



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

# Ireland's Emergency Powers During the Covid-19 Pandemic

Report by the COVID-19 Law and Human Rights Observatory at Trinity College Dublin, on behalf of the Irish Human Rights and Equality Commission.



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We hope this report will make a contribution in identifying some of the core areas where we can enhance protections of human rights, equality and the rule of law when adopting and implementing emergency powers.

Sinéad Gibney, Chief Commissioner

## KEY NUMBERS

- » **1** year into the pandemic
- » **4** emergency power statutes
- » **67** sets of regulations

## LEGAL STANDARDS

- » The Constitution
- » International human rights treaties
- » European human rights and equality law
- » Irish equality law

## FINDINGS AND RECOMMENDATIONS

### Public health **vs** personal liberties



The State response to the pandemic has attempted to protect important rights, and the Government made difficult decisions around complicated rights trade-offs. Restrictions—on movement, home gatherings, face coverings—have been mostly justified to protect public health.

- » Continued scrutiny of decision-making is crucial as challenges emerge, and to learn lessons for any future national emergencies.

### Blurred lines



Government communications have blurred the distinction between the law/regulations and public health advice, creating uncertainty, and inequality for those who may not understand—for example, elderly people thinking they are legally required to ‘cocoon’.

- » Communicate law more clearly.
- » Protect rule of law and democratic values.

### Groups at risk



The restrictions and their enforcement may have disproportionately affected vulnerable and disadvantaged groups.

- » Government and NPHE should give greater consideration to the needs of carers, women and mothers, those with mental health and intellectual capacity difficulties, younger people, older people, children, people with disabilities, non-nationals, prisoners, those from racial and ethnic minorities, and those living below the poverty line.

### Human rights and equality expertise lacking



The lack of human rights and equality expertise in the decision-making structures to tackle the pandemic is concerning.

- » NPHE should have an expert sub-group on human rights, equality and ethical concerns.
- » The Government oversight committee that filters NPHE recommendations should have representation from the Department of Children, Equality, Disability, Integration and Youth.

### Greater **analysis** needed



The shifting interaction between the Minister for Health and NPHE makes it difficult to say where, if at all, human rights and equality concerns and obligations are being addressed.

- » The Minister for Health should publish a human rights and equality analysis of the proportionality of emergency regulation within 48 hours.

### Strengthen **Oireachtas** oversight



Continuing parliamentary scrutiny of emergency legislation, regulations and their impact has not been particularly effective.

- » Set up Committee on Human Rights, Equality and Diversity.
- » Implement sunset clauses for all legislation, allowing for 3 month extensions.
- » Ensure Oireachtas approval for regulations within 10 days.

### Enforcement of **guidance** as law is problematic



The Gardai have enforced public health guidance as if it were law, as have state agencies—for example, social welfare enforcement powers were turned on those who had left the country.

- » The Government should not present public health advice as if it were criminally enforceable.

### More data needed on **Garda enforcement**



Garda failure to publish disaggregated data on enforcement of emergency powers runs the risk of concealing human rights violations—particularly for vulnerable and disadvantaged groups—and itself is a significant breach of international human rights standards.

- » The Garda Commissioner should publish data disaggregated, for example, by gender, age, disability, income, race and ethnicity.