

# LAW SOCIETY SUBMISSION

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## **SUBMISSION ON IRELAND'S THIRD NATIONAL REPORT TO THE UN UNIVERSAL PERIODIC REVIEW 2021**

Department of Children, Equality, Disability, Integration and Youth

12 March 2021

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#### ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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## I. Introduction

The Law Society of Ireland ('the **Society**') is the educational, representative and co-regulatory body for the solicitors' profession in Ireland.

As part of its preparations for Cycle 3 of the United Nations Universal Periodic Review (UPR), the Department of Children, Equality, Disability, Integration and Youth has called for written submissions from stakeholders and interested groups on Ireland's third National Report, due on 9 August 2021.

The Society welcomes the opportunity to contribute to this consultation process and hopes to provide constructive and practical recommendations which will assist in ensuring Ireland's full compliance with key international human rights instruments.

As the National Report will focus on progress made in respect of recommendations from previous cycles, whether they have been implemented in full or in part and whether their status is pending or noted, this submission provides input on new and emerging issues in the human rights area.

In line with the [Universal Periodic Review: information and guidelines for relevant stakeholders' written submissions](#), the submission reflects on implementation of the recommendations which were accepted by the Irish Government in the previous UPR and on developments in the human rights and equality situation in Ireland.

The Society makes 19 recommendations in that regard.

## **II. Summary of recommendations**

1. Progress ratification and implementation of outstanding international treaties as a matter of priority.
2. Re-prioritise legislative initiatives relevant to the State's compliance with its obligations under the UNCRPD.
3. Establish a specific timeframe for the replacement of Article 41.2. with gender-inclusive language, reference to family life (which encompasses a broad scope of family relationships not just those based on marriage) and recognition of care work in the family.
4. Ensure that access to justice is enhanced by investment in key areas of the legal system, particularly in legal aid and criminal legal aid.
5. Broaden the remit of the Legal Aid Board to include issues related to housing, social welfare, employment and anti-discrimination claims before the Workplace Relations Commission/Labour Court.
6. Implement criminal legal aid reform to ensure the resilience and integrity of the criminal legal aid system.
7. Commence key elements of the existing legislative framework for people with disabilities as a matter of priority.
8. Adopt a legislative framework with regard to the right to liberty to enable Ireland to further comply with the requirements of the UNCRPD.
9. Re-prioritise legislative initiatives which are integral to the State's ratification of the UNCRPD.
10. Introduce legislation to implement OPCAT without further delay to ensure independent inspections of places of detention.
11. Ensure equal access to legal advice for suspects in Garda detention.
12. Ensure access to a solicitor for international protection applicants and immigrants.
13. Remove all remaining barriers to allowing asylum seekers to engage in work.
14. Enact effective hate crime legislation and broaden the protected characteristics covered by the 1989 Act to include those based on gender, disability, civil status, family status and age, whether actual or perceived.
15. Ensure that adequate and appropriate legal services are provided to address the specific needs of the Traveller community.
16. Ensure an end to direct provision and the timely introduction of an alternative system for accommodating and supporting those seeking international protection in Ireland.

17. The new system should be supported by legislation to ensure that it is appropriately rights-based and includes remedies where identified standards are not met.
18. The State should have due regard to the fundamental Constitutional right of personal liberty and freedom and its international obligations in respect of the treatment of immigration detainees and international protection applicants.
19. Any further regulations introduced under section 31A of the Health Act 1947 should be referred to the Oireachtas Committee on Justice for consideration and debate.

### III. Snapshot of achievements and challenges ahead

#### International obligations

Since the previous UPR, Ireland ratified the Convention on the Rights of Persons with Disabilities (UNCPRD) (Recommendations 135.2, 135.4 - 135.6, 135.40 – 135.70) in March 2018 and it entered into force on 19 April 2018. The Council of Europe Convention on preventing and combatting violence against women and domestic violence ('the Istanbul Convention') (Recommendations 135.71 – 135.75) was ratified in March 2019.

However, Ireland has not ratified the:

- i. Optional Protocol to the UNCPRD;
- ii. Optional Protocol to the UN Convention against Torture (OPCAT);
- iii. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- iv. Second Optional Protocol to the Convention on the Rights of the Child;
- v. Convention Against Discrimination in Education;
- vi. Convention for the Protection of All Persons from Enforced Disappearances (Recommendations 135.2 – 134.39, 135.71 – 135.75); and
- vii. International Convention on the Rights of All Migrant Workers and Members of their Families.

The Society notes that the Law Reform Commission (LRC) initiated a project focused on the domestic implementation of international obligations (as part of its Fourth Programme of Law Reform) and examines the methodology and models of implementing international obligations and the monitoring of, and accountability for, state obligations.

The Society further notes the Draft inventory of international agreements entered into by the State published by the LRC in 2018 and the LRC's Discussion Paper on the Implementation of International Obligations which issued in 2020 and comprises the second and final element of the LRC's research project on the domestic implementation of Ireland's international obligations.

The Society welcomes the establishment, in September 2020, of an Oireachtas Committee on Disability Matters to assist in the monitoring and implementation of the provisions of the UNCPRD. The Society further notes the Government's commitment to ratifying the Optional Protocol to the UNCPRD after the first reporting cycle.

However, the Society recently communicated its concerns to the Minister for Children, Equality, Disability, Integration and Youth around the de-prioritisation in the legislative agenda of a number of significant legislative initiatives which are relevant to the State's ratification of the UNCPRD.

## **Recommendations**

- Progress ratification and implementation of outstanding international treaties as a matter of priority.
- Re-prioritise legislative initiatives relevant to the State's compliance with its obligations under the UNCRPD.

### **Constitutional Reform**

Since the previous UPR cycle, Ireland has held three referenda to amend the Constitution of Ireland: one on abortion and repealing the Eighth Amendment to the Constitution (Recommendations 135.136, 136.11 - 136.19, 136.64 - 136.73), the second on blasphemy (Recommendations 136.53 - 136.54) and a third on divorce rules.

A further matter which requires constitutional reform is Article 41.2. of the Constitution (Recommendations 136.12 - 136.15) which continues to perpetuate stereotypical attitudes towards the role and responsibilities of men and women in Irish society.

The Society commends the Government's Programme for Government commitment to hold a referendum on Article 41.2. which will be informed by the work of the Citizens' Assembly.

### **Recommendation**

Establish a specific timeframe for the amendment of Article 41.2. with gender-neutral language, reference to family life (which encompasses a broad scope of family relationships not just those based on marriage) and recognition of care work in the family.

### **Protection and Promotion of Human Rights and Equality**

#### **Legal Aid**

The Society notes that, while there is a State-funded civil legal aid scheme in place which is administered and delivered by the Legal Aid Board, save for issues domestic violence, civil legal aid is not free. All legal aid applicants are expected to make a financial contribution.

While the remit of the Legal Aid Board includes free mortgage arrears support, international protection services and criminal legal aid, the vast majority of legal aid relates to family and child care law. In its 2019 [Annual Report](#), the Legal Aid Board recorded that family law continues to constitute the predominant area where the Board provides legal services. Of the cases handled in 2019, 74% were in private family law, 14% in international protection, 4% involving child care and just 8% related to "other civil matters".

A number of areas of law are excluded entirely from legal aid such as social welfare claims and appeals, employment and anti-discrimination claims before the Workplace Relations Commission and the Labour Court. This has particular significance where these cases



involve and engage matters of EU law. In addition, disputes involving land are also excluded which, in practice, limits the availability of legal aid in respect of housing matters.

Demand for civil legal aid has risen in recent years and waiting times for a first appointment with Legal Aid Board Solicitors continues to be a significant problem. As of December 2020, the longest waiting time for a first consultation with a lawyer from the Legal Aid Board stood at 33 weeks in Smithfield Dublin, while there was a waiting period of 29 weeks for a second consultation in Navan, although most other law centres did not have a waiting period for a second consultation.

Currently, the right to legal aid and representation for victims of sexual and gender-based violence (Recommendation 136.36, 136.39-136.41) is ad hoc and piecemeal. Legal aid is limited to those who are victims of certain serious sexual offences and where their prior sexual history is being raised in the context of a defence to the prosecution, but not otherwise.

The Society welcomes the publication of the [O'Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#) in August 2020 which aimed to explore which reforms might be introduced to protect victims of sexual violence during the investigation and prosecution of sexual offences.

The Society strongly supports the proposal to amend [section 26\(3A\) of the Civil Legal Aid Act 1995](#) to provide free legal advice to victims of sexual assault and victims of offences contrary to sections 3 to 8, 18, 21 and 22 of the [Criminal Law \(Sexual Offences\) Act 2017](#). The proposal that advice would be free for parents/guardians of a child or a person with a mental illness or intellectual difficulties is also welcomed.

The Society further notes that the [Justice Action Plan](#), published by the Department of Justice on 22 February 2021, commits to commencing a review of the civil legal aid scheme and making proposals for reform in Q3 2021.

### *Criminal Legal Aid*

The Society has repeatedly expressed its concern around the viability of the current criminal legal aid fees. We have repeatedly emphasised the fact that the resilience and integrity of the criminal legal aid system is being threatened due to longstanding and continued reductions in rates.

The impact of the direct and indirect fee cuts manifests itself in an increasing 'justice gap' which is very much felt by clients of the service i.e. citizens and residents of the State who have a legal right to representation. Legal practices, which may be burdened by the cost pressures of the schemes, are increasingly obliged to decline to represent such clients as it is simply uneconomical. This has significant implications for the Rule of Law in terms of ensuring access to justice as well as quality of legal representation.

The Society notes the Department of Justice's commitment in its 2021 Justice Plan to publish the General Scheme of a Criminal Legal Aid Bill to transfer the operation of the criminal legal aid scheme to the Legal Aid Board and otherwise update and modernise the law on criminal legal aid in Q4 of 2021.

The Society continues to question whether the current levels of criminal legal aid are sustainable and considers that they should be reviewed in the context of the modernisation of the legal aid system overall.

#### **Recommendations**

- Ensure that access to justice is enhanced by investment in key areas of the legal system, particularly in legal aid and criminal legal aid.
- Broaden the remit of the Legal Aid Board to include issues related to housing, social welfare, employment and anti-discrimination claims before the Workplace Relations Commission/ Labour Court.
- Implement criminal legal aid reform to ensure the resilience and integrity of the criminal legal aid system.

#### *Rights of Persons with Disabilities*

As mentioned, Ireland has ratified the UNCRPD (Recommendations 135.2, 135.4 - 135.6, 135.40 – 135.70) but not the Optional Protocol to the Convention.

The main purpose of the Disability (Miscellaneous Provisions) Bill 2016 ('the **2016 Bill**'). was to address the remaining legislative barriers to Ireland's ratification of the UNCRPD. The Bill further aimed to address a range of legislative barriers to ratification which were not addressed separately in other legislation (predominantly the Assisted Decision-Making (Capacity) Act 2015).

The Bill provides for the role of the National Disability Authority (NDA) as part of the monitoring mechanism for the Convention and creates a statutory basis for the IHREC's role in the monitoring framework related to the implementation of the UNCRPD.

Although the initial general scheme of the 2016 Bill included provisions around deprivation of liberty safeguards, the Government decided to provide such safeguards through a further, standalone piece of legislation.

The Society welcomed the introduction of the 2016 Bill and made the following recommendations in its submission to the Department of Justice and Equality at that time:

1. In accordance with Article 33 of the UNCRPD, the Department of An Taoiseach should be given the role of 'focal point' and the Department of Justice and Equality should be the 'co-ordinating mechanism'.

2. In order to satisfy UNCRPD obligations, the IHREC should also be charged with promoting awareness of the Convention.
3. That deprivation of liberty needed to be addressed including the issuance of codes and rules and the establishment of monitoring bodies to ensure compliance with the UNCRPD and the European Convention on Human Rights (ECHR).
4. That provision should be made for independent reviews of deprivation of liberty and that the question of capacity to consent should be specifically linked in any new legislation.

Although the 2016 Bill has been deemed necessary to give effect to the UNCRPD, it lapsed with the last Dáil and has not been reintroduced.

In a 2018 submission, the Society welcomed proposals for a legislative framework in respect of the right to liberty which would enable Ireland to further comply with the requirements of the UNCRPD and appreciated that the draft legislation would form a new part of the *Assisted Decision-Making (Capacity) Act 2015*.

The Society further noted that the Assisted Decision-Making (Capacity) Act 2015 ('the **2015 Act**') had taken several years from initiation to enactment. It had gone through a detailed process of legislative scrutiny aimed at ensuring that it would comply, in particular, with the UNCRPD. The overall objective of the 2015 Act was to have a rights-based approach to decision-making capacity in compliance with human rights obligations contained in the Constitution of Ireland, the ECHR, the UNCRPD and also to ensure that Ireland adhered to its international human rights obligations generally. Accordingly, the Society recommended that any addition to the 2015 Act must meet the human rights standards required of the State.

To date, and despite a detailed report on the issue, the development of deprivation of liberty safeguards legislation (which was to be included in the *Assisted Decision-Making (Capacity) Act 2015*) has not formed part of any legislative proposal.

It is also noted that the 2015 Act has, for the most part, not been commenced and despite the establishment of the Decision Support Service under the Act, its launch is delayed to 2022 due to an insufficient budget allocation (even though this now appears to have been addressed). It is important that there is no further unnecessary delay in implementation of this legislation which is integral to the State's compliance with the UNCRPD.

Finally, the Society notes publication on 3 March 2021 of a consultation on the long-awaited review of the *Mental Health Act, 2001* and appreciates that the Department of Health is calling for written submissions from members of the public and key stakeholders on the issue. We look forward to reform in areas of importance to Ireland's compliance with the UNCRPD.

## Recommendations

- Commence key elements of the existing legislative framework for people with disabilities as a matter of priority.
- Adopt a legislative framework with regard to the right to liberty to enable Ireland to further comply with the requirements of the UNCRPD.
- Re-prioritise legislative initiatives which are integral to the State's ratification of the UNCRPD.

### Police reform

In a [February 2018 submission](#), the Society noted the establishment of the Commission on the Future of Policing in Ireland in 2017 and welcomes its framework for reform comprising five key themes (*Governance, Oversight and Accountability; Recruitment, Training and Professional Development; The role of policing, including community safety, state security and immigration; Technology and Digital Innovation; and Leadership and Structures*) which have at their core, the principles of human rights, justice, inter-agency and international partnership and communities.

The Society has repeatedly urged Government to implement OPCAT without further delay in order to provide for independent inspections of all places of detention, including Garda Stations. Such a mechanism would greatly enhance the operation of governance, oversight and accountability by introducing an effective means to ensure the independent professional scrutiny of police services which would promote excellence in policing standards.

As An Garda Síochána are conferred with many statutory powers which can remove, limit or interfere with the constitutional and fundamental human rights of individuals, the Society strongly encourages the introduction of policies and mechanisms to oversee the accountable exercise of these types of statutory and discretionary powers by Gardaí.

Again, the Society has repeatedly called for equal access to legal advice for suspects in Garda detention, has been a long-term advocate for reform in the area of detainee rights and has sought to identify and resolve areas of improvement in the system.

In its [2018 submission on the Fifth Programme of Law Reform](#), the Society recommended that it should explore the adequacy of current mechanisms for the facilitation of the role of solicitors in Garda stations by evaluating whether the basis upon which solicitors attend Garda stations (to provide legal advice and attend interrogations) should be placed on a statutory footing.

The Society emphasised that solicitors play a vital role in overseeing Garda powers of detention by challenging, where necessary, actions which directly encroach on a citizen's right to liberty or silence. A detainee in a Garda station is in a position of considerable

vulnerability. Access to a solicitor presents the opportunity for this vulnerability to be somewhat tempered by a professional who can advocate for detainees' legal, constitutional and human rights.

In addition, people who are arrested and detained on arrival into the country under section 12 of the Immigration Act 2004 (as amended) are not entitled to legal advice or representation through the Garda Station Legal Aid Revised Scheme.

Upon arrival in the State, international protection applicants and immigrants are particularly vulnerable as they are often unaware of their rights and are in fear of deportation/detention. In such circumstances, access to a solicitor would ensure the right to liberty and the ability to apply for international protection, if required.

#### **Recommendations**

- Introduce legislation to implement OPCAT without further delay to ensure independent inspections of places of detention.
- Ensure equal access to legal advice for suspects in Garda detention.
- Ensure access to a solicitor for international protection applicants and immigrants.

#### *Protection Against Racial Discrimination*

The Society notes the submission of Ireland's Report to the Committee on the Elimination of Racial Discrimination in 2018 (Recommendation 135.82).

In its submission on Ireland's Combined Fifth, Sixth and Seventh Periodic Report to the UN Committee on the Elimination of Racial Discrimination, the Society made the following recommendations which continue to be relevant:

1. The National Consultative Committee on Racism and Interculturalism (NCCRI) should be re-established as it is an indispensable resource in combatting racism and promoting interculturalism.
2. The Irish Traveller Movement Independent Law Centre should be reinstated, together with the necessary funding, to ensure that adequate and appropriate legal services are provided which address the specific needs of the Traveller community.
3. Legislation relevant to racially motivated crimes, including online hate speech, should be subject to continuing review.

The State must redouble its efforts to reduce the amount of time that protection applicants spend in direct provision and to ensure full implementation of all recommendations in the McMahon Report.

In relation to the provision of legal services to the Traveller community, the Society notes that the Government adopted a National Traveller and Roma Inclusion Strategy 2017-2021.

The Strategy notes the importance of the State's recognition of Traveller ethnicity and identified 149 separate actions to assist in the social inclusion of the Traveller and Roma communities in Ireland. One of those actions is the provision of support for a "legal advice and advocacy service for Travellers and Roma". While the Department has provided funding in respect of a legal service for the Roma Community, no similar provision has been made for the Traveller community.

The Society also encouraged the State to move forward with its intention to grant asylum seekers the right to work where their claim remains undetermined within nine months, on the basis that the right will promote greater integration and interculturalism.

The Society welcomes the fact that asylum seekers may now seek work after a period of six months in the asylum system.<sup>1</sup> However, the Society also notes that certain invisible barriers to work have emerged for asylum seekers such as the ability to open a bank account to receive wages, inability to apply for driving licenses and difficulties posed by the remoteness of certain Direct Provision Centres.<sup>2</sup>

In a [2020 submission](#), the Society commended the Department's commitment to reforming Ireland's legal framework on issues of hate crime and speech.

It further noted that the [Prohibition of Incitement to Hatred Act 1989](#) ('the **1989 Act**') currently prohibits incitement to hatred against groups of persons in the State (or elsewhere) on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.

The Society considers that the current list of protected characteristics no longer sufficiently meets the needs of Ireland's diverse society and in that regard, it is under-inclusive and insufficiently defined. For example, protections from incitement to hatred do not encompass matters relating to gender, disability, civil status, family status and age.

To ensure effective protection against incitement to hatred based on gender, the Society suggested that gender should be separately and specifically defined to cover acts targeted at individuals based on actual or perceived sex, having multiple protected characteristics, gender identity and gender expression.

The Society further suggested that 'disability' should be defined broadly to include those with actual or perceived physical and/or intellectual disabilities.

The Society noted that the lack of protection from incitement to hatred on the ground of socio-economic status might also exclude highly vulnerable groups which are not captured within other grounds and suggested that the Department of Justice would consider this issue in more detail.

The Society welcomes the publication (in December 2020) of the [findings of the consultation on Hate Speech and Hate Crime](#) and the Department of Justice's commitment to draft new legislation to deal with hate crime (Recommendations 135.115-135.117).

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<sup>1</sup> European Communities (Reception Conditions) (Amendment) Regulations 2021 (S. I. No. 52 of 2021).

<sup>2</sup> See *A White Paper to End Direct Provision and to Establish a New International Protection Support Service, Government of Ireland*, at p.63.

**Recommendations:**

- Remove all remaining barriers to allowing asylum seekers to engage in work.
- Enact effective hate crime legislation and broaden the protected characteristics covered by the 1989 Act to include those based on gender, disability, civil status, family status and age, whether actual or perceived.
- Ensure adequate and appropriate legal services are provided to address the specific needs of the Traveller community.

**International protection**

In 2015, the Society welcomed publication of the Final Report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers and its recommendations for reform, especially in matters such as the introduction of a single application procedure and a time-limited stay of 6-9 months in direct provision.

The Society further noted the State's intention, in light of the Supreme Court ruling in N.H.V –v Minister for Justice & Equality and ors., to opt into the European Union's Reception Directive on the rights of asylum seekers (which protects the right to work for those asylum seekers who have not had their asylum claim determined within nine months).

On a number of occasions, the Society emphasised its concerns around the narrow interpretation of family within the International Protection Act 2015 in the context of family reunification, and the implications for access to justice whereby no designated process of appeal is provided for family reunification applications which are refused.

The Society notes the publication of a White Paper to End Direct Provision and to Establish a New International Protection Support Service in February 2021 and the Government's commitment to ending direct provision and creating a new system grounded in the principles of human rights, respect for diversity and respect for privacy and family life.

The Society has advocated for an end to the non-statutory system of direct provision for many years and recommended the introduction of an alternative system for accommodating and supporting those seeking international protection in Ireland.

We look forward to implementation of the new system over the coming years and the assessment of the impact of that reform. The Society considers that any system which is based on the principles of human rights must include certain legal guarantees as to minimum standards. It must also provide legal remedies for any failure by the State to achieve those standards.

We further noted that the most recent findings of the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in its Second Periodic Report of August 2017 were of relevance in the context of the use of immigration related detention within the international protection system.

UNCAT recommended that Ireland should enshrine in legislation “the principle that asylum seekers should be detained only as a measure of last resort, for as short a period as possible and in facilities appropriate for their status”.

UNCAT also expressed concern around immigration detainees, including international protection applicants, being kept in prisons and police stations alongside remand and convicted prisoners. In this regard, the Society is conscious of the fundamental right to personal liberty and freedom enshrined under Article 40.4.1° of the Irish Constitution together with the State’s obligations under international treaties including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Recommendations:**

- Ensure an end to direct provision and the timely introduction of an alternative system for accommodating and supporting those seeking international protection in Ireland.
- The new system should be supported by legislation to ensure that it is appropriately rights-based and includes remedies where identified standards are not met.
- The State to have due regard to the fundamental Constitutional right of personal liberty and freedom and its international obligations in respect of the treatment of immigration detainees and international protection applicants.



#### **IV. Priority issues which have emerged in the interim**

##### **Covid-19 and human rights implications**

It is evident that, in the face of a pandemic that spread with such speed, no State's legislative framework could have been fully prepared to deal with the challenge societies would face in seeking to stem the spread of Covid-19. This was no different in Ireland.

The State's legislative response to the health emergency presented by the spread of Covid-19 came in the form of two pieces of primary legislation, which were drafted and enacted on an urgent basis and which have been supplemented and extended by secondary legislation adopted by the Minister for Health.

The Emergency Measures in the Public Interest (Covid-19) Act 2020, deals with ameliorative measures to restrict evictions, provide for remote hearings for those detained under the *Mental Health Act 2001*, extend time limits under the Planning Acts, provide for the immediate registration of health care professionals, and other miscellaneous matters.

Notably, while the primary legislation made amendments in respect of certain social protection payments, the most significant social protection response to the emergency i.e. the Pandemic Unemployment Payment was not immediately grounded in statute.

The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 amended the *Health Act 1947* by inserting a new s.31A. Section 31A empowered the Minister for Health to make Regulations imposing restrictions in relation to a number of matters including travel to/from/within the State; the prohibition of specified events; requiring persons to remain in their homes; the closure of premises and other ancillary matters. The Minister is required to have regard to certain matters relevant to the spread of Covid-19 and must consult with other Ministers in making Regulations. Breach of these Regulations can result in penal sanctions.

The Gardaí can direct a person to comply with the Regulations and, if they fail to do so, arrest that person without warrant. A person is liable on summary conviction for breach of the Regulations to a class C fine and/or six months imprisonment.

As can be discerned from political statements made at the time, the dual legislative response was directed towards preventing the further spread of Covid-19 and avoiding the health system becoming overwhelmed, the priority at that time being to "flatten the curve".

The Society foresaw that the above restrictions would have an immediate impact on the legal profession. While the Society was concerned for its members' welfare, it was also conscious of the impact on society if lawyers were not able to continue their crucial work. In a society based on the rule of law and where the right of access to the Courts is constitutionally protected, it is inconceivable that lawyers would not continue to defend clients' rights, even in this set of extraordinary circumstances. That being so, the Society successfully sought the designation of the work of solicitors as "essential services" for the

purposes of Covid-19 Regulations so that they could continue to operate. The Courts remained open so that essential, and often urgent, work could also continue.

The Society made the following recommendations In a submission to the Special Oireachtas Committee on Covid-19 Response:

- In order to lessen the risk of further outbreaks of Covid19 in Direct Provision Centres, the non-statutory system of direct provision should be brought to an accelerated end and an alternative system for accommodating and supporting those seeking international protection put in place. This would require the establishment of a clear statutory framework in relation to the provision of accommodation and supports (which should integrate such supports with the existing system of social protection).
- Given that in homeless accommodation remains unregulated (even though section 10 of the Housing Act 1988 empowers the Minister for Housing to make such Regulations), the Society recommended that consideration be given to introducing Regulations under that section to ensure that public health guidelines could be implemented in emergency accommodation e.g. hostels and homeless shelters.
- In the event of any further/repeated restrictions on movement, consideration should be given to updating and amending Part 2 of the *Emergency Measures in the Public Interest (Covid-19) Act 2020* so that the wide prohibition on evictions envisaged in the legislation would be more specifically set out in law (with key terms such as “eviction” defined) and extended to encompass not only those with formal tenancies but anyone requiring such protection during a period of emergency where that is in the common good.
- Any social welfare scheme put in place to respond to a crisis such as that presented by Covid-19 should be placed on an immediate statutory footing so that recipients have clarity as to their entitlements as well as the benefit of a statutory appeals process in the event of their claim being refused, disallowed or an overpayment assessed against them.

In relation to the restrictions placed on public freedoms the Society emphasised that:

*“there should be greater clarity in explaining the requirements and such requirements should be given legal force. Legislation and Regulations should be put in place so as to remove uncertainty. Absent such legislative and regulatory clarity, compliance is likely to be lessened and resentment will arise between those who follow guidance and those who do not.”<sup>3</sup>*

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<sup>3</sup> A similar view was expressed in a report recently published by the Irish Human Rights and Equality Commission: *Ireland’s Emergency Powers During the Covid 19 Pandemic*, Casey, Doyle, Kenny and Lyons, IHREC Research Series, at p.103.

Unfortunately, the lack of parliamentary oversight in relation to regulations introduced by the Minister for Health under the emergency legislation remains. More parliamentary oversight would allow for debate in relation to any proposed regulations and a more democratic legislative process, and while it is accepted that the time for debate and proposed amendments might be limited in current circumstances, it remains an important aspect of ensuring that secondary legislation, particularly where it has such far-reaching impacts on individual rights, is scrutinised and commented on, before the Minister for Health can exercise his singular power to make regulations.

### **Recommendation**

The Society recommends that any further regulations introduced under section 31A of the Health Act 1947 be referred to the Oireachtas Committee on Justice for consideration and debate.

### **Conclusion**

The Society hopes that our comments and recommendations will be of assistance in the consideration of these important issues.

We will be glad to engage further on any of the matters raised.

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