harvey, *Travelling with Austerity: Impacts of cuts on Travellers, Traveller Projects and Services* (Pavee Point Publications 2013) 1.

554 Ibid 35.

555 Central Statistics Office, 'Census 2011 Profile 7-Religion, Ethnicity and Irish Travellers' <<http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile7EducationEthnicityandIrishTravellerEntire.doc.pdf>> accessed 29 January 2016.

556 Pavee Point Travellers' Centre, *Profile of the Traveller Family for Family Resource Centres* (Pavee Point 2010) 1.

**IN THE NEWS****STATE TO INTRODUCE PARTS OF CHILDREN AND FAMILY RELATIONSHIPS ACT**

**The Irish Times, 20 May 2015**

The Government is preparing to activate parts of the Children and Family Relationships Act, which overhauls the law on adoption and donor-assisted reproduction.

The Act was signed into law by President Michael D Higgins in April but its provision will not come into force until formal commencement orders are signed. Some parts of the legislation will not be activated for at least a year.

The landmark reform of family law changes guardianship and custody rules and allows same-sex couples to apply to adopt. A section on surrogacy was removed by Minister for Justice Frances Fitzgerald when she succeeded Alan Shatter last year, and the Department of Health plans to

incorporate surrogacy into a forthcoming Bill on assisted human reproduction. Three departments – Justice, Children and Foreign Affairs – must sign separate commencement orders for the Children and Family Relationships Act to come into force. A spokesman for the Department of Justice, which is responsible for most sections of the legislation, said it was "proceeding with preparations" for the commencement of those parts but could not say when it would be done.

[...]The spokesman said the department was already in discussions with the Courts Service on the rules of court that would be needed to activate the provisions on guardianship, custody, access and maintenance. Ms Fitzgerald has indicated that the provisions in parts two and three of the Act, which deal with donor-assisted human reproduction, will not be activated for at least a year. [...]

*By Ruadhán Mac Cormaic*

*In Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*, the Government committed to reduce discrimination and intolerance of all types experienced by marginalised groups including Traveller and Roma children, and to improve their educational and health outcomes.

non-discrimination,<sup>557</sup> access to social protection,<sup>558</sup> health,<sup>559</sup> education,<sup>560</sup> and accommodation.<sup>561</sup> The Final Report of the Child Care Law Reporting Project, published in November 2015, noted that Traveller children are over-represented in child protection cases coming before the courts compared to the general population.<sup>562</sup>

*In Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*, the Government committed to reduce discrimination and intolerance of all types experienced by marginalised groups including Traveller and Roma children, and to improve

their educational and health outcomes.<sup>563</sup> The Government also reiterated its commitment to implement and monitor the *National Traveller Roma Integration Strategy*.<sup>564</sup>

Under the UN Convention on the Rights of the Child, the State is obliged to take measures, using the maximum available resources, to ensure that all children, including Traveller and Roma children, have an adequate standard of living.<sup>565</sup> All children have the right not to experience discrimination on any ground irrespective of the race, language, religion, ethnic or social origin, other status of the child or the child's parents or guardian<sup>566</sup> and they have the right to life, survival and development.<sup>567</sup> The State is obliged to ensure that every child has a standard of living which is adequate to allow them to develop fully – physically, mentally, spiritually, morally and socially.<sup>568</sup> Moreover, children in ethnic, religious, linguistic minorities or of indigenous origin must not be denied the right to enjoy their own culture, religion or language.<sup>569</sup>

**National Traveller and Roma Inclusion Strategy:**

*A National Traveller Roma Integration Strategy* was launched in 2011.<sup>570</sup> In April 2015, the National Traveller and Roma Inclusion Strategy Steering Group was established to oversee the development and implementation of a revised Strategy.<sup>571</sup> A second phase of the consultation process for this strategy

was commenced in February 2016.<sup>572</sup> It is vital that the development of the Strategy involves Travellers and Roma, is based on human rights, and sets out clear goals, targets, indicators, timelines and funding mechanisms.<sup>573</sup> Rigorous monitoring, evaluation and accountability mechanisms should be put in place to oversee the impact of the new Strategy in particular on children.

**Recognition of the Ethnic Status of Travellers:**

In November 2014, the Minister of State for New Communities, Culture and Equality, Aodhán Ó Riordáin TD, made a commitment that the State would recognise Travellers as an ethnic minority within six months.<sup>574</sup> One year later, in November 2015, Traveller ethnicity was debated in Dáil Éireann. A motion calling for the State to recognise the ethnic minority status of Travellers was rejected by Government by 58 to 39 votes.<sup>575</sup>

The Government's failure to recognise Traveller ethnicity is incompatible with international human rights standards and has been criticised at both national and international level,<sup>576</sup> including in 2014 by the UN Human Rights Committee.<sup>577</sup> Travellers are an indigenous minority group that have been part of Irish society for hundreds of years and deserve the right to self-identification. They have a distinctive lifestyle and culture based on a nomadic tradition with a language, customs and traditions that make them identifiable as a group to both themselves

and to others.<sup>578</sup> One impact of the recognition of ethnicity would be that Travellers would be automatically given consideration in anti-racism and anti-discrimination initiatives.<sup>579</sup>

**Ethnic Identifier:** There is no publicly available statistical information on the number of Roma living in Ireland or the number of Roma or Traveller children in the care system.<sup>580</sup> The UN Committee on the Rights of the Child has called on States to employ data collection mechanisms that can study the situation of specific groups, including ethnic and/or indigenous groups.<sup>581</sup> Report Card 2013, 2014 and 2015 highlighted that the lack of disaggregated data on Traveller and Roma children hinders our understanding of the progression of these children within the education, health and child protection systems.

During 2015, the Department of Education and Skills continued to develop a Primary Online Database (POD).<sup>582</sup> Data on ethnicity is sought from families

*The Government's failure to recognise Traveller ethnicity is incompatible with international human rights standards and has been criticised at both national and international level.*

557 Seanad Public Accounts Committee, *Report on Ireland's Compliance with the International Covenant on Civil and Political Rights with Observations and Recommendations to the United Nations Human Rights Committee and to the Irish Government*, (Houses of the Oireachtas, Seanad Éireann 2014) para 19; and Pavee Point, *Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre's shadow report in response to Ireland's consolidated third and fourth report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 5.  
558 Hilary Harmon, *Irish Traveller and Roma Children, Shadow Report, A response to Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 8, 10-11.  
559 *ibid* 10.  
560 *ibid* 15-19 and Brian Harvey, *Travelling with Austerity, Impacts of Cuts on Travellers, Traveller Projects and Services* (Pavee Point 2013) 34-38.  
561 Pavee Point, *Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre's shadow report in response to Ireland's consolidated third and fourth report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 9-10.  
562 Carol Coulter, *Final Report, Child Care Law Reporting Project* (Child Care Law Reporting Project 2015) 13.  
563 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (Department of Children and Youth Affairs 2014) Commitments 1.4, 2.22, 4.9 and 5.6.  
564 *ibid* Commitment 4.9.  
565 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 4.  
566 *ibid* Art 2.  
567 *ibid* Art 6.  
568 *ibid* Art 27.  
569 *ibid* Art 30.  
570 Department of Justice and Equality, 'Traveller and Roma Inclusion' <<http://www.justice.ie/en/JELR/Pages/WP15000120>> accessed 29 January 2016.  
571 Department of Justice and Equality, 'Report of Implementation Group set up to monitor implementation of the Recommendations contained in Ms Emily Logan's Report of the inquiry into the circumstances surrounding the removal of two Roma children from their families' <[http://www.justice.ie/en/JELR/Pages/Logan\\_Report\\_Implementation\\_Group\\_2015](http://www.justice.ie/en/JELR/Pages/Logan_Report_Implementation_Group_2015)> accessed 29 January 2016, 2.

572 Department of Justice and Equality, 'Minister Ó Riordáin announces details of Phase 2 in the development of a new National Traveller and Roma Inclusion Strategy' <<http://www.justice.ie/en/JELR/Pages/PR16000044t>> accessed 12 February 2016. It is expected that a new strategy will be presented to Government for approval as part of the EU Framework for National Roma Strategies up to 2020 in October 2016. See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 5 April 2011- An EU Framework for National Roma Integration Strategies up to 2020* [COM (2011) 173] (European Commission 2011).  
573 See Pavee Point, 'Briefing Note on the National Traveller and Roma Integration Strategy' (February 2014) <<http://www.paveepoint.ie/document/briefing-note-irelands-national-traveller-roma-integration-strategy/>> accessed 29 January 2016; and Hilary Harmon, *A response to Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 23.  
574 Kitty Holland, 'Traveller ethnicity will be reality in six months, says O Riordain' *The Irish Times* (Dublin, 19 November 2014).  
575 Pádraig Mac Lochlainn TD, Dáil Debates, Written Answers: Travellers Rights Motion, 3 November 2015.  
576 State failure to recognise Traveller ethnicity has been criticised by the Equality Authority, the National Consultative Committee on Racism and Interculturalism, the UN Human Rights Committee, the Council of Europe Commissioner for Human Rights, the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Racial Discrimination and the Advisory Committee on the Implementation of the Council of Europe Framework Convention on the Protection of National Minorities (FCNM). See also Houses of the Oireachtas, Joint Committee on Justice, Equality and Defence, 'Report on the Recognition of Traveller Ethnicity' <<http://www.oireachtas.ie/parliament/media/committees/justice/Report-on-Traveller-Ethnicity.pdf>> accessed 29 January 2016, 7.  
577 UNHRC, 'Concluding Observations: Ireland' (19 August 2014) UN Doc CCPR/C/IRL/CO/4 para 23.  
578 Cecily Kelleher et al., *Our Geels, All Ireland Traveller Health Study*, (University College Dublin 2010) 9.  
579 Hilary Harmon, *Irish Traveller and Roma Children, Shadow Report, A response to Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 22.  
580 *ibid* 7.  
581 UNCRC 'General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (2003) UN Doc CRC/GC/2003/4 para 13.  
582 Department of Education and Skills, 'Primary Online Database (POD)' <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/>> accessed 29 January 2016.

as part of the data collection for the POD, known as an ethnic identifier.<sup>583</sup> The POD is due to be fully operational for the academic year 2015/16.<sup>584</sup> An ethnic identifier is an important measure to track and monitor the impact of policies and legislation on minority children, including school attendance, retention and learning outcomes. The data generated by the POD is to be used to monitor the progress of children through the education system and the question on ethnicity is to allow the Department to collect data on the diversity of the school population.<sup>585</sup> It is anticipated that the database will be shared with other relevant bodies, such as the Department of Social Protection, the HSE and the National Council for Special Education.<sup>586</sup> The Data Protection Commissioner has advised that 'the most equitable way' to collect this type of data is to give all pupils an opportunity to identify their own ethnic and cultural background and to consent to the data being shared with the Department.<sup>587</sup> Because ethnicity is considered to be sensitive data, consent of the child's parent or guardian is required in order for it to be shared with the Department.<sup>588</sup> The database only applies to primary schools. At second level, Traveller children are the only group asked to identify their ethnicity.

**Traveller Accommodation:** Adequate and culturally appropriate accommodation is a serious and

ongoing issue for the Traveller community and has a direct impact on health outcomes of Traveller children.<sup>589</sup> A study in 2010 found that almost three-quarters of Travellers live in houses and almost a fifth live in caravans, trailers or mobile homes.<sup>590</sup> It also found a quarter of families felt where they lived was unhealthy and over a quarter felt that their place of residence was unsafe.<sup>591</sup> Over three quarters did not have safe play areas.<sup>592</sup>

Local authorities are charged with providing Traveller accommodation but between 2008 and 2013, 25 local authorities failed to meet their targets for accommodation provision.<sup>593</sup> There are no sanctions against those who failed to achieve their target.<sup>594</sup> The Irish Human Rights and Equality Commission expressed concern at the rising numbers of Travellers living on the roadside and sharing accommodation in the context of 'low or non-existent' capital investment in Traveller accommodation through the Department of the Environment, Community and Local Government.<sup>595</sup> The Commission went on to note that emergency accommodation has become 'de facto permanent' accommodation for many Traveller families and that such accommodation 'cannot, in the long term, vindicate the right to dignity and protection of the individuals concerned'.<sup>596</sup> A 2015 Supreme Court judgment in *O'Donnell & Ors v South Dublin County Council & Ors* highlighted

the fact that poor quality Traveller accommodation, may be a breach of a local authority's statutory duty, and in addition may also amount to a breach of the constitutional right to autonomy, bodily integrity and privacy.<sup>597</sup>

On 9 October 2015, a fire at a temporary Traveller halting site, in Carrickmines, Dublin, killed ten people including five children. Local residents objected to the use of a nearby green field site to re-accommodate the survivors on a temporary basis.<sup>598</sup> Legal action by residents threatened to delay the relocation decision so the Local Authority accommodated the survivors in an alternative site – a car park. The Carrickmines fire tragedy highlighted the deeply rooted racism in Irish society towards Travellers and focused national attention on the deficits of Traveller accommodation. Following the tragedy, fire safety reviews are to be undertaken on all sites<sup>599</sup> and Pavee Point called for the establishment of a dedicated Traveller Agency to drive improvements and implementation of policy and legislation for Travellers.<sup>600</sup>

**Roma Children:** In December 2013, the then Ombudsman for Children, Ms. Emily Logan was appointed in her personal capacity by the Minister for Justice and Equality to carry out a special inquiry into the removal of two Roma Children from their families by An Garda Síochána.<sup>601</sup> The Report of the Implementation Group set up to monitor the recommendations in the Logan Report was published in November 2015 and lists the range of activities undertaken to date.<sup>602</sup> One of the report's key recommendations was that an assessment of

*The Programme for Government commits to use available resources to more effectively deliver on principles of social inclusion such as Traveller education. All children including Traveller and Roma children have the right to education.*

the needs of the Roma community be undertaken.<sup>603</sup> This assessment is ongoing in partnership with Pavee Point and is expected to be finalised by the end of 2015.<sup>604</sup> The Government note that the completed assessment will 'inform consideration of whether an up-dated needs assessment of the Traveller community could usefully be undertaken'.<sup>605</sup>

**Education:** The *Programme for Government* commits to use available resources to more effectively deliver on principles of social inclusion such as Traveller education. All children including Traveller and Roma children have the right to education.<sup>606</sup> This education must be directed to the development of 'respect for the child's parents, his or her own cultural identity, languages and values, [...]'.<sup>607</sup> While the *Report and Recommendations for a Traveller Education Strategy* was published in 2006,<sup>608</sup> a strategy of itself with an implementation plan and timeline was never developed. In April 2015, an evaluation of the Delivering Equality of Opportunity In Schools (DEIS) programme was published;<sup>609</sup> it repeated earlier findings comparing average test

583 Department of Education and Skills, 'Information for Parents on the New Primary Online Database (POD) <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/POD-Information-for-Parents.pdf>> accessed 29 January 2016, 1.

584 Department of Education and Skills, Primary Online Database (POD) <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/>> accessed 29 January 2016.

585 Department of Education and Skills, 'Information for Parents on the New Primary Online Database (POD) <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/POD-Information-for-Parents.pdf>> accessed 29 January 2016, 4.

586 Department of Education and Skills, 'Primary Online Database (POD)' <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/>> accessed 29 January 2016.

587 Department of Education and Skills, 'Information for Parents on the New Primary Online Database (POD) <<https://www.education.ie/en/Publications/Statistics/Primary-Online-Database-POD-/POD-Information-for-Parents.pdf>> accessed 29 January 2016, 4.

588 *ibid* 1.

589 Cecily Kelleher et al., *Our Geels, All Ireland Traveller Health Study*, (University College Dublin 2010) 148.

590 *ibid* 46.

591 *ibid*.

592 *ibid*.

593 Pavee Point, *Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre's shadow report in response to Ireland's consolidated third and fourth report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 11.

594 Pavee Point, *Irish Traveller and Roma Children, An Update to Pavee Point Traveller and Roma Centre's shadow report in response to Ireland's consolidated third and fourth report to the UN Committee on the Rights of the Child* (Pavee Point 2015) 11.

595 *ibid*, 11.

596 The Irish Human Rights and Equality Commission, 'Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin' (23 October 2015) Section 42 of the Irish Human Rights and Equality Commission Act 2014 places a duty on public bodies, including local authorities, to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights in the performance of their functions.<<http://www.ihrec.ie/news/2015/10/23/statement-by-the-irish-human-rights-and-equality-c/>> accessed 29 January 2016.

597 The Irish Human Rights and Equality Commission, 'Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin' (23 October 2015) <<http://www.ihrec.ie/news/2015/10/23/statement-by-the-irish-human-rights-and-equality-c/>> accessed 29 January 2016.

597 [2015] IESC 28 para 68.

598 Kitty Holland, 'Carrickmines fatalities: Anger distilled from shock and grief' *The Irish Times* (Dublin 24 October 2015) and Gene Kerrigan, 'The policy of leaving things as they are' *The Sunday Independent* (Dublin 25 October 2015).

599 Minister for the Environment, Community and Local Government, Alan Kelly TD, Dáil Debates, Written Answers, Traveller Accommodation, 5 November 2015.

600 Pavee Point Traveller and Roma Centre, 'Almost 5,500 sign up for Traveller agency' (11 November 2015) <<http://www.paveepoint.ie/almost-5500-sign-up-for-traveller-agency/>> accessed 29 January 2016.

601 Emily Logan, *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013: Report of Ms Emily Logan* (Department of Justice and Equality 2013).

602 Department of Justice and Equality, 'Report of Implementation Group set up to monitor implementation of the Recommendations contained in Ms Emily Logan's Report of the inquiry into the circumstances surrounding the removal of two Roma children from their families' <[http://www.justice.ie/en/JELR/Pages/Logan\\_Report\\_Implementation\\_Group\\_2015](http://www.justice.ie/en/JELR/Pages/Logan_Report_Implementation_Group_2015)> accessed 29 January 2016.

603 Emily Logan, *Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to An Garda Síochána) Order 2013: Report of Ms Emily Logan* (Department of Justice and Equality 2014) 106.

604 Pavee Point 'Assessment of need of Roma community in Ireland' <<http://www.paveepoint.ie/roma-needs-assessment/>> (accessed 29 January 2016).

605 UNCRRC 'List of Issues in relation to the Combined Third and Fourth Periodic reports Ireland' UN Doc CRC/C/IRL/Q/3-4/Add.1.4.

606 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 28.

607 *ibid*, Art 29(c).

608 Department of Education and Skills, *Report and Recommendations for a Traveller Education Strategy* (Stationery Office 2006).

609 The Delivering Equality of Opportunity in Schools (DEIS) Programme, introduced in 2006, aims to address the educational needs of children from marginalised communities through lower pupil-teacher ratios and a range of literacy and numeracy programmes. For more information see section 2.2 of this Report.

scores of pupils from the Traveller community in 2007 and in 2010 with non-Traveller pupils in reading and mathematics.<sup>610</sup> The study found that the average scores of Travellers in both years were significantly below those of non-Travellers and that the difference between them was 'large'.<sup>611</sup> Small but not significant improvements were seen across the board in reading but not in mathematics.<sup>612</sup> This is of particular concern given the broader context that of the general Traveller population 55 per cent have left school by the age of 15, on average 4.7 years earlier than the general population,<sup>613</sup> and 17.7 per cent of Travellers have no formal education, compared with 1.4 per cent in the general population.<sup>614</sup>

Half of Traveller pupils attend DEIS schools, those in non-DEIS schools do not receive additional support because Traveller specific supports, such as resource teachers for Travellers and the Visiting Teacher Service were abolished in 2011.<sup>615</sup> The Irish National Teacher's Organisation (INTO) has noted that 'many teachers' are of the view that 'the DEIS support programme did not adequately respond to the needs of Traveller children'.<sup>616</sup>

Despite the obvious challenges faced by Traveller and Roma children in education, Budget 2016 did not include any additional supports for these groups. Resources are provided on 'identified individual educational need' to all children with no targeted initiatives for Traveller children or others based on cultural or ethnic background to facilitate and support their engagement in mainstream education.<sup>617</sup>

Despite the obvious challenges faced by Traveller and Roma children in education, Budget 2016 did not include any additional supports for these groups. Resources are provided on 'identified individual educational need' to all children with no targeted initiatives for Traveller children or others based on cultural or ethnic background to facilitate and support their engagement in mainstream education.

## Traveller and Roma Children

### Immediate Actions for 2016



#### PUT IN PLACE A MONITORING AND EVALUATION MECHANISM FOR THE NATIONAL ROMA AND TRAVELLER INCLUSION STRATEGY.

To ensure commitments are delivered, a rigorous monitoring and evaluation mechanism should be established for the Strategy.

#### DELIVER ON THE GOVERNMENT COMMITMENT TO RECOGNISE TRAVELLER ETHNICITY.

Swift action is needed to fulfil the commitment of the Minister of State for Equality, New Communities and Culture that the State will recognise Traveller ethnicity.

#### INTRODUCE AN ETHNIC IDENTIFIER ACROSS ALL ADMINISTRATIVE AREAS.

An ethnic identifier should be introduced across all administrative areas to enable the Government to track outcomes for minorities and to measure the efficacy of Traveller and Roma related initiatives.

#### ENSURE ADEQUATE AND APPROPRIATE ACCOMMODATION, INCLUDING TRANSIENT ACCOMMODATION, IS PROVIDED TO TRAVELLER FAMILIES BY LOCAL AUTHORITIES.

Local authorities should fulfil their obligations under the Housing (Traveller Accommodation) Act 1998 to provide culturally appropriate accommodation to Travellers with adequate water and sanitation facilities. Penalties should be imposed where local authorities fail in their duty to do so. Safe play and recreational areas should be provided for Traveller children and young people.

#### ESTABLISH A TRAVELLER AGENCY.

A Traveller Agency should be established to drive cohesion and integration of delivery of services as well as improvements to and implementation of policy and legislation for Travellers and their children.

#### TAKE STEPS TO IMPROVE THE EDUCATIONAL OUTCOMES FOR TRAVELLER AND ROMA CHILDREN.

Targeted education supports should be introduced to support Traveller and Roma inclusion in mainstream education. An evaluation of the impact of the withdrawal of Traveller specific education supports should be undertaken to inform this. A monitoring and evaluation framework with clear timelines for the *Report and Recommendations for a Traveller Education Strategy* should also be developed and implemented.

610 Emer Smyth et al, *Learning from the Evaluation of DEIS*, (Economic and Social Research Institute 2015) 12.

611 Susan Weir et al, *A Report of the First Phase of the Evaluation of DEIS* (Education Research Centre 2011) 45-47.

612 *ibid.*

613 Central Statistics Office, 'Census 2011-Profile 7-Religion, Ethnicity and Irish Travellers' <<http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile7EducationEthnicityandIrishTravellerCommentary.pdf>> accessed 29 January 2016, 32.

614 *ibid.*

615 The Irish National Teacher's Organisation, 'DEIS Consultation Submission' <<https://www.education.ie/en/Schools-Colleges/Services/DEIS-Delivering-Equality-of-Opportunity-in-Schools-/DEIS-Supporting-Information/DEIS%20Review%20Consultation/INTO-submission.pdf>> accessed 29 January 2016, 9.

616 *ibid.* 6.

617 Communication Received by the Children's Rights Alliance from the Department of Justice and Equality, 4 November 2014.

## 6.2

**Migrant Children****GOVERNMENT COMMITMENT**

The *Programme for Government 2011-2016* commits to promoting policies that integrate minority ethnic groups in Ireland, and that promote social inclusion, equality, diversity and the participation of immigrants in the economic, social, political and cultural life of their communities.



**Progress: Limited**

**'Migrant Children' receives a 'D-' in Report Card 2016. This grade represents an increase on last year's 'E+' grade. The increased grade reflects the fact that the Working Group on the Protection Process completed its task and published its report, and that the first government consultation of its kind in the EU took place with children in the Direct Provision system. Further resources are required to ensure that the Working Group recommendations that relate to children are implemented. However, the grade remains low because in spite of the report, little changed on the ground for children in 2015 and the promised Integration Strategy has not yet been published.**

This is the final year being analysed in the Report Card series under the *Programme for Government 2011-2016*. A commitment was made to promote policies on the integration of minority ethnic groups including the promotion of inclusion, equality and diversity. While progress is beginning to be made now, little has changed for migrant children on the ground across these areas over 2015.

Census 2011 shows that one in seven children under the age of 14 is from an ethnic minority and/or migrant background.<sup>618</sup> There were more than 1,200 asylum seeking children living in the Direct Provision system in Ireland at the end of December 2015.<sup>619</sup> International developments have seen an increase over the last twelve months in the number of migrant and asylum-seeking families and unaccompanied children in Europe.<sup>620</sup> The Government responded to the refugee crisis by establishing the Irish Refugee Protection Programme and agreed to accept up to 4,000 persons under the EU Resettlement and Relocation Programmes.<sup>621</sup>

This is the final year being analysed in the Report Card series under the *Programme for Government 2011-2016*. A commitment was made to promote policies on the integration of minority ethnic groups including the promotion of inclusion, equality and diversity.

618 Central Statistics Office, 'Census 2011 Profile 7 – Religion, Ethnicity and Irish Travellers' <<http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire.doc.pdf>> accessed 29 January 2016.

619 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 27 January 2016.

620 Niall Collins TD, Dáil Debates, EU Council Decisions on Measures in the Area of International Protection: Motions, 1 October 2015.

621 Department of Justice and Equality, 'The Irish Refugee Protection Programme (IRPP)' <[http://www.justice.ie/en/JELR/Pages/Irish\\_Refugee\\_Protection\\_Programme\\_\(IRPP\)](http://www.justice.ie/en/JELR/Pages/Irish_Refugee_Protection_Programme_(IRPP))> accessed 29 January 2016.

There are a range of rights relating to migrant children under the UN Convention on the Rights of the Child<sup>622</sup> but for the purpose of this section, we will examine the *Programme for Government* commitment under two key provisions relating to migrant children – non-discrimination and special protection measures. Under Article 2, the State is required to ensure that children are not discriminated against on any ground irrespective of their race, national or ethnic origin or other status.<sup>623</sup> Furthermore, they must be protected against discrimination based on their parent or guardian's race, national, ethnic or other status. Under Article 22, States must provide special protection measures for children outside their country of origin seeking refugee protection.<sup>624</sup>

The *Programme for Government* commitment in this area is broad-reaching. *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* recognises migrant children as a vulnerable group and makes specific commitments including to tackle inequalities in health,<sup>625</sup> strengthen social inclusion measures, improve educational outcomes,<sup>626</sup> address the interaction of migrant children with the immigration system, provide for a more efficient protection determination system<sup>627</sup> and reduce discrimination and intolerance experienced by migrant children.<sup>628</sup>

**Integration Strategy:** In 2014, a review of Ireland's approach to migrants was ordered by the then Minister for Justice and Equality, Alan Shatter TD. A Cross-Departmental Group on Integration was established in March 2014 to draft an overarching Integration Strategy taking account of existing

policies<sup>629</sup> and actions being implemented.<sup>630</sup> Consultation with key stakeholders was carried out and in October 2015 a draft of the Strategy was shared with stakeholders for their observations; the Strategy is due to be published shortly.<sup>631</sup>

It has been eight years since the publication of *Migration Nation, Statement on Integration Strategy and Diversity Management* in 2008<sup>632</sup> and the landscape has changed significantly in the intervening period, with the lapse of *Planning for Diversity, The National Action Plan Against Racism 2005-2008*, the closure of the National Consultative Committee on Racism and Interculturalism and the loss of the designated Minister for Integration as well as a significant reduction in the capacity of community migrant-led groups.<sup>633</sup> The new Strategy is an opportunity for the State to meet its commitments to migrant children under the *National Policy Framework* and its obligations under the UN Convention on the Rights of the Child. The Strategy should include commitments on legislative reforms. The continued lack of a modern and coherent legal structure in relation to migrants and their families, impacts negatively of the everyday lives of migrant children, young people and their families in Ireland. 2015 saw the publication and enactment of the International Protection Act 2015. However, this legislation only addresses issues relating to the protection determination process, which is not covered in this report.

There is still no legal framework on the reception conditions of asylum seekers in Ireland, that is, Direct Provision. Ireland has decided to opt out of the EU Reception Conditions (Recast) Directive, which governs reception conditions for applicants

622 See for example, Article 7 of the UN Convention on the Rights of the Child, which stipulates that a child shall have the right to a nationality and Article 30 which provides that the State must ensure that children of an ethnic religious or linguistic minority are not denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language. Article 31(2) obliges States to ensure that children can participate fully in cultural [...] life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

623 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2 para 1.

624 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 22.

625 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (Department of Children and Youth Affairs 2014) Commitment 1.4.

626 *ibid* Commitment 2.22.

627 *ibid* Commitment 3.7.

628 *ibid* Commitment 5.6.

629 Existing strategies include the Intercultural Education Strategy and the Garda Síochána Diversity Strategy.

630 Minister of State at the Department of Justice and Equality, Mr Aodhán Ó Riordáin TD, Dáil Debates, Migrant Integration, 25 November 2015 [41947/15].

631 Office for the Promotion of Migrant Integration, 'Review of the Integration Strategy – Update (Oct 2015)' <<http://www.integration.ie/website/omi/omiwebv6.nsf/page/NewIntegrationStrategy-en>> accessed 29 January 2016.

632 Office of the Minister for Integration, *Migration Nation, Statement on Integration Strategy and Diversity Management* (Office of the Minister for Integration 2008).

633 Nasc, 'Submission to the Office for the Promotion of Migrant Integration on the Development of a Migrant Integration Policy' <<http://www.nascireland.org/wp-content/uploads/2012/02/OPMI-Integration-Submission.pdf>> accessed 29 January 2016, 2.

for international protection.<sup>634</sup> This is disappointing as Article 23 of the Directive requires signatories to ensure that the best interests of the child are a primary consideration in decision making and States must 'ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.'

**Children Living in Direct Provision:** Young people from migrant backgrounds experience discrimination in their daily lives both interpersonally<sup>635</sup> and systemically in terms of their right to family life,<sup>636</sup> access to play and recreational facilities,<sup>637</sup> social protection<sup>638</sup> and independent complaints (though this is expected to change shortly).<sup>639</sup> Few children are more vulnerable to discrimination in Ireland than those of asylum seeking families. Approximately half of children in asylum-seeking families in Ireland live in the Direct Provision system.<sup>640</sup> Direct Provision is a system of accommodation provided by the State to people seeking asylum in Ireland. It provides

room and board within former hotels, hostels or other large buildings. Each centre is managed by private contractors on behalf of the Reception and Integration Agency.<sup>641</sup>

Concerns about the system and the living conditions at the centres are well documented<sup>642</sup> and the Government's own *Statement of Government Priorities 2014-2016* highlights the need for reform.<sup>643</sup> In October 2014, the Minister for Justice and Equality, Frances Fitzgerald TD and the Minister of State for New Communities, Culture and Equality, Aodhán Ó Riordáin TD established a Working Group, chaired by former High Court Judge, Dr Bryan McMahon, to review the protection process and make recommendations on how to improve the standard of living in the Direct Provision system.<sup>644</sup> The Final Report of the Working Group, published in June 2015, made a range of findings and 173 recommendations, five of which were of particular

The average length of stay in Direct Provision is three years and four months but almost 15 per cent of residents have been living in the system for more than seven years. This means that there are children who have spent their whole lives living in a centre, which often involves living in communal or shared accommodation not appropriate for family life.

relevance to children. The Working Group report provides a blueprint for the State to significantly improve the lives of children and families in the Direct Provision system.

The average length of stay in Direct Provision is three years and four months but almost 15 per cent of residents have been living in the system for more than seven years.<sup>645</sup> This means that there are children who have spent their whole lives living in a centre, which often involves living in communal or shared accommodation not appropriate for family life. One of the main recommendations of the Working Group relates to reducing the length of time being spent by people in the protection process and leave to remain stages.<sup>646</sup>

Another key issue raised by the Working Group related to the quality of the physical conditions in Direct Provision accommodation, which, they noted, varied across the centres<sup>647</sup> and in some cases involved 'cramped physical conditions' and that the 'multipurpose and multi-occupancy nature of the accommodation...raises concerns around privacy, mental health, family life and child protection'.<sup>648</sup> The Working Group notes that some children had grown up without a memory of their parents cooking a family meal,<sup>649</sup> and that all families should have access to cooking facilities and their own private living space in so far as practicable.<sup>650</sup> The Group recommended that all requests for tender for new accommodation for asylum seeker families should specifically require self-contained units with cooking facilities and/or family quarters with communal kitchens and adequate recreational space for children and young people.<sup>651</sup> However, a tender for new accommodation released in July 2015 did not reflect this recommendation, missing an important opportunity to act on the Working Group's recommendation in this area.<sup>652</sup>

In May 2015, the Health Inspection and Quality Authority (HIQA) issued a report that found that in one year child welfare and protection referrals had been made to Tusla – the Child and Family Agency in relation to approximately 14 per cent of the population of children living in Direct Provision.<sup>653</sup> This represents a significantly higher referral rate than for the general child population of 1.6 per cent.<sup>654</sup> The Final Report of the Child Care Law Reporting Project, published in November 2015, also noted

634 Council Directive 2013/33/EU of 26 June 2013, laying down standards for the reception of applicants for international protection (recast) [2013] L 180/96.  
635 Immigrant Council of Ireland, 'Young People on Frontline of Racism' (6 January 2014) <<http://immigrantcouncil.ie/pages/articles/2014/110>> accessed 29 January 2016; Out of 182 reported incidents of racism recorded between July and December 2014, 13 (8 per cent) were directly experienced by children aged 17 and under, Shane O'Curry and Dr Lucy Michael, *Reports of Racism in Ireland, 5th and 6th quarterly reports of iReport.ie* (ENAR Ireland 2015) 12.  
636 CESCR, 'Concluding Observations on the third periodic report of Ireland' (2015) UN Doc E/C.12/IRL/CO/3 para 14.  
637 Samantha K. Arnold, *State Sanctioned Child Poverty and Exclusion – The case of children in state accommodation for asylum seekers* (Irish Refugee Council 2012) 13-15.  
638 Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report* (June 2015) <<http://bit.ly/1GYBUL5>> accessed 29 January 2016, para 5.5.  
639 In February 2016, in line with a recommendation of the Working Group, the Minister for Justice and Equality agreed, subject to the advice of the Attorney General, to allow asylum seekers living in Direct Provision to have their complaints heard by both the Ombudsman and the Ombudsman for Children. Up to this point, children living in Direct Provision centres were the only group of children denied access to the Ombudsman for Children's complaints procedure. Ombudsman for Children's Office, 'Commitment to allowing residents in Direct Provision to make complaints to Ombudsman offices welcomed' (4 February 2016) <<http://bit.ly/1PUtvK6>> accessed 5 February 2016.  
640 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 27 January 2016.  
641 For more information, see Reception and Integration Agency, 'Direct Provision' <[http://www.ria.gov.ie/en/RIA/Pages/Direct\\_Provision\\_FAQs](http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs)> accessed 29 January 2016.  
642 See for example, Health Information and Quality Authority, 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' <<https://www.hiqa.ie/inspection-reports/inspection-id706-child-protection-and-welfare-services-provided-children-living-d>> accessed 29 January 2016. In addition, the Special Rapporteur on Child Protection, Prof. Geoffrey Shannon, has repeatedly raised concerns about children living in the Direct Provision and has called for an immediate review of the system, research on 'the specific vulnerability of children accommodated in this system' and has recommended that 'asylum proceedings are accessible and effective[...] for all applicants, including children' and that the 'rights of children, including the right to a fair trial and the right to private and family life, are not violated by asylum proceedings.' Prof Geoffrey Shannon, *Fifth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas* (Department of Children and Youth Affairs 2012) 13. See also the UN Committee on Economic, Social and Cultural, 'Concluding Observations on the third periodic report of Ireland' (2015) UN Doc E/C.12/IRL/CO/3 para 14 and UN Human Rights Committee 'Concluding Observations under the International Covenant on Civil and Political Rights: Ireland' (2014) UN Doc CCPR/C/IRL/CO/4 para 19.  
643 It contains a number of commitments to address issues in this area such as to make the system of Direct Provision more respectful to the applicant; introduce a Protection Bill to reduce the length of time the applicant spends in the system through the establishment of a single applications procedure; work on an Immigration and Residence Bill; establishment of an independent Working Group to report to Government on improvements with the protection process, including Direct Provision and supports for asylum seekers. Government of Ireland, 'Statement of Priorities 2014-2016' <[http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2014/Statement-of-Government-Priorities-2014-2016.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2014/Statement-of-Government-Priorities-2014-2016.pdf)> accessed 29 January 2016.  
644 Department of Justice and Equality, 'Ministers Fitzgerald and Ó Riordáin announce composition of Working Group to examine improvements to the Protection process and the Direct Provision system' (13 October 2014) <<http://www.justice.ie/en/JELR/Pages/PR14000280>> accessed 29 January 2016.

645 Reception and Integration Agency, 'Monthly Statistics Report – September 2015' <<http://www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%209-2015.pdf/Files/RIA%20Monthly%20Report%209-2015.pdf>> accessed 29 January 2016.  
646 Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report* (June 2015) <<http://bit.ly/1GYBUL5>> accessed 29 January 2016, paras 3.128, 3.134 and 3.135.  
647 *ibid* para 47.  
648 *ibid* para 4.56.  
649 *ibid* para 1.62.  
650 *ibid* para 4.75.  
651 *ibid* para 4.75.  
652 RTE News, 'RIA accused of failing to enforce direct provision recommendations' (8 September 2015) <<http://www.rte.ie/news/2015/0908/726570-ria-asylum-seekers/>> accessed 29 January 2016.  
653 The report focused on the following service areas, namely Louth/Meath, Midlands, Sligo/Leitrim/West Cavan and Dublin North City. Health Information and Quality Authority, 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' <<https://www.hiqa.ie/inspection-reports/inspection-id706-child-protection-and-welfare-services-provided-children-living-d>> accessed 29 January 2016, 11. There were a range of referrals concerns but common themes included physical or mental illness of parents impacting on capacity to provide quality care for children, mental health issues for children and parents and a lack of clothes and toys. The nature of protection concerns focused on physical abuse due to excessive physical chastisement, protection concerns about older children left caring for younger children, proximity of children to unknown adults living on the same site and inappropriate contact by adults towards some children, exposure to incidents of domestic violence and children being left alone for significant periods of time.  
654 *ibid* 12. There were approximately 1600 children living in Direct Provision accommodation in Ireland, and of these children, there were 209 referrals of child protection and welfare concerns relating to 229 children between August 2013 and August 2014. Of these referrals, 51 per cent refer to child welfare issues while a further 49 per cent of refer to child protection concerns.

the prevalence of families in Direct Provision centres involving in child care proceedings.<sup>655</sup>

While a child protection policy is in place at the accommodation centres, the current approach must be revisited to develop a broader policy in line with the recommendation of the Working Group.<sup>656</sup> The Group recommended that Tusla, in conjunction with the Reception and Integration Agency (RIA) should develop a welfare strategy within RIA, to advise on policy and practice matters and to liaise on individual cases as required.<sup>657</sup> This followed a number of recommendations from HIQA to Tusla in this area including that Tusla develop an inter-cultural strategy to inform the provision of social services to ethnic minority children and families. It is understood that work is underway on formalising current practice between Tusla and RIA and in their cooperation on tracking movement of children and families between centres to ensure social workers are notified where necessary.<sup>658</sup> HIQA also recommended that Tusla complete an audit to ensure all assessments have been carried out where needed; ensure effective interagency and inter-professional co-operation with key stakeholders and gather information on referrals to their services about children in Direct Provision accommodation to inform strategic planning.<sup>659</sup>

The Working Group found that the existing inspection regimes at Direct Provision centres lacked credibility among residents, and focused on compliance with contractual obligations in relation to health and safety, for example, and lacked care standards in areas such as training of staff in diversity issues, ensuring that residents have a voice and facilities for children.<sup>660</sup> The Group recommended that national standards for inspection be developed to reflect fully government policy across all areas of service in Direct Provision. The report further recommended that an independent Inspectorate should be established to ensure equality of treatment across services and that the Inspectorate should report its findings directly to the Minister.

In early 2016, plans were announced to extend the remit of the complaints procedure under the Office of the Ombudsman for Children to include children in the Direct Provision.<sup>661</sup> Up to this point, this group of children were the only group of children in Ireland who were denied access to this procedure.<sup>662</sup> They continue to be among a minority of children denied access to the Child Benefit payment.<sup>663</sup> On 5 January 2016, the Department of Social Protection announced that the child component of the weekly Direct Provision allowance of €9.60 will be increased by €6.00 to €15.60.<sup>664</sup> This represents the first increase in the payment in 16 years. While this

increase is welcome, it falls far short of the €29.80 weekly figure recommend by the Working Group for the child component of the payment.<sup>665</sup>

**Consultations:** During October and November 2015, the Citizen Participation Unit of the Department of Children and Youth Affairs conducted consultations with approximately 90 asylum seeking children and young people (aged 8-17) living in Direct Provision, in co-operation with the Reception and Integration Agency (RIA) of the Department of Justice and Equality. An independent researcher is compiling a report of the consultations. RIA has committed to giving consideration to the views of the children in the forthcoming series of reforms aimed at improving conditions, particularly for families and children, in the Direct Provision system.<sup>666</sup>

On 5 January 2016, the Department of Social Protection announced that the child component of the weekly Direct Provision allowance of €9.60 will be increased by €6.00 to €15.60. This represents the first increase in the payment in 16 years. While this increase is welcome, it falls far short of the €29.80 weekly figure recommend by the Working Group for the child component of the payment.

655 Carol Coulter, *Final Report - Child Care Law Reporting Project* (Child Care Law Reporting Project 2015) 45. This often related to instances where mothers in Direct Provision suffered from mental illness problems, leading to their children being taken into care.

656 Reception and Integration Agency, 'Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA) and Centres under contract to RIA' <<http://bit.ly/1SLHPvA>> accessed 29 January 2016.

657 Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report* (June 2015) <<http://bit.ly/1GYBUL5>> accessed 29 January 2016, para 4.199.

658 Communication received by the Children's Rights Alliance from Tusla, The Child and Family Agency, 18 February 2016.

659 Health Information and Quality Authority, 'Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007' <<https://www.hiqa.ie/inspection-reports/inspection-id706-child-protection-and-welfare-services-provided-children-living-d>> accessed 29 January 2016, 29.

660 Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report* (June 2015) <<http://bit.ly/1GYBUL5>> accessed 29 January 2016, para 4.212-4.226.

661 In February 2016, in line with a recommendation of the Working Group, the Minister for Justice and Equality agreed, subject to the advice of the Attorney General, to allow asylum seekers living in Direct Provision to have their complaints heard by both the Ombudsman and the Ombudsman for Children. Children living in Direct Provision centres are the only group of children denied access to the Ombudsman for Children Office. Ombudsman for Children's Office, 'Commitment to allowing residents in Direct Provision to make complaints to Ombudsman offices welcomed' (4 February 2016) <<http://bit.ly/1PUtvK6>> accessed 5 February 2016.

662 Ombudsman for Children Act 2002, s 11(1)(e)(i) precludes the Office of the Ombudsman for Children from hearing complaints on decisions taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship.

663 Child Benefit is a monthly payment to parents for the support of their children. Department of Social Protection, 'Child Benefit Payment' <<http://www.welfare.ie/en/Pages/Child-Benefit.aspx>> accessed 29 January 2016. The Habitual Residence Condition was introduced in 2005 under the Social Welfare (Consolidation) Act 2005 as amended, s 246, restricting access to certain social welfare payments including Child Benefit, to those who can prove a close link to Ireland. This amounts to indirect discrimination against approximately 10,000 children as they are denied the payment due to their parents' immigration status or migration history.

664 Department of Social Protection, 'Government announces increase in the Direct Provision Allowance for Children' (5 January 2016) <<https://www.welfare.ie/en/pressoffice/Pages/pa050116.aspx>> accessed 29 January 2016.

665 The Government has committed to revisiting the payment with a view to considering the possibility of further increases. Communication received by the Children's Rights Alliance from the Irish Naturalisation and Immigration Service, 28 January 2016.

666 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 15 February 2016.



## Migrant Children

# Immediate Actions for 2016



**PUBLISH AND IMPLEMENT A NEW INTEGRATION STRATEGY WITHOUT DELAY.**  
The Integration Strategy should be published together with a plan and timeline for its implementation. It should contain a specific focus on children and young people.

**ENSURE THAT NO FAMILIES WITH CHILDREN ARE LIVING IN THE DIRECT PROVISION SYSTEM FOR ANY LENGTH OF TIME.**  
All families with children should be accommodated in individual self-catering family accommodation together with adequate recreational space for children. All future requests for tenders for accommodation should reflect this, as per the recommendation of the Working Group on the Protection Process. Accommodation that is inappropriate for families should not be used.

**THE STATE SHOULD TAKE IMMEDIATE ACTION TO IMPLEMENT THE OTHER RECOMMENDATIONS OF THE WORKING GROUP ON THE PROTECTION PROCESS. IN PARTICULAR, IT SHOULD:**  
Develop national standards for the management of Direct Provision centres and establish as a matter of urgency an independent regime for the system.

Increase the weekly allowance for children in Direct Provision to the amount recommended by the Working Group by a further €14.20 to €29.80.

Develop a dedicated preventative child welfare and protection strategy for Direct Provision accommodation.

**OPT-IN TO THE EU RECAST RECEPTION CONDITIONS DIRECTIVE TO PROVIDE A LEGAL FRAMEWORK TO GOVERN RECEPTION CONDITIONS FOR ASYLUM SEEKERS, INCLUDING CHILDREN, IN IRELAND.**  
Opting-in to the Recast Reception Conditions Directive would ensure that the best interests of the child principle is at the forefront of decisions made about accommodating asylum and protection applicant.

## 6.3

# Inequalities in Family Life

### GOVERNMENT COMMITMENT

*The Programme for Government 2011-2016* promises to modernise and reform outdated elements of family law.



#### Progress: Complete

We will enact legislation to consolidate and reform the law on adoption.



#### Progress: Slow

We will amend the Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 to address any anomalies or omissions, including those relating to children.



#### Progress: Complete

**Inequalities in Family Life' receives an 'A' grade in Report Card 2016, an increase from the 'B' grade awarded last year. The improved grade reflects the enactment of the Children and Family Relationships Act 2015, which represents the most important reform of family law for a generation and the improvement in the law relating to children parented by same sex couples.**

This is the final year being analysed in the Report Card series under the *Programme for Government 2011-2016*. A commitment was made to modernise and reform the law in relation to families and adoption. Significant progress has been made through the enactment of the Children and Family Relationships Act 2015 and Marriage Act 2015, and the publication of the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015.

The UN Convention on the Rights of the Child recognises the central role played by parents

and guardians in the lives of children. Under the Convention every child has the right to be cared for by his or her parents insofar as possible.<sup>667</sup> Children also have the right to contact with both their parents on a regular basis, to maintain personal relations and not to be separated from their parents against their will, unless the separation is in the child's best interests.<sup>668</sup> States are obliged to 'respect the responsibilities, rights and duties of parents' or 'persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of [his or her rights].'<sup>669</sup> Irrespective of the relationships entered into by parents, children should not be discriminated against on any ground, including due to the status of their parents' relationship.<sup>670</sup>

**Family Law:** The Government committed under *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People*

669 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 7.

668 ibid Art 9.

669 ibid Art 5.

670 ibid Art 2.

2014-2020, to '[r]eform aspects of family law, including the law on guardianship, to create a legal structure to underpin diverse parenting situations and provide legal clarity on parental rights and duties in diverse family forms'.<sup>671</sup>

The Children and Family Relationships Act 2015 was enacted on 6 April 2015. It modernises and reforms outdated elements of family law by providing legal clarity around various family types and addressing discrimination faced by children of non-marital families. Prior to the Act, there was no legal framework to govern the relationship between a child and a non-biological parent acting in loco parentis (day to day parenting) such as their parent's cohabiting partner.<sup>672</sup> The lack of a legal relationship made routine family life difficult because the non-biological parent could not consent for example, to emergency medical treatment, vaccinations or school forms. It also meant that the non-biological parent had no visitation rights or maintenance duties toward a child upon breakdown of the relationship. It is a long overdue recognition that the make-up of families has changed since we last revisited their status in primary legislation.

One of the key strengths of the Children and Family Relationships Act 2015 is that it provides that the best interests of the child are paramount in decisions on guardianship, custody and access.<sup>673</sup> In addition the Act sets out the arrangements that will apply with regard to the parentage of a child through donor assisted human reproduction.<sup>674</sup> This follows a commitment under the *National Policy Framework* to 'clarify the law in relation to a child and young person's right to know his or her identity' where the child is adopted or born through the use of Assisted Reproductive Technologies, and to 'put in place a mechanism to collect and retain information necessary to enable a child to exercise their right to

## One of the key strengths of the Children and Family Relationships Act 2015 is that it provides that the best interests of the child are paramount in decisions on guardianship, custody and access.

identity...'<sup>675</sup> The Act also addresses the obligations of a donor assisted human reproduction (DAHR) facility and the categories of information required for, and available from, the national donor-conceived person register.<sup>676</sup> It is expected that this part of the Act will not be commenced for at least a year to allow DAHR facilities to prepare for the changes contained in the legislation.<sup>677</sup> The longer this is delayed however, the longer the rights of children to know their parents and to have accurate information about their identity under the UN Convention are not being respected.<sup>678</sup>

In relation to guardianship, the Act provides that a step-parent, civil partner or a person who has cohabited with a parent for not less than three years may apply to the court to become a guardian where they co-parented the child for more than two years. A person who has provided for the child's day-to-day care for a continuous period of more than a year may apply for guardianship if the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship. The Act also allows for the appointment of a temporary guardian. Further, the Act stipulates that an unmarried father will automatically be a guardian if he has lived with the child's mother for 12 months, including at least three months with the mother and child following the birth of the child. This is a welcome development as previously unmarried fathers did not automatically acquire guardianship rights.

The provisions of the Act relating to adoption, guardianship and custody were commenced on 18 January 2016<sup>679</sup> and Part 10 which relates to passports has also been commenced.<sup>680</sup> Despite the significant progress made in the area of family law under the 2015 Act, two significant problems remain unresolved.

Section 63 of the Act 2015 provides, at the discretion of the Court, to procure from an expert a report in writing on any question affecting the welfare of the child or to appoint an expert to determine the views of the child and convey these to the Court.<sup>681</sup> The cost of the expert must be borne by the parties to the cases, in effect the parent or guardian. This provision is likely to impact negatively on children in low income families who will face an additional barrier to having their voices heard. Section 63 has yet to be commenced meaning that a child still has no automatic entitlement to have their voice heard in family law proceedings affecting them, such as guardianship, custody and access decisions.<sup>682</sup>

The second issue relates to the lack of a Central Register for Statutory Declarations for Joint Guardianship which may cause a difficulty for an unmarried father who has not retained a copy of his declaration of guardianship and so is unable to prove that he is a joint guardian of his child. The statutory declaration is the only non-judicial mechanism to enable an unmarried father to gain guardianship rights – the safe keeping of these documents should be fully supported by the State. It is understood that work is being undertaken by the Department of Justice and Equality to develop a repository of statutory declarations relating to guardianship.<sup>683</sup>

**Adoption Law:** In addition to the right to know their parents and to have accurate information about their identity, a child has the right to the assistance and protection of the State where they have been denied an element of their identity.<sup>684</sup> In July 2015, the Government published the General Scheme and Heads of the Adoption (Information and Tracing) Bill 2015. It provides a statutory basis for the provision of information related to prospective and retrospective adoptions, including access for persons over 18 years to their original birth certificate. Moreover, it provides that the best interests of the child principle is to be the deciding factor in the sharing of information on anyone under 18 years.<sup>685</sup> This legislation should be enacted to vindicate the right of an adopted child to know his or her identity.

The Children and Family Relationships Act 2015 places new obligations on the court system, in particular the District Court. On foot of the Act and as part of a broader programme of reform, a number of new initiatives were announced. These include plans to develop a state-of-the-art Family Law and Children's Courts building on Hammond Lane in Dublin<sup>686</sup> and courtroom capacity in Dolphin House will be freed up to facilitate family law proceedings.<sup>687</sup> It is anticipated that these changes will have a positive impact on waiting times in family law cases.<sup>688</sup>

In addition, a court welfare service is needed to support the roll out of the Children and Family Relationships Act 2015. This service would support the judiciary to make informed decisions by carrying out assessments of the child's welfare and best interests, ascertaining his or her views, and carrying out family risk assessments. Additional ancillary services are also needed to support children and families, such as mediation services and child contact centres.<sup>689</sup>

671 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (Department of Children and Youth Affairs 2014) Commitment 3.17.

672 For example, there were only two ways in which the relationship between a child and their non-biological parent could be recognised in law. The relationship between a step-parent and their partner's child could be recognised only if the step-parent adopted the child. Adopting a child is not a practical solution in many cases, particularly if the child's other parent is present in the child's life. The only other way was if a non-biological parent became a child's guardian in the case of the death of the child's parent through testamentary guardianship. In this case however, testamentary guardianship will act jointly with the child's surviving parent who is a guardian unless the parent objects, in which case a court order must be obtained, granting joint guardianship to the testamentary guardian and the child's surviving parent or excluding the child's surviving parent.

673 Children and Family Relationships Act 2015, s 45.

674 Children and Family Relationships Act 2015, Part 2.

675 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (Department of Children and Youth Affairs 2014) Commitment 5.10.

676 Children and Family Relationships Act 2015, Part 3.

677 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 11 November 2015.

678 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Arts 7 and 8.

679 Department of Justice and Equality, 'Minister Fitzgerald signs order for commencement of landmark family law reform' (18 January 2016) <<http://www.justice.ie/en/JELR/Pages/PR16000018>> accessed 28 January 2016.

680 Part 10 amends the Passports Act 2008.

681 Children and Family Relationships Act 2015, s 63.

682 Section 52 of the Children Act 1997 would have provided for it, but the section was never commenced.

683 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 11 November 2015.

684 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 7 and 8.

685 Ibid 85, 92 and 177.

686 Department of Justice and Equality, 'Minister Fitzgerald announces unprecedented Capital Investment in Justice Sector' (29 September 2015) <<http://www.justice.ie/en/JELR/Pages/PR15000498>> accessed 12 February 2016.

687 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 1 December 2015.

688 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 1 December 2015.

The General Scheme of a Family Courts Bill is due to be published shortly, which will provide for the establishment of a dedicated family court to improve levels of judicial expertise and training in family law matters and streamline family law proceedings, thereby making them more user-friendly and less costly. Department of Justice and Equality, 'Family Courts Bill' <<http://www.justice.ie/en/JELR/Pages/FamilyCourtsBill>> accessed 12 February 2016.

689 Child contact centres are for children whose parents are separated and are unable to agree safe and appropriate arrangements for the child/children to have contact with the parent they do not live with and for children who are in the care who need support to have contact with their parent(s). These are time-limited services so families need to engage with family supports so that they can move to self-arranged contact over time. See: Candy Murphy and Louise Caffrey, *Supporting Child Contact: the Need for Child Contact Centres in Ireland* (One Family 2010).

**Civil Partnership and Cohabiting Couples:** The commitment in the *Programme for Government* to address anomalies and omissions in civil partnership legislation has been addressed through the Children and Family Relationships Act 2015. The Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 did not provide a legal framework governing the relationship between a child and their mother or father's civil partner or cohabiting partner in a number of critical areas. This meant that civil or cohabiting partners could not apply for guardianship, custody or access of a child in the family unit.<sup>690</sup> It was also not possible for a maintenance order to be made against a civil or cohabiting partner in relation to a dependent child<sup>691</sup> and non-biological children of a deceased civil or cohabiting partner were denied inheritance rights.<sup>692</sup> This meant that civil partner or cohabiting families faced significant discrimination in comparison with married families. The Children and Family Relationships Act 2015 addresses these anomalies and ensures that the legal relationship is formalised.<sup>693</sup>

Furthermore, on 23 May 2015, a referendum took place to determine whether or not the Constitution should be amended to extend civil marriage rights to same sex couples.<sup>694</sup> The amendment was passed by a 62.1 per cent majority.<sup>695</sup> On foot of the referendum result, the Marriage Act 2015 was enacted and commenced on 16 November 2015. It provides for civil marriages for same sex couples – which have the same status under the Constitution as a marriage between a man and a woman.<sup>696</sup>

The commitment in the *Programme for Government* to address anomalies and omissions in civil partnership legislation has been addressed through the Children and Family Relationships Act 2015. The Civil Partnership and Certain Rights and Obligations of Cohabiting Couples Act 2010 did not provide a legal framework governing the relationship between a child and their mother or father's civil partner or cohabiting partner in a number of critical areas.

## Inequalities In Family Life

# Immediate Actions for 2016



### COMMENCE THE OUTSTANDING PROVISIONS OF THE CHILDREN AND FAMILY RELATIONSHIPS ACT 2015.

Commence the outstanding provisions of the Children and Family Relationships Act 2015 without delay to provide legal clarity around various family types and address discrimination faced by children of non-marital families.

### DEVELOP A REPOSITORY FOR STATUTORY DECLARATIONS RELATING TO GUARDIANSHIP.

Put in place a repository for statutory declarations to ensure that all guardians, in particular unmarried fathers, can prove their right to guardianship of their children.

### ENACT THE ADOPTION (INFORMATION AND TRACING) BILL 2015.

The Adoption (Information and Tracing) Bill 2015 should be enacted at the earliest opportunity to provide for a statutory adoption information and tracing service, including retrospective application.

690 Paula Fagan, *Missing Pieces, A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained through civil marriage in Ireland* (Marriage Equality 2011) 26-27.

691 Paula Fagan, *Missing Pieces, A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained through civil marriage in Ireland* (Marriage Equality 2011) 27.

692 *ibid.*

693 Children and Family Relationships Act 2015, Part 4 addresses amendments to the Guardianship of Infants Act 1965; Part 5 addresses amendments to the Succession Act 1965; Part 6 covers amendments to the Family Law (Maintenance of Spouses and Children) Act 1976.

694 Department of Justice and Equality, 'Minister and Department of Justice and Equality Achievements in 2015' (January 2016) <[http://www.justice.ie/en/JELR/Pages/Minister\\_and\\_Department\\_of\\_Justice\\_and\\_Equality\\_Achievements\\_2015](http://www.justice.ie/en/JELR/Pages/Minister_and_Department_of_Justice_and_Equality_Achievements_2015)> accessed 29 January 2016.

695 Referendum Ireland, 'Current Referendum: Thirty-Fourth Amendment to the Constitution (Marriage Equality) Bill 2015' <<http://www.referendum.ie/results.php?ref=10>> accessed 29 January 2016.

696 Department of Justice and Equality, 'Minister Fitzgerald announces commencement Marriage Act 2015' <<http://justice.ie/en/JELR/Pages/PR15000577>> accessed 29 January 2016.