

# Comments on Ireland's 14th National Report on the Implementation of the European Social Charter

*April 2017*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission



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## Introduction

The Irish Human Rights and Equality Commission is an independent public authority that was established by the Irish Human Rights and Equality Commission Act 2014. Among the Commission's functions under that Act are:

- protecting and promoting human rights and equality;
- encouraging good practice in intercultural relations and promoting acceptance of diversity; and
- working towards the elimination of human rights abuses and discrimination.<sup>1</sup>

In particular, the Act provides that one of the ways in which the Commission may implement its functions is by consulting 'with such national, European Union, international bodies or agencies having a knowledge or expertise in the field of human rights or equality as it sees fit'.<sup>2</sup>

The Commission is the Irish national human rights institution and has been accorded 'A status' under the Paris Principles that were adopted by the General Assembly of the United Nations in 1993. The Commission is the national equality body for the purpose of the European Union's equality directives.

In its 2016–2018 Strategy Statement, the Commission has identified as a strategic priority 'promoting the indivisibility of equality and human rights', and in particular, delivering 'enhanced support for expanded protection measures for socio-economic rights'.<sup>3</sup> In recent years the Commission has contributed to the examination by UN treaty bodies of the realisation of economic, social and cultural rights in Ireland through reports on Ireland's examinations under the International Covenant on Economic, Social and Cultural Rights in 2015<sup>4</sup>, the Convention on the Rights of the Child in 2016<sup>5</sup>, and the Convention on the Elimination of All Forms of Discrimination against Women in 2017<sup>6</sup>. At a European level, in December 2016, the Commission recommended that the draft *European Pillar of Social Rights* be revised to ensure that the principles in it respect, protect or fulfil the rights set out in the European Social Charter, and that a revised *Pillar* set out

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1 Section 10(1) of the Irish Human Rights and Equality Commission Act 2014 (available at <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>).

2 Section 10(2)(h) of the Irish Human Rights and Equality Commission Act 2014.

3 Irish Human Rights and Equality Commission (2015) *Strategy Statement 2016–2018* (available at <https://www.ihrec.ie/download/pdf/strategystatement.pdf>).

4 Irish Human Rights and Equality Commission (2015) *Submission to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland's Third Periodic Report under the International Covenant on Economic, Social and Cultural Rights* (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fIRL%2f20495&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNHS%2fIRL%2f20495&Lang=en)).

5 Irish Human Rights and Equality Commission (2016) *Ireland and the United Nations Convention on the Rights of the Child: Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports* (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fIRL%2f22566&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fIFN%2fIRL%2f22566&Lang=en)).

6 Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports* (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNHS%2fIRL%2f26596&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNHS%2fIRL%2f26596&Lang=en)).

steps to reform the European Union's social *acquis* in order to reduce and eliminate the divergences between that *acquis* and the jurisprudence under the European Social Charter.<sup>7</sup>

The Commission welcomes the opportunity to provide to the European Committee of Social Rights comments on a number of matters regarding Ireland's *14th National Report on the Implementation of the European Social Charter*<sup>8</sup> and the rights that are examined in the 2017 cycle.

### Article 3.3 – Enforcement of safety and health regulations

The Commission notes that over the reporting period, the budget of the Health and Safety Authority was cut, and the number of inspections and investigations it undertook fell, from nearly 14,000 to 11,000.<sup>9</sup> At the same time, the number of people employed in the Irish economy increased from 1.8 million to nearly 2 million.<sup>10</sup> Thus, the number of inspections and investigations the Health and Safety Authority was able to undertake over the reporting period fell from 7.48 per 1,000 workers in the economy in 2012 to 5.49 per 1,000 workers in 2015, a drop of over 25 percent. **The Commission is concerned that rates of workplace health and safety inspections and investigations have fallen over the reference period.**

### Article 3.4 – Prevention of diseases and accidents

The Commission notes that in its *12th National Report on the Implementation of the European Social Charter* in December 2014,<sup>11</sup> the government of Ireland reported that there is no statutory requirement in Ireland on employers to provide access to occupational health services, that there are no statutory plans to establish such services, and that there is no plan in place by the government, its agencies or private enterprise to improve the provision of such services for small and micro enterprises. **The Commission is concerned that Ireland remains in non-conformity with Article 3.4 in respect of the provision of occupational health services.**

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7 Irish Human Rights and Equality Commission (2016) *Submission to the European Commission on the First preliminary outline of a European Pillar of Social Rights* (available at <https://www.ihrec.ie/documents/submission-european-commission-first-preliminary-outline-european-pillar-social-rights/>).

8 Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ec8e1>.

9 Annual reports of the Health and Safety Authority, 2012 to 2015 (available at [http://www.hsa.ie/eng/Publications\\_and\\_Forms/Publications/Corporate/](http://www.hsa.ie/eng/Publications_and_Forms/Publications/Corporate/)).

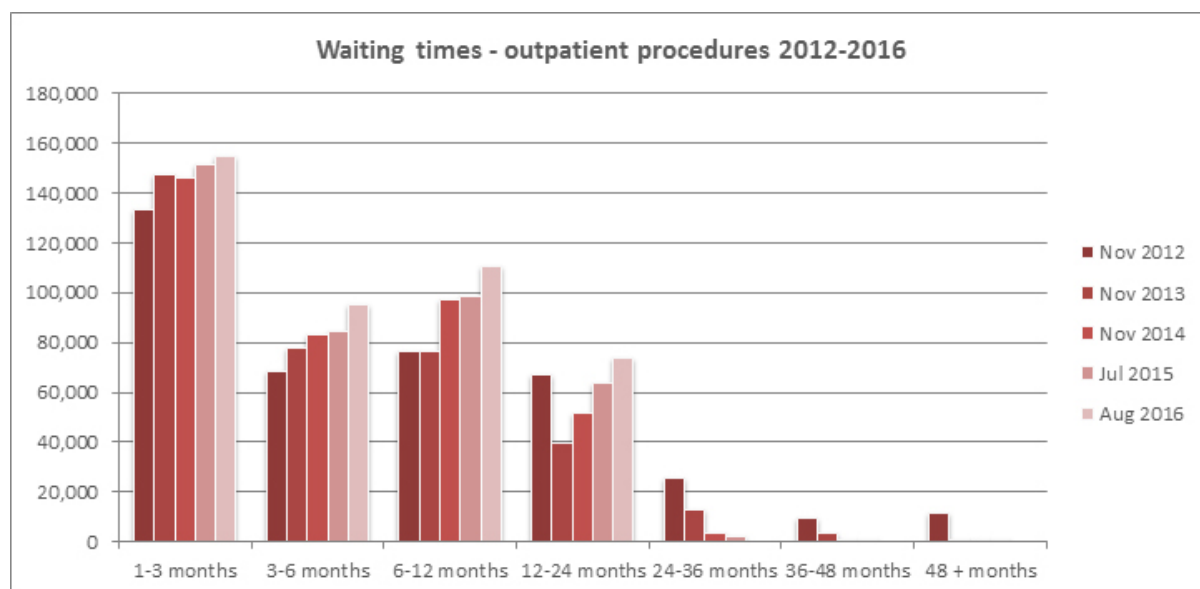
10 Annual reports of the Health and Safety Authority, 2012 to 2015 (available at [http://www.hsa.ie/eng/Publications\\_and\\_Forms/Publications/Corporate/](http://www.hsa.ie/eng/Publications_and_Forms/Publications/Corporate/)); Central Statistics Office's *Quarterly National Household Survey* for quarter 4 in each of the four years in the reporting period (available at <http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?Maintable=QNQ03&Planguage=0>).

11 Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489518>.

## Article 11.1 – Removal of the causes of ill-health

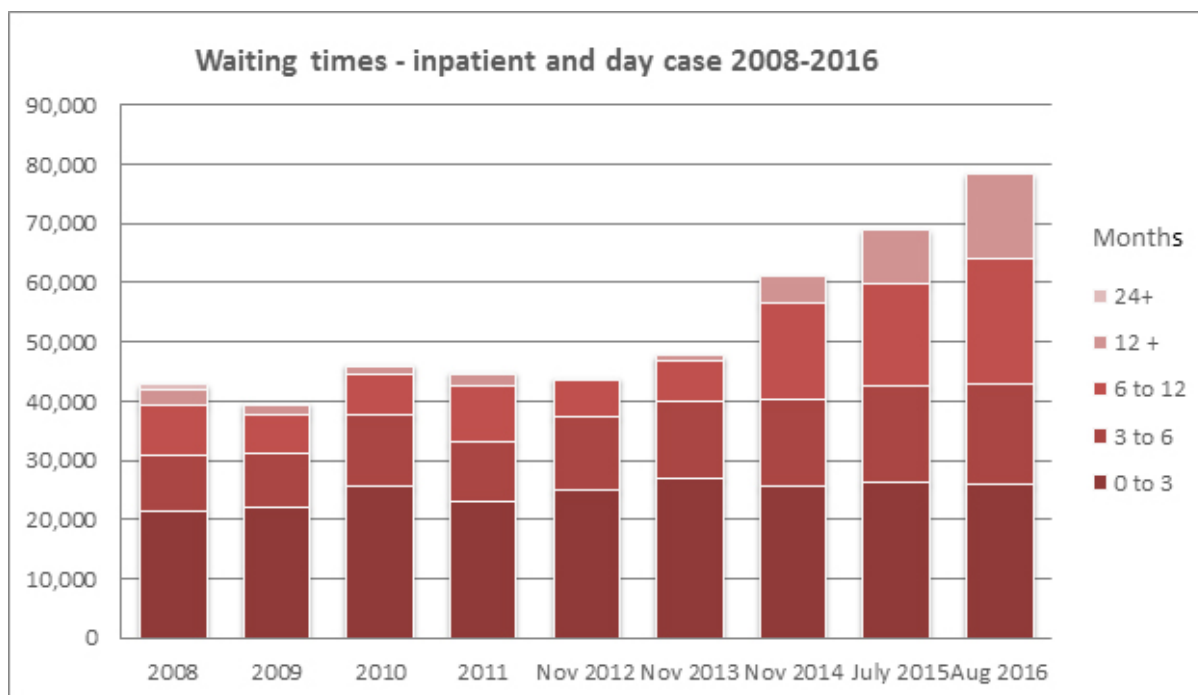
### Waiting Times

Excessive delays in accessing medical care are a significant problem in the Irish public health care system. While the OECD noted in 2013 that ‘Long waiting times to access health services have characterised the Irish health sector from the early 1990s’,<sup>12</sup> such delays got considerably worse over the reference period. Researchers at the Centre for Health Policy and Management in the School of Medicine, Trinity College Dublin, have analysed the data on waiting times for the period from 2012 to 2016. The data shows that for both outpatient and inpatient treatments, waiting times for patients in the public health care system have increased.<sup>13</sup> The figures below show the clear trends for outpatient and for inpatient and day-case procedures. Given the particular public–private mix in the Irish healthcare system, excessive waiting times are a strong indicator of unequal access. Privately insured patients can avoid delays facing public patients even where they have the same health needs and are accessing the same health services in the same hospitals. **The Commission is concerned that waiting times across all the recorded categories have increased significantly during the reporting period.**



**Source:** Thomas *et al.* (2017), Centre for Health Policy and Management, Trinity College Dublin  
<https://www.tcd.ie/medicine/health-systems-research/indicators.php>

- 12 Valerie Moran, Charles Normand and Alan Smith (2013), ‘Ireland’ in: *Waiting Time Policies in the Health Sector: What Works?*, Paris: OECD Publishing, at page 147.
- 13 Steve Thomas, Sarah Barry, Sara Burke, Bridget Johnston and Rikke Siersbaek (2016) ‘Pathways Indicators’ [web page], Centre for Health Policy and Management, Trinity College Dublin, <https://www.tcd.ie/medicine/health-systems-research/indicators.php>.



Source: Thomas *et al.* (2017), Centre for Health Policy and Management, Trinity College Dublin  
<https://www.tcd.ie/medicine/health-systems-research/indicators.php>

## Traveller Health

The *All Ireland Traveller Health Study* reported in 2010 that ‘no matter what way one examines the mortality data, the picture painted is a bleak one for Travellers. Compared to the general population, Travellers experience considerably higher mortality at all ages in both males and females’.<sup>14</sup> The *All Ireland Traveller Health Study* reported that infant mortality in 2008 was higher by a factor of 3.6 for Travellers than for the general population: 14.1 deaths per 1,000 live births for the Traveller community compared with 3.9 for the general population. In the 2011 Census of Population, members of the Traveller community report higher levels of bad or fair health and lower levels of good or very good health than is reported by the non-Traveller community.<sup>15</sup> The differences in the age profile of the Traveller and broader population are striking: 2 percent of the Traveller population is aged over 65, compared with 12 percent of the non-Traveller population.<sup>16</sup> Despite the evidence of the need for a targeted focus on the health of Travellers, the government did not renew or replace the National Intercultural Health Strategy 2007–2012. In 2013 a review of the Traveller Health Advisory Committee was commissioned by the Department of Health and presented to it, but

14 All Ireland Traveller Health Study Team (2010) *All Ireland Traveller Health Study: Our Geels – Summary of Findings*, Dublin: University College Dublin, at page 86 (available at [https://www.ucd.ie/t4cms/AITHS\\_SUMMARY.pdf](https://www.ucd.ie/t4cms/AITHS_SUMMARY.pdf)).

15 The age profile of the Traveller community and the non-Traveller community differ, and to correct for this, the comparison is made between people in both groups who are aged 35–54. Dorothy Watson, Oona Kenny and Frances McGinnity (2017) *A Social Portrait of Travellers in Ireland*. ESRI Research Series Number 56. Dublin: Economic and Social Research Institute, at pages 52 and 53 (available at <https://www.esri.ie/pubs/RS56.pdf>).

16 Watson *et al.* *A Social Portrait*, page 25. This is based on the Census of Population for 2011, the most recent census for which data at this level of detail is available.



has not been published. The Committee has not been convened since 2012.<sup>17</sup> The Health Service Executive operates the Traveller Health Advisory Forum, but this is not a national policy-making body and its remit is described as ‘a forum for discussion on issues around Traveller health’.<sup>18</sup> The national population health strategy, *Healthy Ireland: A Framework for Improved Health and Wellbeing 2013–2025*, contains just three references to Travellers, all of which refer to disaggregated data and Traveller-specific indicators.<sup>19</sup> **The Commission is concerned that despite the strong evidence of the pressing need for specific steps to improve the health of the Traveller population, structures for responding to those needs were discontinued or downgraded. The Commission is concerned that the national population health strategy, *Healthy Ireland*, does not contain an effective and targeted approach to ensuring improvements in Traveller health.**

### Socio-economic Inequality

The most recent official data shows significant differences in life expectancy between different socio-economic groups. The Central Statistics Office (the Irish statistics authority) reported in 2010 that professional female workers had a life expectancy of 86.0 years compared with 81.0 for unskilled female workers, a difference of 5 years, and professional male workers had a life expectancy of 81.4 years compared with 75.3 for unskilled male workers, a difference of 6.1 years.<sup>20</sup> The pattern is consistent when other measures of socio-economic status are used, such as residence in an area of deprivation<sup>21</sup> or level of education<sup>22</sup>. The standardised death rate for people with a disability was 1,578 per 100,000 people in the population, and 434 for people without a disability.<sup>23</sup> Research published by the Institute of Public Health in Ireland showed that rates of hypertension, coronary heart disease, stroke, and diabetes are higher among groups that are most deprived.<sup>24</sup> The Commission considers that there is a need for a clear focus on measures within the health system to address the health inequalities experienced by people who experience higher rates of deprivation. **The Commission is concerned at the significant structural differences in mortality and illness in Ireland and believes these issues require a systematic response within the health system.**

In January 2013 the charge levied on holders of the medical card<sup>25</sup> who needed to obtain medication on a prescription increased from €0.50 to €1.50 per item and the maximum monthly amount that a

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17 Minister of State at the Department of Health, Catherine Byrne TD, ‘Written Answers – Traveller Community’ (questions no. 460–464), *Parliamentary Debates: Dáil Éireann*, 22 November 2016, vol. 929, no. 3, page 352.

18 Minister of State at the Department of Health, Catherine Byrne TD, ‘Written Answers – Traveller Community’ (questions no. 460–464), *Parliamentary Debates: Dáil Éireann*, 22 November 2016, vol. 929, no. 3, page 352.

19 Department of Health (2013) *Healthy Ireland – A Framework for Improved Health and Wellbeing 2013–2025*, Dublin: Department of Health (available at <http://health.gov.ie/blog/publications/healthy-ireland-a-framework-for-improved-health-and-wellbeing-2013-2025/>).

20 Central Statistics Office (2010) *Mortality Differentials in Ireland*, Cork: CSO, in Table 2 (available at <http://www.cso.ie/en/statistics/birthsdeathsandmarriages/archive/releasearchive2010/>).

21 *Mortality Differentials in Ireland*, Table 1.

22 *Mortality Differentials in Ireland*, Table 3.

23 *Mortality Differentials in Ireland*, Table 4.

24 Kevin P Balanda, Steve Barron, Lorraine Fahy, and Aisling McLaughlin (2010) *Making Chronic Conditions Count: Hypertension, Stroke, Coronary Heart Disease, Diabetes – A Systematic Approach to Estimating and Forecasting Population Prevalence on the Island of Ireland*. Dublin: Institute of Public Health in Ireland.

25 The medical card provides the holder with a range of medical services free of charge. There are a number of (alternative) criteria for eligibility, all but two of which are that the recipient has a low income. See:

person would be charged increased from €10.00 to €19.50; In December 2013, these amounts were further increased to €2.50 and €25.00.<sup>26</sup> A recent study assessed the effect of the introduction of the original charge of €0.50 (which occurred in 2010) and the first of the increases in the reference period, to €1.50 in January 2013 and found that the introduction and the increase of the prescription charges were associated with decreases in the use of prescribed medicines.<sup>27</sup> **The Commission is concerned that the imposition of additional charges has impaired the ability of people on low incomes to buy prescribed essential medicines.**

## Mental Health

Over the last decade, the admission rate to psychiatric hospitals has decreased.<sup>28</sup> The Commission has welcomed the considerable reduction in the number of adults admitted to psychiatric hospitals,<sup>29</sup> but has noted concerns more recently from women living in direct provision about access to mental health services.<sup>30</sup> The Commission has noted that the level of community mental health services continues to fall short of targets set in the 2006 *Vision for Change Strategy*.<sup>31</sup> The underpinning legislation for mental health care in Ireland, the Mental Health Act 2001, is in need of reform.<sup>32</sup> The Commission welcomes the recommendation, by the Expert Group to review the 2001 Act, that community-based services should be brought within the remit of the Mental Health Commission to provide adequate oversight of these important services.<sup>33</sup> Improvements have been made in relation to children and young people admitted to adult psychiatric wards, but concerns

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Health Service Executive, *Your Guide to Medical Cards and GP Visit Cards* (available at <http://www.hse.ie/eng/services/publications/corporate/medcardgpvisit.pdf>).

- 26 Health Services (Prescription Charges) Regulations 2012, Statutory Instrument No 545 of 2012 (available at <http://www.irishstatutebook.ie/eli/2012/si/545/made/en/print>) Health Services (Prescription Charges) Regulations 2013, Statutory Instrument No 437 of 2013 (available at <http://www.irishstatutebook.ie/eli/2013/si/437/made/en/print>). An important exception is that people who are eligible for a medical card and are eligible under the long-term illness scheme do not have to pay a prescription charge for drugs that are dispensed by a pharmacist under the long-term illness scheme.
- 27 Sarah-Jo Sinnott *et al.* (2016) 'Copayments for prescription medicines on a public health insurance scheme in Ireland', *Pharmacoepidemiology and Drug Safety*, volume 25, issue 6, pages 695–704.
- 28 It decreased from 479.2 patients per 100,000 people in 2006 to 385.3 in 2015. Department of Health (2016) *Health in Ireland: Key Trends 2016*, Dublin: Department of Health, at page 42 (available at [http://health.gov.ie/wp-content/uploads/2016/12/Health\\_in\\_Ireland\\_KeyTrends2016.pdf](http://health.gov.ie/wp-content/uploads/2016/12/Health_in_Ireland_KeyTrends2016.pdf)).
- 29 Irish Human Rights and Equality Commission (2015) *Submission to the Second Universal Periodic Review Cycle for Ireland*, at page 9.
- 30 Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Reports*, at page 117. (available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNHS%2fIRL%2f26596&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNHS%2fIRL%2f26596&Lang=en))
- 31 Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin: Department of Health, at page 7.
- 32 Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin: Department of Health, at page 7.
- 33 Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin: Department of Health, at page 101.

remain that despite a target set by the Mental Health Commission that no individual under 18 years should be treated in an adult facility the practice persists.<sup>34</sup>

In October 2015, the Government published a Roadmap to Ratification of the UN Convention on the Rights of Persons with Disabilities. It stated the intention to allow for the compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards.<sup>35</sup> The Commission is concerned that this approach is not in line with the principles developed under the UN Convention on the Rights of Persons with Disabilities. The Commission emphasises that community-based care is the preferred policy option which should be underpinned by clear legislative entitlement and dedicated funding provided to ensure that this legislative entitlement is delivered.

The Health Service Executive reported in 2014 that ‘mental health staffing levels are at circa 75% of what is recommended by the official policy *Vision for Change* i.e. 12,240 WTE [whole-time equivalent] (this is the *Vision for Change* number of 10,657 adjusted for population growth)’.<sup>36</sup> The Commission notes that in the first half of the reporting period, approximately 86 percent of additional posts for mental health services had been filled.<sup>37</sup> **The Commission is concerned the provision of mental health services is significantly below the levels identified as necessary in the national strategy for mental health. It recommends that prioritisation should be given to the further advancement of the availability of community-based mental health services; that the Mental Health Act 2001 should be amended to ensure adequate oversight of community-based services by the Mental Health Commission; and that all individuals under the age of 18 years should be placed in age-appropriate facilities.**

## Trans People

There is limited provision of specialised health services for trans<sup>38</sup> people in Ireland. There are no centres providing gender reassignment surgery and instead people requiring the surgery are referred to facilities in other countries. There is a system for referring patients for surgery in other countries, but ‘this system is somewhat convoluted and frequently causes delays in access to

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34 In 2013, the Inspectorate of Mental Health Services examined child admissions to adult wards and discovered that 83 young people were placed on adult wards on 91 occasions on the basis that there were no age-appropriate beds available in child friendly facilities. 60 per cent of these young patients remained in an adult facility for more than three days, while 21 per cent were there for more than 10 days. See Inspectorate of Mental Health Services (2013) *Child and Mental Health Services 2013: Admission of Children to Adult Units 2013*, Dublin: Mental Health Commission, at page 1.

35 Irish Human Rights and Equality Commission (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill* (available at: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>).

36 Health Service Executive (2014) *National Service Plan 2015*, Dublin: Health Service Executive, at page 47 (available at <http://www.hse.ie/eng/services/publications/serviceplans/>). *Vision for Change* is the national mental strategy, which was adopted in 2006: Government of Ireland (2006) *A Vision for Change: Report of the Expert Group on Mental Health Policy*, Dublin: Stationery Office (available at <http://www.hse.ie/eng/services/Publications/Mentalhealth/VisionforChange.html>).

37 Minister of State and the Department of Health, Kathleen Lynch TD, ‘Written Answers: Mental Health Services Provision’ (question no. 425), *Parliamentary Debates: Dáil Éireann*, 24 February 2015.

38 Other terms used to refer to trans people have included include ‘transgender’ and ‘transsexual’ (see, for example, *P v S and Cornwall County Council*, Case C-13/94, in the Court of Justice of the EU). The Commission uses the term preferred by trans people in Ireland in recent years, reflected the wording used in the study by McNeil *et al.* that is cited below.

surgery'.<sup>39</sup> More than half of the participants in the largest study of the mental health and wellbeing of trans people in Ireland reported that they had experienced difficulty in accessing the treatment they felt they needed from a gender identity clinic.<sup>40</sup> A mapping exercise undertaken for the Health Service Executive in 2009 found there is limited provision of psychological support services for trans people's family members and significant others; limited availability of essential health services – surgeons, post-operative care, endocrinologists, psychiatrists and therapists; and a prohibitive cost of gender reassignment treatment such as laser hair removal/electrolysis.<sup>41</sup> An unpublished survey of healthcare professionals in 2012 found that '41 percent indicated that they had a poor level of knowledge or know nothing about transgender health issues'. Ninety percent stated that they had not received any training, although 74 percent would like to.<sup>42</sup> **The Commission is concerned that health care for trans people is inadequate to meet their needs, reflecting complex processes, inadequate provision of services, and inadequate levels of knowledge and awareness among health professionals.**

## Reproductive Rights

The *Protection of Life During Pregnancy Act 2013* ('the 2013 Act') allows for terminations of pregnancy in limited circumstances and, subject to a detailed clinical assessment and certification process, where there is a real and substantive risk to the life of the mother, including in circumstances where the mother is suicidal.<sup>43</sup> The Act was designed to respond to the judgment of the European Court of Human Rights which held that there was 'striking discordance between the theoretical right to a lawful abortion in Ireland on grounds of a relevant risk to a woman's life and the reality of its practical implementation'.<sup>44</sup> Prior to enactment of the 2013 Act, the report into the death from sepsis during pregnancy of Ms Savita Halappanavar noted that 'concerns about the law, whether clear or not, impacted on the exercise of clinical professional judgment', and that 'interpretation of the law related to lawful termination in Ireland ... [was] ... a material contributory factor'.<sup>45</sup> Following the commencement of the 2013 Act on 1 January 2014,<sup>46</sup> a number of cases have

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39 Ciaran Judge, Claire O'Donovan, Grainne Callaghan, Gadintshware Gaoatswe and Donal O'Shea (2014) 'Gender dysphoria – prevalence and co-morbidities in an Irish Adult population', *Frontiers in Endocrinology*, vol. 5, article 87, at page 4 (available at <http://journal.frontiersin.org/article/10.3389/fendo.2014.00087/full>).

40 Jay McNeil, Louis Bailey, Sonja Ellis and Maeve Regan (2013) *Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland*, Dublin: TENI, at page 21 (available at <http://www.teni.ie/attachments/5bdd0cd5-16b6-4ab6-9ee6-a693b37fdbcf.PDF>).

41 *LGBT Health: Towards Meeting the Health Care Needs of Lesbian, Gay, Bisexual and Transgender People – Report and Findings From a Mapping Exercise Undertaken for the HSE National Social Inclusion Governance Group*, Dublin: Health Service Executive, at page 32 (available at [http://www.hse.ie/eng/services/Publications/topics/Sexual/LGBT\\_Health.pdf](http://www.hse.ie/eng/services/Publications/topics/Sexual/LGBT_Health.pdf)).

42 Vanessa Lacey (2015) 'Experiences of healthcare in Ireland from a patient's perspective', presentation to the National Transgender Healthcare Conference, 3 December 2015, slide no. 13 [Dublin: TENI] (available at <http://teni.ie/attachments/94b4b8ff-23c9-4564-b5ca-88d01831f3e3.PDF>).

43 Sections 7–9 of the Protection of Life During Pregnancy Act 2013. See also: Department of Health (2014) *Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals*, sections 2–5 (available at <http://health.gov.ie/blog/publications/implementation-of-the-protection-of-life-during-pregnancy-act-2013-guidance-document-for-health-professionals/>).

44 *A, B and C v Ireland* (2010), No. 25579/05, para. 264.

45 See: Health Service Executive (2013) *Final Report: Investigation of Incident 50278 from time of patient's self-referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012*, pp. 69–74 (available at <http://www.lenus.ie/hse/handle/10147/293964>).

46 The Act was commenced by Article 2 of the Protection of Life During Pregnancy Act 2013 (Commencement) Order 2013 (S.I. No. 537 of 2013).

arisen that suggest improvements to the legislation and associated guidance will be necessary.<sup>47</sup> The Commission has endorsed recent recommendations by UN treaty monitoring bodies that the State revise its legislation on abortion in line with international human rights standards.<sup>48</sup> **The Commission is concerned that the current legal position not only puts in place barriers which impede a woman’s right to bodily autonomy, but also that it has a disproportionate impact on women who may face barriers to travelling, including women from lower socio-economic backgrounds, women living in detention, migrant women, including undocumented migrants and asylum-seeking women whose inability to travel may be circumscribed due to their immigration status. The Commission is concerned that the State ensure that clear, comprehensive and authoritative guidance as to what constitutes ‘real and substantive risk’ be provided to allow women and girls, particularly those from more vulnerable backgrounds, to access the medical services to which they are entitled.**

### Article 11.3 – Prevention of diseases and accidents

The Commission notes that in *Médecins du Monde – International v France* (collective complaint no. 67/2011), the Committee found a violation of Article E in conjunction with Article 11.3 because of a lack of prevention of diseases and accidents of migrant Roma.<sup>49</sup> The finding of violation was grounded on the poor living conditions of the migrant Roma. The Commission notes also that in *European Roma Right Centre v Ireland* (collective complaint no. 100/2013), a violation of Article 11 was not alleged.<sup>50</sup> However, the Committee did find a violation of Article 16 on the grounds that many Traveller halting sites are in an inadequate condition.<sup>51</sup> The Commission also draws the Committee’s attention to the deaths of ten members of the Traveller community in a fire at a halting site in south Dublin on 10 October 2015 and the comment by the Council of Europe’s Commissioner for Human Rights, Nils Muižnieks in respect of that tragedy, in his report on his country visit to Ireland in November 2016.<sup>52</sup> **The Commission is concerned that the inadequate conditions of Traveller accommodation must be addressed if the rights of Travellers under Article 11 of the Charter are to be realised.**

### Article 12.1 – Existence of a social security system

#### Adequacy of Benefits

The Commission notes the Irish Government’s comments on the use of the Eurostat median equivalised income by the Committee.<sup>53</sup> For the convenience of the Committee, the table below

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47 See: Health Service Executive (2013) *Final Report: Investigation of Incident 50278 from time of patient’s self-referral to hospital on the 21st of October 2012 to the patient’s death on the 28th of October, 2012*, pp. 69–74 (available at <http://www.lenus.ie/hse/handle/10147/293964>).

48 This is the majority view of the Irish Human Rights and Equality Commission.

49 *Médecins du Monde – International v France*, Complaint No. 67/2011, at paragraphs 158–164, <http://hudoc.esc.coe.int/eng/?i=cc-67-2011-dmerits-en>

50 *European Roma Rights Centre (ERRC) v Ireland*, Complaint No. 100/2013, <http://hudoc.esc.coe.int/eng/?i=cc-100-2013-dmerits-en>.

51 *European Roma Rights Centre (ERRC) v Ireland*, Complaint No. 100/2013, at paragraphs 85–92.

52 Commissioner for Human Rights, Nils Muižnieks (2017) *Report by Nils Muižnieks Following His Visit to Ireland from 22 to 25 November 2016*, at paragraph 22 (available at [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2017\)8](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2017)8)).

53 Ireland’s 14th National Report on the Implementation of the European Social Charter, at the 29th page of the PDF document (available at

provides the median equivalised income in each of the four years in the reference period as calculated using the methodology preferred by the Irish Government.

#### CSO measure of median equivalised income<sup>54</sup>

	2012	2013	2014	2015
CSO SILC median annual equivalised income	18,276.00	18,262.00	18,864.00	20,000.00
60% of this income, per week	210.16	209.99	216.92	229.98
50% of this income, per week	175.13	175.00	180.76	191.65
40% of this income, per week	140.10	140.00	144.61	153.32

Notes: CSO = Central Statistics Office, the Irish statistics authority ([www.cso.ie](http://www.cso.ie)). All amounts are in €.

The Commission notes that the Committee's main measure for the adequacy of benefits under Article 12 is 50 percent of the median equivalised income, with further assessment in respect of payments between 40 percent and 50 percent of that threshold to take account of other social benefits and social assistance that is available. **The Commission is concerned that in 2015, the maximum payment for Jobseeker's Benefit and Illness Benefit fell below the 50 percent threshold using both the CSO and Eurostat measures.**

#### Article 12.2 – European Code of Social Security

In 2012 the Committee of Ministers in its resolution of the application of the European Code of Social Security by Ireland observed that the qualifying period for eligibility for Jobseeker's Benefit and for Illness Benefit (in both cases, 104 weeks of contributions) is too long.<sup>55</sup> In 2016 the Committee of Ministers in its resolution of the application of the European Code of Social Security by Ireland observed that the extension of the waiting period for receipt of Illness benefit from three days to six days does not comply with the Code.<sup>56</sup> **The Commission is concerned that Ireland has retained the excessive length of qualifying time for Illness Benefit and Jobseeker's Benefit, in breach of the European Code of Social Security, for over five years and that the waiting period before a person can receive Illness Benefit is in breach of the European Code of Social Security.**

#### Article 12.3 – Development of the social security system

The Irish Government maintained maximum rates of social security constant in nominal terms over the four years of the reporting period while the median equivalised income over the period increased by 8.2 percent from €18,276 to €20,000 (see the table above, in the section on Article

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ec8e1>).

- 54 The source for the SILC median annual equivalised income is <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2015/>. The weekly values in the table are calculated by the Commission.
- 55 Resolution CM/ResCSS(2012)20 on the application of the European Code of Social Security by Ireland (Period from 1 July 2010 to 30 June 2011) (available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c97b9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c97b9)).
- 56 Resolution CM/ResCSS(2016)9 on the application of the European Code of Social Security by Ireland (Period from 1 July 2014 to 30 June 2015) (available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680692363](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680692363)).

12.1).<sup>57</sup> **The Commission is concerned that holding the levels of benefit constant in nominal amounts while incomes in the wider economy have risen over the reporting period has resulted in more of the payment levels falling below the poverty thresholds.**

The Commission draws the Committee's attention to the following changes that were made during the reference period:

- In January 2012, the rules on Disablement Benefit were changed. From that month on, new applicants are required to have a disability classified at more than 15 per cent 'disablement' in order to qualify for the Benefit.
- With effect from 1 January 2012, the law on income tax was changed and all payments under the Occupational Injury Benefit were included in the recipient's taxable income. Prior to that, payments in the first six weeks in a tax year had been exempt from tax.<sup>58</sup>
- In 2012, the rules concerning the payment of Jobseeker's Benefit for those who secure part-time work by reducing the payment entitlement from a six-day week to a five-day week, with the result that the deduction from the payment was increased from one sixth of the rate the person received to one fifth.
- In 2013, the duration of payment of Jobseeker's Benefit was reduced for new claimants as follows: from 12 months to 9 months for recipients with 260 or more contributions paid and from 9 months to 6 months for recipients with fewer than 260 contributions paid.<sup>59</sup>
- Illness Benefit is subject to a 'waiting period' during which it is not paid, and from January 2014, this waiting period was increased from 3 days to 6 days.<sup>60</sup>
- Changes to the One Parent Family Payment (OPFP), which is designed to support single parents on low incomes, restricted access to the payment through the reduction of income disregards and the introduction of a condition related to the age of the children.<sup>61</sup>

**The Commission is also concerned that these changes reduced the effectiveness of social assistance payments in keeping people out of poverty and in enabling people to live in dignity, and were counter to the purpose of Article 12.**

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57 However, average annual earnings for full-time workers increased by 1.2 percent over the period, from €44,523 to €45,075. See: Central Statistics Office (2016) *Earnings and Labour Costs Annual Data 2015*, Cork: CSO, Table 5 (available at <http://www.cso.ie/en/releasesandpublications/er/elca/earningsandlabourcostsannualdata2015/>).

58 Revenue Commissioners (2013) *Taxation of Illness and Occupational Injury Benefits IT 22*, Dublin: Revenue Commissioners (available at <http://www.revenue.ie/en/tax/it/leaflets/it22.html>).

59 Department of Social Protection (2012) 'Budget Factsheet: Main Social Welfare Changes and Rates of Payment – Budget 2013' Dublin: Department of Social Protection (available at <http://www.welfare.ie/en/downloads/budfact13.pdf>).

60 Department of Social Protection (2013) 'Budget Factsheet: Main Social Welfare Changes and Rates of Payment – Budget 2014' Dublin: Department of Social Protection, available at <https://www.welfare.ie/en/downloads/budfact14.pdf>.

61 For further detail see: Mary P Murphy (2014) 'Ireland's lone parents, social welfare and recession', *The Irish Community Development Law Journal*, volume 3, issue 2, at pages 6–21 (available: [http://www.communitylawandmediation.ie/\\_fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf](http://www.communitylawandmediation.ie/_fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf)).

## Article 13.1 – Adequate assistance for every person in need

### Level of Assistance

The most significant payments in the Irish social welfare system in respect of this article are the Jobseeker's Allowance and the Supplementary Welfare Allowance.<sup>62</sup> The Supplementary Welfare Allowance is 'a residual payment payable to persons who do not qualify for one of the other conditional payments in the Social Welfare Code'.<sup>63</sup> It is also used as a 'bridging payment' to provide social assistance to people while their application for another payment is being processed.

In 2015, the maximum personal payments under these two allowances were both below the 50 percent threshold using the CSO measure of median equivalised income. Furthermore:

- throughout the period, the payments to those aged 18–21 were below both the 50 percent and 40 percent thresholds for both the CSO and Eurostat measures;
- in 2012 and 2013, payments to those aged 22–24 were below both 50 percent thresholds and below the Eurostat 40 percent threshold; and
- in 2014 and 2015, payments to those aged 25 and younger under the Supplementary Welfare Allowance were below the national CSO 40 percent threshold.<sup>64</sup>

The rates under both allowances remained unchanged in nominal terms throughout the reference period. However, in 2014 new recipients aged 22–24 and new recipients aged 25 were placed on lower rates than would have applied to new entrants in previous years.<sup>65</sup> **The Commission is concerned that a number of payments to those aged under 26 were below the 50 percent threshold and in some cases below the 40 percent threshold and therefore were manifestly inadequate under the Committee's jurisprudence.**

The Commission notes that in 2012 (in addition to the changes to the age bands for the Jobseeker's Allowance and the Supplementary Welfare Allowance outlined above), the Fuel Allowance season was reduced by six weeks from 32 weeks to 26 weeks, resulting in a reduction of €120 per year for those receiving these payments.<sup>66</sup>

### Conditions for Granting Assistance

Eligibility for social assistance is subject to a means test. When a person's weekly means are above a certain level, the person is normally not eligible for social assistance. Where an applicant for Jobseeker's Assistance is aged 24 or younger and is living with their parent or step-parent, the

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62 The Commission notes that under other articles of the Charter, the adequacy of a number of other important social assistance payments is examined by the Committee, including: the State Pension Non-contributory, the Widow's, Widower's and Surviving Civil Partner's Non-contributory Pension, and the One-Parent Family Payment.

63 Mel Cousins (2012) *Social Security Law in Ireland* (2nd edition), Alphen aan den Rijn: Kluwer Law International, at page 239.

64 These rates did not apply to people in these age groups who had children.

65 These changes were not applied to individuals who were receiving the older, higher rates before the changes were made.

66 Details of those who are eligible for the Fuel Allowance are available at <http://www.welfare.ie/en/Pages/Fuel-Allowance.aspx>. They include long-term recipients of Jobseeker's Allowance and Supplementary Welfare Allowance.



means test takes account of parental income (with certain exceptions<sup>67</sup>). These rules assume that the person under 24 is provided with free or subsidised meals and accommodation.<sup>68</sup> **The Commission is concerned that the regime in respect of Jobseeker’s Allowance for persons under the age of 25 years often denies them access to an adequate minimum income where they are living in the family home.**

### Individual Right Supported by a Right of Appeal

The Social Welfare Appeals Office is an office of the Department of Social Protection established to process and adjudicate on appeals.<sup>69</sup> The Commission notes that, although the time taken to process appeals significantly improved over the reference period, it never fell below 20 weeks.<sup>70</sup> **The Commission is concerned that the time to process an appeal is lengthy, extending on average five months.**

While the Social Welfare Appeals Office publishes summaries of a small number of selected decisions in its annual reports, key decisions of importance are not published. This prevents prospective appellants having access to previous relevant decisions. Given the complexity of the law, the role of the Social Welfare Appeals Office in adjudicating social welfare appeals and the small number of cases that are dealt with by the courts, the Social Welfare Appeals Office could and should play an important role in interpreting the legislation. The Commission considers that access to decisions in previous appeals is necessary if potential appellants and their legal advisors are to be enabled to understand how the social assistance code is applied. Although the Social Welfare Appeals Office states that it operates independently of the Department of Social Protection,<sup>71</sup> it is a business unit of the Department. The Irish Supreme Court ruled in the 1950s that an appeals officer (under the previous regime for handling social welfare appeals) must be independent in the performance of their duties.<sup>72</sup> However, the legislation governing the appointment and functions of Appeals Officers does not provide that they be independent in the exercise of their functions, a provision that is made for other quasi-judicial bodies and decision makers.<sup>73</sup> A report by FLAC, an NGO, in 2012, identified a number of concerns in respect of the independence of the Social Welfare Appeals Office.<sup>74</sup> It noted that a former Chief Social Welfare Appeals Officer in 2007 stated that there was a need to consider providing statutory independence for the office.<sup>75</sup> FLAC stated ‘it is not

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67 Exceptions include where (i) the person under 25 years of age is living with their spouse, civil partner or cohabitant or (ii) where the person under 25 years of age has previously lived independently of their parents for at least three years.

68 Minister for Social Protection, Leo Varadkar TD, ‘Written Answers – Jobseeker’s Allowance Eligibility’ (question no. 363), *Parliamentary Debates: Dáil Éireann*, 21 July 2016, vol. 929, no. 2, page 294.

69 The Social Welfare Appeals Office deals with appeals under both social security schemes that come under Article 12 of the Charter and social assistance schemes that come under Article 13.

70 The annual reports of the Social Welfare Appeals Office show that the average processing times were as follows: 33.1 week in 2012; 29.0 weeks in 2013; 24.2 weeks in 2014; 20.9 weeks in 2015. The annual reports are available at <http://www.socialwelfareappeals.ie/publications/category.html?id=7>.

71 Social Welfare Appeals Office ‘The Social Welfare Appeals Office’ [web page] [http://www.socialwelfareappeals.ie/foi/the\\_social\\_welfare\\_appeals\\_office/](http://www.socialwelfareappeals.ie/foi/the_social_welfare_appeals_office/)

72 *McLoughlin v Minister for Social Welfare*, (1958) Irish Reports 5.

73 For example, section 11(3) of the Workplace Relations Act 2015 provides that the Workplace Relations Commission shall be independent in the performance of its functions, and section 40(8) of that Act provides that an adjudication officer ‘shall be independent in the performance of his or her functions’.

74 FLAC (2012) *Not Fair Enough: Making the Case for Reform of the Social Welfare Appeals System*, Dublin: FLAC, at pages 28–33 (available at <https://www.flac.ie/publications/not-fair-enough/>).

75 *Not Fair Enough*, at page 29.

clear, given the position of the Appeals Office as a section of the Department, that the necessary safeguards are in place to ensure its actual and perceived independence'.<sup>76</sup> In addition, civil legal aid is not available for representation before the Social Welfare Appeals Office. **The Commission is concerned that the absence of statutory independence, of access to decisions which show how the social assistance law is applied and interpreted, and the absence of civil legal aid undermine a full right of appeal.**

#### Article 13.4 – Specific emergency assistance for non-residents

##### Asylum Seekers in Direct Provision

The Commission notes the Committee's jurisprudence on the provision to asylum seekers of accommodation, food, clothing, small allowances for food and transport, and access to health services and to education for children, and that the Committee considered the situation in Malta to be in conformity with Article 14.2.<sup>77</sup> However while a broadly similar system operates in Ireland significant numbers of people seeking asylum in Ireland remain in direct provision for very long periods. The annual report of the Reception and Integration Agency for 2015 records that more than one-third (34.7 percent) of asylum seekers had been in the direct provision system for longer than four years, and 14 percent had been in direct provision for more than seven years.<sup>78</sup>

The Council of Europe's European Commission against Racism and Intolerance expressed concern in 2013 'that residents of the direct provision centres have little control over their everyday life (cooking, cleaning, celebrating important events), which in many cases impacts negatively on their family life. Moreover, very few activities are organised in the centres (although it has to be noted that the inhabitants, who have freedom of movement can participate in activities outside the centres). ECRI considers that, whereas the centres can serve a very useful role in providing necessary secure accommodation at a short notice, they are unsuitable for lengthy periods of stay; in particular they risk causing harm to the mental health of the residents'.<sup>79</sup>

The Commission has expressed concerns in relation to the human rights implications of lengthy stays in direct provision centres.<sup>80</sup> It is the Commission's view that the system of direct provision is not in the best interests of children, has a significant impact on the right to family life and has failed to adequately protect the rights of those seeking protection in Ireland. **The Commission has recommended that the basis for direct provision be placed on a statutory footing and recommends the introduction of a time-limited period (6–9 months) after which any person who has not yet received a decision, on either first instance or appeal, should be able to leave direct provision, live independently, access relevant social welfare payments and employment.**

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76 *Not Fair Enough*, at page 30.

77 *Conclusions 2015 – Malta – Article 13-4*, <http://hudoc.esc.coe.int/eng/?i=2015/def/MLT/13/4/EN>.

78 Reception and Integration Agency (2016) *Annual Report 2015*, Dublin: Department of Justice and Equality, at page 5 (available at: <http://www.ria.gov.ie/en/RIA/Pages/AR16000050>). The Commission has calculated the cumulative durations from the data in the table for 2015 on that page.

79 *ECRI Report on Ireland (fourth monitoring cycle)*, CRI(2013)1, at paragraph 115 (available [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/Ireland\\_CBC\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/Ireland_CBC_en.asp)).

80 Irish Human Rights and Equality Commission (2014) *Policy Statement on the System of Direct Provision in Ireland* (available at: <https://www.ihrec.ie/documents/ihrec-policy-statement-on-direct-provision/>).

Direct provision centres are also used to provide basic needs for possible or presumed victims of human trafficking. The Commission has raised concerns that this is inappropriate.<sup>81</sup> The Council of Europe Group of Experts on Action against Trafficking in Human Beings in 2013 expressed concern at the use of direct provision centres to accommodate possible or presumed victims of human trafficking, noting: the risk of exposing vulnerable women to further grooming and exploitation; the lack of privacy with victims sharing bedrooms with up to three other persons; and the possibility for traffickers getting to access victims.<sup>82</sup> **The Commission is concerned that the direct provision system is used for the provision of emergency assistance to victims of human trafficking instead of an appropriate system to meet the particular needs of this vulnerable group being put in place.**

The Comptroller and Auditor General reported that 16 percent of the residents in direct provision centres (667 individuals) had been granted ‘status’ – that is, were recognised as refugees, had been provided subsidiary protection, or had been granted leave to remain.<sup>83</sup> In 2014, the Irish office of the UN High Commissioner for Refugees reported that stakeholders believe that the process for refugees to access housing support ‘is disjointed, fragmented and suffers from a lack of unity’. It also noted that ‘access to social housing and housing benefits such as rent supplement, depends on local authorities and refugees report that outcomes can be influenced by who is dealing with whom’.<sup>84</sup> The Commission notes that in 2015, the Working Group on Improvements to the Protection Process recommended that the government put in place a consistent integration plan for those in direct provision who will be granted status to include both those in the ‘legacy cohort’ from the previous legal regime and those who were to be processed under the new arrangements that were being prepared at that time<sup>85</sup> and that in 2016, the Department of Justice reported that this recommendation had been implemented<sup>86</sup>. The Commission notes, however, that concerns have

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81 Irish Human Rights and Equality Commission (2016) *Submission to GRETA in advance of its Second Evaluation Round of Ireland*, at pages 38–40 (available at <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>).

82 *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First evaluation round*, GRETA(2013)15, at pages 45 and 46 (available at <http://www.coe.int/en/web/anti-human-trafficking/ireland>).

83 That proportion does not include children who are resident in direct provision but who had not applied for protection. Comptroller and Auditor General (2016) *Report on the Accounts of the Public Services 2015*, at pages 69–70 (available at [http://www.audgen.gov.ie/viewdoc.asp?fn=/documents/annualreports/2015/Report/En/Report\\_Index\\_2015.htm](http://www.audgen.gov.ie/viewdoc.asp?fn=/documents/annualreports/2015/Report/En/Report_Index_2015.htm)).

84 United Nations High Commissioner for Refugees, Ireland (2014) *Towards a New Beginning: Refugee Integration in Ireland*, Dublin UNHCR Ireland, at page 42 (available at <http://www.refworld.org/docid/52ca8a6d4.html>).

85 Department of Justice and Equality (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, at page 239 (available at <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>).

86 Department of Justice and Equality (2012) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers: Position as at 16 June, 2016 in respect of the 173 Recommendations of the Working Group*, Dublin: Department of Justice and Equality. The pages are unnumbered. The information referred to is on page 73 of the PDF document. (Available at <http://www.justice.ie/en/JELR/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum->

been identified by homeless services in respect of the proportion of families placed in emergency accommodation following their exit from the system of direct provision.<sup>87</sup> **The Commission is concerned that the pathways to housing for people leaving the direct provision system are not effective in ensuring that all such persons do not become homeless.**

## Article 14.1 – Promotion or provision of social services

The Commission notes that while the government’s report provides information on the *provision* of a number of specific social welfare services<sup>88</sup>, it does not provide information on the level of *access* to social services by those who need them. In addition, the report does not address the two matters that gave rise to a finding of non-conformity with Article 14.1 when the Committee last examined Ireland on this paragraph: (i) fees for social welfare services and whether fees prevent effective access to social services; and (ii) the total amount of spending on social services and the total number of social services staff. The Commission notes that the Committee also referred to the lack of information on the qualifications of social services staff.<sup>89</sup>

A range of social welfare services have given rise to concern over the reporting period and the Commission has collated the following examples. While in many cases, the Committee examines these services individually under other articles of the Charter, the Commission considers that these examples taken together demonstrate significant shortcomings in the ‘overall organisation and functioning of social services’ required by Article 14.1.

### Homeless Services

Focus Ireland, an NGO, published a study in 2015 of a cohort of families that had been allocated to its Homeless Action Team by four Dublin local authorities during April of that year. The study found that in the period between receiving notice to quit a tenancy and presenting as homeless ‘the opportunities for rapid rehousing are very limited, and services are not set up to assist them during this period’. More substantially, the study reported that ‘in a significant number of cases the families were not provided with appropriate or timely information, and were not referred to relevant services; 17% families stated that they were told nothing could be done “until they actually became homeless” and to come back at this point. This was the case even where the family had written proof that they would shortly lose their home’.<sup>90</sup> A 2015 study for the Housing Agency reported that the

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[seekers.pdf/Files/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf.](#))

- 87 Focus Ireland (2016) *Focus Ireland Submission to Department of Social Protection in advance of the Pre-Budget Forum 2017*, Dublin: Focus Ireland (available at <https://www.focusireland.ie/wp-content/uploads/2016/03/Focus-Ireland-Submission-to-Department-of-Social-Protection-Pre-Budget-Forum.pdf>).
- 88 The specific services for which information is provided include children’s supports (area-based measures to reduce child poverty, foster and residential care), funding for the youth sector, domestic and gender-based violence, youth justice, the Child and Family Agency, and a number of aspects of the health services.
- 89 *Conclusions 2015 – Ireland – Article 14-1*, <http://hudoc.esc.coe.int/eng/?i=2015/def/IRL/14/1/EN>.
- 90 Focus Ireland (2015) ‘Come Back When You’re Homeless’: *Preventing Family Homelessness Through Assisting Families to Stay in Their Homes or to Find Alternative Affordable Accommodation*, Dublin: Focus Ireland, at page 2 (available at [18](https://www.focusireland.ie/wp-content/uploads/2016/04/Focus-</a></p></div><div data-bbox=)

average waiting time for a homeless family to be assigned a case manager was between five and six months unless the family had been identified as a priority, in which case it takes a number of weeks.<sup>91</sup>

According to the Dublin Regional Homeless Executive 6,314 adults accessed homeless accommodation in 2016 and 42 per cent had never used homeless accommodation before.<sup>92</sup> In February 2017 there were 801 families in hotels (with 1623 dependents) and 254 families in homeless accommodation (with 506 dependents), totalling 1,055 families (with 2129 dependents) in homeless accommodation.<sup>93</sup>

As part of Census 2016 a count was performed of people who spent Census Night either sleeping rough or in accommodation providing shelter for people experiencing homelessness.<sup>94</sup> The data collected will be released in August 2017 and includes information on gender, type of accommodation, family structure, nationality and ethnic background. This is the second count of this nature, the first one took place as part of Census 2011. The 2011 Census figures indicated that a higher proportion of the usually resident homeless population was non-Irish – 15 per cent (or 553 persons) compared with 12 per cent for the general population; UK nationals were the largest non-Irish group (139 persons); and there were 140 persons from African countries, of whom 77 were female.<sup>95</sup>

A 2012 study on the experiences of migrants who were homeless in Dublin reported mixed experiences of the quality of welfare services, including difficulties with the quality of the advice and information about how their case could be pursued, with being referred from office to office over extended periods, with not being advised of the right of appeal, and with pressure from social welfare to return to their country of origin.<sup>96</sup> A 2014 study of young homeless people noted long delays between presenting to the police to ask for support in a crisis situation and the arrival of a social worker, leaving a homeless young person waiting in a police station for many hours during the night.<sup>97</sup>

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[Ireland-2015-Come-back-when-youre-homeless-A-Study-of-Families-entering-Homelessness-during-April-2015.pdf](#)).

- 91 Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: The Families' Perspective*, Dublin: Housing Agency, at page 27 (available at <https://www.housingagency.ie/getattachment/Our-Publications/Latest-Publications/Family-Experiences-Report-PDF.pdf>).
- 92 Dublin Regional Homeless Executive (2016) *2016 Homeless Accommodation Use* (available at <http://www.homelessdublin.ie/publications?tags=38>).
- 93 Dublin Regional Homeless Executive (2017) *Families who are homeless February 2017* (available at <http://www.homelessdublin.ie/publications?tags=38>).
- 94 No census was conducted during the reference period.
- 95 Central Statistics Office (CSO) (September 2012), *Homeless persons in Ireland: A special Census report*, CSO: Dublin, page 5 (available at <http://www.cso.ie/en/census/census2011reports/homelesspersonsinirelandaspecialcensus2011report/>).
- 96 TSA Consultancy and Focus Ireland (2012) *Homeless in My New Home: Migrants' Experiences of Homelessness in Dublin*, Dublin: Focus Ireland and Immigrant Council of Ireland, at pages 65 and 66 (available at [https://www.focusireland.ie/wp-content/uploads/2016/04/FI-ICI-2012-Homelessness-is-My-New-Home\\_Migrants-Experiences-of-Homelessness-in-Dublin-FULL-REPORT-1.pdf](https://www.focusireland.ie/wp-content/uploads/2016/04/FI-ICI-2012-Homelessness-is-My-New-Home_Migrants-Experiences-of-Homelessness-in-Dublin-FULL-REPORT-1.pdf)).
- 97 Paula Mayock, Sarah Parker, and Andrew Murphy (2014) *Young People, Homelessness and Housing Exclusion*, Dublin: Focus Ireland, at page 103 (available at <https://www.focusireland.ie/wp->

National homeless data is gathered on the basis of eight regions, on behalf of the Department of Housing, Planning, Community and Local Government, by a 'lead' local authority in each region. For quarter 4 of 2015, seven of the eight regions reported that there were individuals whom the local authorities were unable to accommodate due to 'insufficient capacity' or 'unsuitability'. This ranged from 1,669 persons in Dublin to 7 in the mainly rural north-west region.<sup>98,99</sup> The Commission notes that the Cork Social Housing Forum (CSHF) told the special Dáil Committee on Housing and Homelessness that in Cork rough sleeping in a single night increased from 38 people in 2011 to 345 people in 2015.<sup>100</sup> The provision of emergency accommodation in some regions is inadequate. For example, in the Midlands Region, the *Performance Report for Quarter 4 2015* reported problems with the geographical location of emergency accommodation: 'for a male homeless person presentation in Mullingar, the nearest S10 [section 10 of the Housing Act 1988] emergency bed is in Athlone, a distance of 62 km. For a female homeless client who presents in Portlaoise, the nearest women and children emergency facility is Mullingar, a distance of 72km.'<sup>101</sup>

## Domestic Violence

During the Commission's consultation in 2016 on its parallel report to the UN Committee on the Elimination of Discrimination against Women, the lack of emergency accommodation for victims of domestic violence in a number of regions in the State was highlighted. For example, at a regional consultation event in Co. Monaghan, in one of five regions that does not have a refuge, a domestic violence support worker informed the Commission that on an occasion the closest available emergency accommodation was 165 kilometres from a victim's home.<sup>102</sup> During its consultation, the Commission became acutely aware of the debilitating effect of austerity cuts on services for victims of domestic violence. The Commission is concerned these cuts coupled with demand for services have created barriers to accessing emergency accommodation, particularly for rural women, women with addiction, migrant women, and Traveller and Roma women.

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[content/uploads/2016/04/Mayock-Parker-and-Murphy-2014-Young-People-Homelessness-and-Housing-Exclusion-FULL-BOOK.pdf](http://www.housing.gov.ie/content/uploads/2016/04/Mayock-Parker-and-Murphy-2014-Young-People-Homelessness-and-Housing-Exclusion-FULL-BOOK.pdf)).

98 These values (1,669 to 7) refer to the total over the full quarter and would need to be divided by the number of nights in that quarter of the year to obtain the average number per night. 'Homelessness Data' [web page] <http://www.housing.gov.ie/housing/homelessness/other/homelessness-data>.

99 Sources: the individual Local Authority Regional Performance Reports for 'Q4 2015', available at the 'Homeless Data' web page. In the eighth region (North East), the number classified as 'unable to be accommodated' is not given, but the data on the other columns of the relevant table suggests that it was 143 persons, which amount to 48 percent of the number of people presenting for emergency accommodation.

100 The Dáil is the lower chamber of the Irish parliament. Cork is the second largest city in Ireland. Reference: Houses of the Oireachtas (2016) *Report of the Committee on Housing and Homelessness*, at page 109 (available at <http://www.oireachtas.ie/parliament/media/committees/32housingandhomelessness/Final-Report-.pdf>).

101 *Performance Report for Quarter 4-2015 relating to the Protocol Governing Delegation of Section 10 Funding for Homeless Services to the Midlands Region*, at page 2 (available at <http://www.housing.gov.ie/housing/homelessness/other/homelessness-performance-report-q4-2015-midlands>).

102 *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports*, at page 62 (available at <https://www.ihrec.ie/documents/ireland-convention-elimination-forms-discrimination-women/>).

Although policing is not normally a matter for the Charter, the Commission believes that it is relevant in the context of Article 14.1 and the provision of services to victims of domestic violence. The Commission notes that in 2014, the Garda Inspectorate<sup>103</sup> reported that it ‘encountered many negative attitudes from gardaí [police officers] towards [domestic violence] by referring to calls as problematic, time consuming and a waste of resources, because victims are not prepared to make a statement. Providing a better response to [domestic violence] victims will necessitate a general cultural change in the attitudes of some gardaí’.<sup>104</sup>

## Children’s Services

The Health Information and Quality Authority (HIQA) has a broad mandate in relation to the regulation and the oversight of services and setting standards in the health and social care systems. However, the Commission is concerned that a number of provisions in the Health Act 2007 in respect of HIQA’s functions in respect of children’s services have not become operational.<sup>105</sup> Specifically, sections 41(a), 41(d), 41(e), and 45(1)(a) will not come into operation until the Minister for Health signs ‘commencement orders’ for them. Commencement of these sections would enable HIQA to in conduct independent inspections of all residential, foster and respite services for children, whether the service is provided by the state or through a non-state actor.

The Commission notes that in 2013 the Inspector of Mental Health Services expressed concern at the high number of children being admitted to adult in-patient psychiatric units<sup>106</sup>, and that the practice has continued since then<sup>107</sup>.

The Commission notes that the OECD reported that Ireland has one of the highest childcare costs in the European Union, measured as a percentage of family income.<sup>108</sup> In 2015, the European Commission reported that there was ‘no progress on improving access to affordable and full-time childcare’ in Ireland.<sup>109</sup> The European Commission also noted: ‘Currently, there is no comprehensive monitoring system for assessing the quality of childcare services. The findings from various sources

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103 The Garda Síochána is the national police service, and the Garda Inspectorate is an independent statutory body to ensure that the resources available to the Garda Síochána are used to maintain and achieve the highest levels of effectiveness and efficiency in its operation and administration as measured against best international practice.

104 Garda Síochána Inspectorate (2014) *Report of the Garda Síochána Inspectorate: Crime Investigation*, Dublin: Garda Síochána Inspectorate, at page 42 of Part 6 (page 268 of the PDF document) (available at <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>).

105 ‘Health Act 2007’ [web page] [http://www.irishstatutebook.ie/eli/isbc/2007\\_23.html](http://www.irishstatutebook.ie/eli/isbc/2007_23.html).

106 Inspector of Mental Health Services (2013) *Child and Adolescent Mental Health Services 2013: Admissions of Children to Adult Units in 2013*, Dublin: Office of Inspector of Mental Health Services (available at [http://www.mhcirl.ie/File/IRs/tr2013\\_camhschildtoadults.pdf](http://www.mhcirl.ie/File/IRs/tr2013_camhschildtoadults.pdf)).

107 See, for example, Inspector of Mental Health Services (2015) *Approved Centre Inspection Report: Sliabh Mis Mental Health Admission Unit, Kerry General Hospital, Tralee*, Dublin: Inspector of Mental Health Services at page 62 (available at [http://www.mhcirl.ie/File/2015-Inspection-Reports/SliabhMisKerry\\_ir2015.pdf](http://www.mhcirl.ie/File/2015-Inspection-Reports/SliabhMisKerry_ir2015.pdf)).

108 OECD (2013) *Economic Policy Reforms: Going for Growth 2013*, Paris: OECD, at Figure 4.9 (available at <http://www.oecd.org/eco/growth/Going-for-growth-2013-structural-policy-indicators.pdf>).

109 European Commission (2015) *Commission Staff Working Document: Country Report Ireland 2015 Including an In-Depth Review on the prevention and correction of macroeconomic Imbalances*, SWD(2015)27 final, at page 2 (available at [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_ireland\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_ireland_en.pdf)).

indicate that there is variable quality in terms of compliance with (minimum standard) pre-school regulations, qualification levels of staff, in particular in centre-based services, and shortcomings in pre-school curricula.<sup>110</sup>

## Disability Services

While Ireland signed the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2007, it is now the only European Union state yet to ratify it. The Commission has consistently called for immediate ratification of the CRPD without any further delay, and for the establishment of appropriate domestic mechanisms for monitoring compliance with the Convention.<sup>111</sup>

The Commission has welcomed the State's policy commitment to make the transition from congregated settings to community based living for persons with intellectual disabilities; however, the Commission regrets the slow progress in making this transition, with numbers living in congregated residential settings in 2014 at similar levels to those in 2005.<sup>112</sup> The Commission has welcomed<sup>113</sup> the Government's commitments to provide a range of housing options to persons with disabilities<sup>114</sup> and to invest €71 million in social housing for people with special housing needs, including those with disabilities.<sup>115</sup> The Commission has called for more clarity on how much will be allocated for the housing needs of persons with disabilities.<sup>116</sup> The Commission has also raised<sup>117</sup> concerns about the possible negative effects for persons with disabilities of reductions in the State's

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110 *Commission Staff Working Document: Country Report Ireland 2015*, at page 60 [a footnote reference in the quoted text has been deleted].

111 See for example, Irish Human Rights and Equality Commission press release (30 March 2017), 'State Explanation Required to People with Disabilities on Continued Denial of Rights' (available at <https://www.ihrec.ie/state-explanation-required-people-disabilities-continued-denial-rights/>).

112 Irish Human Rights and Equality Commission (IHREC) (May 2013), *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, Dublin: IHREC, section 9.4.2. See also, Department of Health (2015), *Health in Ireland: Key Trends 2015*, Dublin: Department of Health, page 54.

113 Irish Human Rights and Equality Commission (IHREC) (May 2013), *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, Dublin: IHREC, section 9.4.1.

114 The National Housing Strategy for People with Disabilities 2011–2016 aims to address the specific housing needs of people with physical, sensory, mental or intellectual disabilities, who make up four per cent of people in need of housing. See: Department of the Environment, Community and Local Government (2011) *National Housing Strategy for People with Disabilities 2011–2016* (available at [http://health.gov.ie/wp-content/uploads/2014/03/housing\\_strategy\\_implementation.pdf](http://health.gov.ie/wp-content/uploads/2014/03/housing_strategy_implementation.pdf)). This strategy has been extended in the context of the government's Action Plan for Housing and Homelessness, published in July 2016. See Government of Ireland (2016) *Action Plan for Housing and Homelessness* (available at [http://rebuildingireland.ie/Rebuilding%20Ireland\\_Action%20Plan.pdf](http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf)).

115 Department of the Environment, Community and Local Government, 'Minister Alan Kelly invites proposals for social housing accommodation for people with special housing needs' [press release], 16 March 2015

116 Irish Human Rights and Equality Commission (IHREC) (May 2013) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, Dublin: IHREC, section 9.4.1.

117 Irish Human Rights and Equality Commission (IHREC) (May 2013), *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, Dublin: IHREC, section 9.4.1



Housing Adaption Grant scheme<sup>118</sup> and of the 2013 discontinuation of the monthly mobility allowance for persons with disabilities.<sup>119</sup>

The Commission has raised concerns, in light of recent cases, about the culture and treatment of individuals with intellectual disabilities in the care system.<sup>120</sup> Oversight of residential services for persons with disabilities is provided by the Health Information and Quality Authority (HIQA) which has established standards for the care of persons with disabilities in residential settings and commenced inspections in late 2013.<sup>121</sup> The Commission has welcomed this development and has emphasised the importance of ensuring that the inspection process is robust, and adequately resourced.<sup>122</sup> In 2015 HIQA carried out 741 inspections of centres for adults and children with disabilities.<sup>123</sup> HIQA's annual report for 2015 noted that inspections have 'highlighted a significant range of challenges', but that there has also been 'significant improvement in services as a result of our interventions'.<sup>124</sup>

### Care Needs of Older People

A recent study by the School of Social Policy, Social Work and Social Justice at University College Dublin of how the health and social care system responds to the care needs, required supports, and preferences of older people found that older people's preferences for receiving care and support in their home and community is not being realised.<sup>125</sup> The study noted that in 2015, the Health Service Executive is spending less on home support services for older people than it had in 2008 but that the population of those aged over 85 had increased by 30 percent in the period 2008–2015.<sup>126</sup> The study found that 61 percent of older people were involved in decision making related to their care planning, and a further 24 percent were 'somewhat involved' and 15 percent were not involved at all.<sup>127</sup> The Commission in its submission to the UN Committee on the Elimination of Discrimination

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118 The Disability Federation of Ireland (DFI) has calculated that between 2010 and 2014, Housing Adaptation Grant Schemes were cut by 42 per cent. These schemes include Housing Adaptation Grant for People with a Disability (HAG), Housing Aid for Older People (HOP) and Mobility Aids Grant (MAG). DFI (2013) Pre Budget Submission 2014, Dublin: DFI, page 6.

119 The Mobility Allowance was a means-tested monthly payment to persons with disabilities between the ages of 16 and 65 to assist them in meeting the cost of transport services (such as accessible taxis). In 2013 the scheme was closed to new applicants. See 'Mobility Allowance' [web page] [http://www.citizensinformation.ie/en/travel\\_and\\_recreation/transport\\_and\\_disability/mobility\\_allowance.html](http://www.citizensinformation.ie/en/travel_and_recreation/transport_and_disability/mobility_allowance.html).

120 Irish Human Rights and Equality Commission [press release] 7 March 2017, 'Commission Calls for "Grace" Investigation to Respect Human Rights and Equality Obligations for People with Intellectual Disabilities' (available at <https://www.ihrec.ie/commission-calls-grace-investigation-respect-human-rights-equality-obligations-people-intellectual-disabilities/>).

121 Health and Information Quality Authority (HIQA) (2013) *National Standards for Residential Services for Persons with Disabilities*, Dublin: HIQA.

122 Irish Human Rights and Equality Commission (IHREC) (May 2013), *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, Dublin: IHREC, section 9.4.2

123 Health and Information Quality Authority (HIQA) (2016), *Annual Report 2015*, Dublin: HIQA, page 2.

124 Health and Information Quality Authority (HIQA) (2016), *Annual Report 2015*, Dublin: HIQA, page 2.

125 Sarah Donnelly, Marita O'Brien, Emer Begley and John Brennan (2016) *'I'd Prefer to Stay at Home but I Don't Have a Choice' – Meeting Older People's Preference for Care: Policy, But What About Practice?*, Dublin: University College Dublin (available at [http://researchrepository.ucd.ie/bitstream/handle/10197/7670/IASW.AGE\\_ACTION.ASI.UCD\\_Research\\_Report\\_on\\_Care\\_of\\_Older\\_People\\_2016.pdf](http://researchrepository.ucd.ie/bitstream/handle/10197/7670/IASW.AGE_ACTION.ASI.UCD_Research_Report_on_Care_of_Older_People_2016.pdf)).

126 *'I'd Prefer to Stay at Home but I Don't Have a Choice'*, page 8.

127 *'I'd Prefer to Stay at Home but I Don't Have a Choice'*, page 17.

against Women recommended that ‘the State improve supports for care services for older people and persons with disabilities’.<sup>128</sup>

**The Commission is concerned that the level of provision, the absence of standards, or inadequate standards in a range of social welfare services may mean that Ireland is not in conformity with Article 14.1 of the Charter.**

## Article 14.2 – Public participation in the establishment and maintenance of social services

### Supports for the Community and Voluntary Sector

A 2014 study for an NGO reported that although overall government current spending fell by 7.1 percent between 2008 and 2014, funding for the community and voluntary was reduced by 35 percent in that period.<sup>129</sup> The study reported that ‘funding has fallen most sharply in those funding lines reaching the most disadvantaged groups and communities, especially community development’.<sup>130</sup> The Commission has expressed concern about the continued impact of funding cuts on the community and voluntary sector in reports to United Nations treaty monitoring bodies during the reporting period.<sup>131</sup> The Commission has also expressed concern about the replacement of Local Community Development Programme (LCDP) with the Social Inclusion and Community Activation Programme (SICAP). For example, this structural change resulted in the removal of ‘disadvantaged women’ as a target group.<sup>132</sup> **The Commission is concerned about the impact of funding cuts and structural changes on the capacity of the community and voluntary sector to participate in the delivery of social welfare services.**

### Non-discrimination and the Delivery of Private Sector Social Services

While the *Equal Status Acts 2000–2015* prohibits discrimination in the provision of goods and services, some concerns prevail in relation to the provision of an effective remedy – an upper limit on the amount of compensation that may be awarded to a victim of discrimination.<sup>133</sup> Further to the Committee’s question to the government in relation to the monitoring of how private social services are provided in a non-discriminatory way, the Commission is of the view that this may be achieved

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128 Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, at page 95.

129 Brian Harvey (2014) *Scoping of Need in Social Justice Sphere*, Dublin: Philanthropy Ireland, at page 11 (available <http://www.philanthropy.ie/wp-content/uploads/2011/10/Scoping-of-Need-in-Social-Justice-Sphere-2014.pdf>).

130 *Scoping of Need in Social Justice Sphere* at page 10.

131 – Irish Human Rights and Equality Commission (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights*, section 3.1;

– Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women*, section 8.3.

132 See further: Pobal (no date) ‘Social Inclusion and Community Activation Programme’ [web page] <https://www.pobal.ie/beneficiaries/sicap/Pages/Social%20Inclusion%20and%20Community%20Activation%20Programme.aspx>

133 Section 82(4) of the *Employment Equality Acts 1998–2015* provides that the maximum amount that can be paid in compensation is the greater of 104 weeks’ pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of the *Equal Status Acts 2000–2015* provides that the maximum amount of redress is the amount that may be awarded by the District Court, which is currently €15,000.

through the public sector duty that requires both public bodies and organisations financed wholly or partly out of public money to prohibit discrimination, promote equality and protect human rights in a more proactive manner.<sup>134</sup> **The Commission is concerned about the lack of regard for economic and social rights in the State’s practice of subcontracting its functions to non-state actors and recommends that the State should ensure that public bodies are aware of European Union law that require non-state actors to comply with international agreements in the performance of a public contract.**

## Article 23 – The right of elderly persons to social protection

### Right to a Pension

In 2014 the age at which the State pensions are, in practice, paid was increased from 65 to 66<sup>135</sup>, and it will increase to 67 in 2021 and 68 in 2028. However, while the Employment Equality Acts 1998–2015 regulate the dismissal of employees on reaching a fixed retirement age<sup>136</sup>, they do not ensure that every employee will remain in employment until they reach pensionable age (currently 66). The policy response to this gap has been limited, consisting of requests to a number of State agencies<sup>137</sup> to prepare guidance, stating that employers ‘should take steps’ to clearly state their retirement policy, the provision of ‘up-skilling’ for older workers, awareness raising, and a review of statutory provisions in respect of employment in the public sector. **The Commission is concerned that the law does not adequately protect workers from compulsory retirement at an age before they are entitled to receive a State pension and that the State has not balanced the need for measures to support longer working lives with measures to ensure access to social protection for those who are not able to remain in the workforce.**

### Level of Pension

The State Pension (Contributory) is paid to people aged 66 and over who meet the requirements on contributions, and is divided into bands reflecting the yearly average number of contributions the pension recipient has been credited with during their employment. From September 2012 the number of payment bands was increased from four to six (through the division of the second band into three bands), and reductions were made to the amount of payments made to new recipients in all the bands below the second band. This affected only those who received pensions for the first time after September 2012. In effect, it targets those who would already have been lower paid for further reductions in their income (compared with what it would have been if they had reached

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134 Sections 2 and 42 of the *Irish Human Rights and Equality Commission Act 2014* (available at <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print.html>). General guidance on the public duty is available on the Commission’s website at <https://www.ihrec.ie/our-work/public-sector-duty/>.

135 A pensionable age of 66 was set by the Social Welfare Consolidation Act 2005 for both contributory and non-contributory State pensions. The change that occurred in 2014 was that the State pension (transition) which had provided for payment of a State pension at 65, was abolished.

136 Employers are entitled to fix compulsory retirement ages, and may dismiss employees on their reaching this age, provided this is objectively justified by a legitimate aim, and the means of achieving the aim are proportionate and necessary. This requirement was introduced into Irish law by the Equality (Miscellaneous Provisions) Act 2015 and brings Irish law into alignment with EU law.

137 The Commission is one of these agencies.

pension age earlier). Data on the effect of the change from the Department of Social Protection shows that one-third of new recipients of the State Pension (Contributory) were affected.<sup>138</sup>

The Commission notes that the rates paid over the reference period for both the State Pension (Contributory) and the State Pension (Non-Contributory) remained unchanged (other than the introduction of the two new rate bands noted above) and were not index linked, although the mean equivalised income increased over that period.

**The Commission is concerned that although the maximum amount of payment was unchanged over the reporting period, reductions were imposed on those among the new recipients who were least able to take reductions in the levels of pension. The Commission is concerned that, contrary to the Committee's established jurisprudence, the pension rates were not index linked during the reference period.**

In April 2012, the rules on late claims for a State Pension (Contributory) were changed.<sup>139</sup> From that date, the period for which a claim could be backdated was reduced from 5 years to 6 months. **The Commission considers that a social security benefit the right to which has been acquired through the payment of social insurance contributions confers a strong entitlement on the intended beneficiaries. The Commission is concerned that introduction of such a severe restriction on access to the State Pension (Contributory) and the Widow's, Widower's, and Surviving Civil Partner's Contributory Pension is disproportionate and excessive.**

Other changes made to secondary payments that are provided to recipients of the State Pension (Contributory) and of State Pension (Non-contributory) (and of the Widow's, Widower's, and Surviving Civil Partner's Contributory Pension) during the reporting period included:

- in 2012, the period of payment of the Fuel Allowance was reduced from 32 weeks to 26 weeks, resulting in a reduction of €120.00 per year;
- in 2013 the Telephone Allowance was reduced from €26.00 to €9.50 per month, resulting in a reduction of €234 that year;
- in January 2014 the Telephone Allowance was abolished, resulting in a reduction of €114 in each of the remaining years of the reporting period; and
- in January 2013 the Electricity allowance was changed to €35 per month, and the effect was a reduction of approximately €105 per year.<sup>140</sup>

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138 The data was provided by the Department of Social Protection to the NGO Age Action and refers to the reporting period and the first six months of 2016. It is published in: Maureen Bassett (2017) *Towards a Fair State Pension for Women Pensioners*, Dublin: Age Action, Table 4 on page 15 (available at [https://www.ageaction.ie/sites/default/files/attachments/briefing\\_paper\\_3\\_-\\_reverse\\_the\\_2012\\_state\\_pension\\_cuts.pdf](https://www.ageaction.ie/sites/default/files/attachments/briefing_paper_3_-_reverse_the_2012_state_pension_cuts.pdf)). The Commission's calculation from that data is that 33.9 percent of new pensioners were affected.

139 Department of Social Protection (2011) 'Budget Factsheet: Main Social Welfare Changes and Rates of Payment – Budget 2012' Dublin: Department of Social Protection (available at <http://www.welfare.ie/en/downloads/budfact12.pdf>). This reduction in the time permitted for late claims also applied to the Widow's, Widower's, and Surviving Civil Partner's Contributory Pension.

140 Before the change, the Electricity allowance was set at 2,400 units per year. On the basis of the price of electricity in 2011, the Minimum Essential Budget Standards Research Centre, a unit of Vincentian Partnership for Social Justice, an NGO, calculated that in 2011 the Electricity Allowance was typically worth €525.72 per year. See: '2011 Income Scenarios: Pensioner Couple, Aged 66–69 – Urban'

**The Commission is concerned that the reduction in secondary benefits has reduced the effectiveness of the State Pensions.**

### **Gender Inequality**

In order to qualify for a full State Pension (Contributory), a person is required to have a yearly average of 48 social insurance contributions or more since they entered insurable employment up to the last full contribution year before they retire. Where a person takes a number of years off, for example to raise a family, and then returns to insurable employment, they may not meet these contribution requirements and may only qualify for a lower partial pension. In 1994, an amendment was made to the Irish social welfare legislation to introduce a 'homemakers disregard', under which complete years spent as a 'homemaker'<sup>141</sup> are not counted for the purpose of calculating the yearly average contributions, up to a maximum of 20 years. However, the homemakers disregard does not include periods as a homemaker that occurred before the disregard was introduced, and puts women now of an age to be eligible for the State Pension (Contributory) at a disadvantage. The statistics published by the Department of Social Protection show that the proportion of women who are in receipt of the State Pension (Contributory) was significantly lower than the number of men for each of the four years in the reference period, but that it has been rising.<sup>142</sup> Furthermore, the proportion of the men aged over 65 who receive the State Pension (Contributory) compared with the number of men in the total population in that age group is significantly higher than the equivalent proportion for women.

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([http://www.budgeting.ie/download/legacy/2011\\_Urban\\_folder/2011\\_urban\\_income\\_folder/Pensioner\\_Couple.pdf](http://www.budgeting.ie/download/legacy/2011_Urban_folder/2011_urban_income_folder/Pensioner_Couple.pdf)).

- 141 A 'homemaker' is defined in the legislation as a person who is not engaged in paid work and who either cares for a child under 12 years of age on a full-time basis or provides full-time care and attention to a person who is so incapacitated as to require full-time care and attention. See section 108(2) of the Social Welfare Consolidation Act 2005, available at <http://www.irishstatutebook.ie/eli/2005/act/26/enacted/en/print>
- 142 Department of Social Protection (2013) *Statistical Information on Social Welfare Services 2012*, at page 30, available at [http://www.welfare.ie/en/downloads/Social%20Stats%20AR%202012\\_Final.pdf](http://www.welfare.ie/en/downloads/Social%20Stats%20AR%202012_Final.pdf); Department of Social Protection (2014) *Statistical Information on Social Welfare Services 2013*, at page 34, available at <http://www.welfare.ie/en/downloads/Social-Stats-AR-2013.pdf>; Department of Social Protection (2015) *Statistical Information on Social Welfare Services 2014*, at page 61, available at <http://www.welfare.ie/en/downloads/Statistical-Information-on-Social-Welfare-Services-2014.pdf>; Department of Social Protection (2016) 'Number of Recipients of State Pensions by Age and Sex, 2015' [online spreadsheet] at sheet B4, available at [www.welfare.ie/en/downloads/Statistical\\_Reports/Section\\_B\\_Pensions\\_V1.0.xlsx](http://www.welfare.ie/en/downloads/Statistical_Reports/Section_B_Pensions_V1.0.xlsx)

**Proportion of men in the population over 65 years and proportion of women in the population over 65 years who are in receipt of the State Pension (Contributory) – estimate**

	Population aged 65 and over (2011 census) (n)	Annual mean receiving State Pension (Contributory) 2012–2015 (n)	Estimated proportion of the population over 65 in receipt of the State Pension (Contributory) (%)
Male	243,314	217,670	89
Female	292,079	119,827	41
<b>Totals</b>	<b>535,393</b>	<b>337,497</b>	<b>63</b>

The numbers in column 4 are estimates that have been calculated using data from two adjacent periods: (a) the Census of Population in 2011, and (b) the numbers in receipt of the State Pension (Contributory) in the four years in the reference period (2012–2015). The numbers in column 4 cannot be regarded as precise, because two different periods were used to calculate them. However, as the periods are adjacent and as there were no abrupt changes in the population at that time, the values are a reliable indicator of the scale of the difference in coverage of the State Pension (Contributory).

**The Commission is concerned that gender inequality continues to be embedded in the operation of the state pension and the steps taken by the State to respond the causes of the inequality have been inadequate.**

### Elder Abuse

The National Positive Ageing Strategy in 2013 reported that the prevalence of elder abuse in Ireland was 2.2 per cent but that the prevalence of elder abuse in other developed countries is between 3 and 5 per cent, and therefore that the number of people experiencing elder abuse may be twice that reported.<sup>143</sup> **The Commission believes that research should be commissioned by the government to establish the reasons for the significant lower reported rate of elder abuse in Ireland compared with other developed countries in order to establish if the difference reflects lower level of elder abuse, lower levels of awareness, or lower reporting so that adequate policies and programmes can be developed and implemented if needed.**

The Health Service Executive has published comprehensive data on reported incidents of elder abuse for 2012, 2013, and 2014.<sup>144</sup> At the end of 2014, the Health Service Executive published a new policy on safeguarding vulnerable persons at risk of abuse which incorporated the services for people with disabilities and for elder abuse.<sup>145</sup> The policy provided for the establishment of a

143 Department of Health (2013) *Positive Ageing Starts Now! The National Positive Ageing Strategy*, Dublin: Department of Health, at page 38 (available at <http://health.gov.ie/healthy-ireland/national-positive-ageing-strategy/>).

144 Each annual *HSE Elder Abuse Report* from 2008 to 2014 is available at <http://www.hse.ie/eng/services/publications/olderpeople/elderabusepublications.html>). The reports show that the number of substantiated referrals in each of the three years was as follows: 2012, 423 (32 percent of the total number of referrals); 2013, 356 (27 percent of the total); and 2014, 437 (32 percent of the total). The most significant change in the reported numbers is that the number of referrals where it was not possible to either prove or disprove the allegation increased in the latter two years (619 or 47 percent in 2013 and 587 or 42 percent in 2014, compared with 453 or 35 percent in 2012).

145 Health Service Executive (2014) *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy & Procedures – Incorporating Services for Elder Abuse and for Persons with a Disability*. Dublin: Health Service Executive (available at <http://www.hse.ie/eng/services/publications/corporate/personsatriskofabuse.pdf>).

National Safeguarding Committee, which held its first meeting in December 2015.<sup>146</sup> In a separate change, the Department of Health established a partnership with the Health Service Executive and a philanthropic organisation entitled the 'Healthy and Positive Ageing Initiative' (HaPAI) to monitor progress in the implementation of the National Positive Ageing Strategy. In December 2016, the HaPAI published its first report on national indicators.<sup>147</sup> The Commission notes that the HaPAI report republishes data from the 2014 annual report on elder abuse,<sup>148</sup> and does not provide (i) new data for 2015 or (ii) the same level of detailed breakdown of data that had been published in the annual reports on elder abuse in previous years, including details on the steps taken to reduce elder abuse and to improve reporting. **The Commission is concerned that the changes in the structures on the provision of services on elder abuse and in the reporting of indicators, data and statistics on elder abuse have resulted in reduced transparency on the levels of abuse and on the steps that the State has taken to combat elder abuse.**

The Commission notes that there is an absence of legislation in respect of the deprivation of liberty in nursing homes and other care and residential accommodation. This applied throughout the reference period and continues into 2017. The government has stated that it intends to correct this situation.<sup>149</sup> In December 2016 it published a Bill to amend the law on a range of matters related to the rights of people with disabilities which did not include the proposed text of the relevant provision. The explanatory memorandum to that Bill states 'The Department of Health is working on proposals to address this issue'.<sup>150</sup> **The Commission is concerned that throughout the reference period, residents of nursing homes and other care and residential institutions did not enjoy legislative protection against the deprivation of their liberty. The Commission is concerned that draft legislation to correct this deficit has not been published and is to be introduced at a late stage in the legislative process, which will have the effect of limiting the time available to the Commission and to civil society to analyse the proposed wording and to adequately respond to it before it proceeds through the legislative process in the Irish parliament.**<sup>151</sup>

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146 Patricia T Rickard-Clarke (2016) 'Foreword' in: *National Safeguarding Committee Strategic Plan 2017–2021*, Limerick: National Safeguarding Committee, at page 4 (available at <http://safeguardingcommittee.ie/wp-content/uploads/2016/12/NSC-Strategic-Plan-2017-2021-2.pdf>).

147 Healthy and Positive Ageing Initiative (2016) *Positive Ageing 2016: National Indicators Report*. Dublin: NaPAI (available at <http://health.gov.ie/wp-content/uploads/2016/11/National-Indicators-Report-Single-W.pdf>).

148 *National Indicators Report*, at page 99.

149 Department of Justice (2015) *Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)*, Dublin: Department of Justice and Equality, at page 7 (available at <http://www.justice.ie/en/JELR/Roadmap%20to%20Ratification%20of%20CRPD.pdf/Files/Roadmap%20to%20Ratification%20of%20CRPD.pdf>); Department of Justice (2015) 'Fitzgerald and Ó Ríordáin publish Roadmap to Ratification of the UN Convention on the Rights of Persons with Disabilities' [press statement] (available at <http://www.justice.ie/en/JELR/Pages/PR15000550>); Department of Justice and Equality (2016) *General Scheme of the Equality/Disability (Miscellaneous Provisions) Bill Heads in relation to ratification of the UN Convention on the Rights of Persons with Disabilities*, Dublin: Department of Justice and Equality, at page 4 (available at [http://www.justice.ie/en/JELR/General-Scheme-of-the-Equality-Disability-\(Miscellaneous-Provisions\)-Bill-17-August-2016.pdf/Files/General-Scheme-of-the-Equality-Disability-\(Miscellaneous-Provisions\)-Bill-17-August-2016.pdf](http://www.justice.ie/en/JELR/General-Scheme-of-the-Equality-Disability-(Miscellaneous-Provisions)-Bill-17-August-2016.pdf/Files/General-Scheme-of-the-Equality-Disability-(Miscellaneous-Provisions)-Bill-17-August-2016.pdf)).

150 *Disability (Miscellaneous Provisions) Bill 2016: Explanatory Memorandum*, at pages 2 and 3 ('Head 3'), (available at <https://www.oireachtas.ie/documents/bills28/bills/2016/11916/b11916d-memo.pdf>).

151 *Supplementary Observations on the Disability (Miscellaneous Provisions) Bill 2016*, at page 3 (available at <https://www.ihrec.ie/documents/18229/>).

## Assisted Decision-Making

As is noted in Ireland's *14th National Report on the Implementation of the European Social Charter*, the Assisted Decision-Making (Capacity) Act 2015 became law on the second last day of the reference period but has not yet come fully into operation.<sup>152</sup> In 2013, the Commission's precursor body noted that the draft of the legislation was not compatible with the Convention on the Rights of Persons with a Disability in relation to legal capacity, mental capacity, and decision-making,<sup>153</sup> but those concerns were not reflected in the amendments made to the Bill in its passage through the Irish parliament. The Act retains a functional assessment of mental capacity that can be used to restrict or deny legal capacity. **The Commission is concerned that the Assisted Decision-Making (Capacity) Act 2015 fails to fully respect the rights of people to make decisions as provided for in the Convention on the Rights of Persons with a Disability.**

## Article 30 – Right to protection against poverty and social protection

The Commission notes that all of the indicators that the Irish government uses for assessing the levels of poverty and deprivation have been worse in each of the four years in the reporting period than they were in the two years before the reporting period. The national headline target for poverty reduction is to reduce consistent poverty<sup>154</sup> to 4 percent by 2016 and to 2 percent or less by 2020, from the 2010 baseline rate of 6.3 percent.<sup>155</sup> However, the rate of consistent poverty was 6.3 percent and 6.9 percent of the population in, respectively, 2010 and 2011, and rose to 9.1 percent in 2013 and has fallen to only 8.7 percent in 2015. The deprivation rate was 22.6 percent and 24.5 percent in 2010 and 2011, and rose to 30.5 percent in 2013, before falling back to 25.5 percent in 2015.<sup>156</sup> This occurred despite the fact that in 2012 the economy began to grow again after the crash of 2008 and the Great Recession that followed that crash.<sup>157</sup> These are average rates for the population as a whole. Some specific groups experienced much higher rates of poverty and deprivation. In 2015, the unemployed, those not at work due to illness or disability, lone parents, and those who lived in accommodation provided at below the market rate or rent free had rates of

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152 The act contains 104 sections. As of 9 January 2017, 12 of these had been 'commenced' or partly commenced. See the 'Commencement' section on 'Assisted Decision-Making (Capacity) Act 2015' [Web page] ([http://www.irishstatutebook.ie/eli/isbc/2015\\_64.html](http://www.irishstatutebook.ie/eli/isbc/2015_64.html)).

153 Irish Human Rights Commission (2014) *IHRC Observations on the Assisted Decision-Making (Capacity) Bill 2013*, at paragraphs 47–55 (available at <https://www.ihrec.ie/documents/ihrc-obs-assisted-decision-making-bill-2013/>).

154 Consistent poverty is a national poverty measure which combines both income and deprivation measures. It consists of two component indicators: at-risk-of-poverty and basic deprivation. At risk of poverty refers to individuals whose household income is below 60 percent of the median, and basic deprivation captures individuals lacking two or more of a list of eleven basic necessities. A person is in consistent poverty if they are both income poor and deprived.

155 Department of Social Protection (2016) *Social Inclusion Monitor 2014*, Dublin: Department of Social Protection, at page 17 (available at [http://www.socialinclusion.ie/documents/2016-05-09\\_SocialInclusionMonitor2014withIrishForeword\\_rpt\\_Final\\_002.pdf](http://www.socialinclusion.ie/documents/2016-05-09_SocialInclusionMonitor2014withIrishForeword_rpt_Final_002.pdf)).

156 Central Statistics Office (2017) *Survey on Income and Living Conditions (SILC): 2015 Results*, in Table A (available at <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2015/>).

157 John FitzGerald (2014) 'Ireland's recovery from crisis', *CESifo Forum*, no. 2/2014, pp. 8–13 (available at <https://www.cesifo-group.de/ifoHome/publications/journals/CESifo-Forum/Archiv/CESifo-Forum-2014.html>).



consistent poverty above or close to three times the overall state level.<sup>158</sup> **The Commission is concerned that rates of poverty and deprivation were higher during that recovery than during the recession that preceded it and that groups such as the unemployed and lone parents are particularly at risk.**

The Commission notes that in 2012 the government reviewed the national poverty target.<sup>159</sup> The Commission notes that the *National Action Plan for Social Inclusion 2007–2016* was written before the crash and it was not until 2012 that it was updated to take account of the new and extensive challenges to which the crash gave rise, when a new target for poverty reduction was adopted in the context of the European Union’s 2020 Strategy,<sup>160</sup> and more substantially not until 2016 that a revised action plan was published<sup>161</sup>. **The Commission is concerned that the government did not update the National Action Plan for Social Inclusion before the recovery began and that for the reference period the only change made to the plan originally adopted in 2007 was to revise the targets, and that no revision was made to the measures needed to reduce poverty and social exclusion until the end of the reference period.**

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158 The rates were: overall, 8.7 percent; unemployed, 26.2 percent; not at work due to illness, 22.4 percent; one adult with children under 18, 26.2 percent; and renting at below the market rate or rent free, 24.9 percent.

159 Department of Social Protection (2012) *National Social Target for Poverty Reduction* (available at <http://www.welfare.ie/en/Pages/Review-of-the-National-Poverty-Target.aspx>).

160 Department of Social Protection (2012) *National Social Target for Poverty Reduction: Policy Briefing on the Review of the National Poverty Target* (available at <http://socialinclusion.ie/NPT.html>).

161 Department of Social Protection (2016) *Updated National Plan for Social Inclusion 2015–2017* (available at <http://socialinclusion.ie/UpdatedNAPinclusion2015-2017.html>).





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