Ireland: Legal Response to Covid-19
Ireland [ie]

Eoin Carolan, Silvia Gagliardi, Seána Glennon, Ailbhe O’Neill

Content type: Encyclopedia entries
Article last updated: February 2023

General editors: Prof. Jeff King; Prof. Octavio Ferraz
Area editors: Dr. Pedro Villarreal; Dr. Andrew Jones; Prof. Alan Bogg; Prof. Nicola Countouris; Prof. Eva Pils; Prof. Nico Steytler; Dr. Elena de Nictolis; Dr. Bryan Thomas; Dr. Michael Veale; Dr. Silvia Suteu; Prof. Colleen Flood; Prof. Cathryn Costello; Dr. Natalie Byrom.

© The several contributors 2021. Some rights reserved. This is an open access publication, available online and distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0), a copy of which is available at https://creativecommons.org/licenses/by-nc/4.0/. Enquiries concerning use outside the scope of the licence terms should be sent to the Rights Department, Oxford University Press.
I. Constitutional Framework

1. Ireland is a parliamentary constitutional democracy with a written constitution. The Irish Constitution of 1937 (Bunreacht na hÉireann) sets out the framework for the organs of the State. The Irish Parliament, the Houses of the Oireachtas, is bicameral, with an elected Lower House (Dáil Éireann) and an Upper House (Seanad Éireann). Members of Dáil Éireann are elected by a system of proportional representation. Eleven members of the Seanad are nominated by the Taoiseach (Prime Minister), six members are elected by university graduates, and 43 are elected from panels of candidates representing specified vocational interests.

2. The Constitution provides that the Head of State is the President of Ireland and he appoints the Taoiseach upon the nomination of Dáil Éireann. The majority of the President’s powers are performable only on the advice of the Government. One exception to this is the President’s power under Article 26 of the Constitution to refer the question of the constitutionality of a proposed law that has been passed by the Houses of the Oireachtas to the Supreme Court before the law comes into effect.

3. The Taoiseach appoints a government. The Taoiseach, the Tánaiste (Deputy Prime Minister), and the Minister for Finance must be Members of Dáil Éireann. The Constitution also allows two Senators to be members of the Government, but this is rare in practice.

4. By virtue of Article 50 of the Constitution, pre-1922 laws relating to Ireland (eg Acts of the United Kingdom Parliament) and measures adopted by the Irish Free State (1922–1937), which are not inconsistent with the Constitution remain in force. Common law rules which predate 1937 but which are compatible with the Constitution also continue to have legal effect pursuant to Article 50.

5. The courts are vested by Article 34 of the Constitution with an express jurisdiction to determine the validity of any law having regard to the provisions of the Constitution. Article 28(3)(3) of the Constitution permits the suspension of this jurisdiction to invalidate any emergency laws that are expressed to be for the purpose of securing the public safety and the preservation of the State, or any acts so undertaken. This emergency provision is confined to situation ‘of war or armed rebellion’.

6. The sources of legal rules in Ireland are the Constitution, measures necessitated by Ireland’s membership of the European Union (EU), Acts of the Oireachtas (primary legislation), secondary or delegated legislation, and the common law as administered by judges of the superior courts.

7. The Oireachtas may delegate legislative powers to a Minister of Government or a particular authority. The power to make delegated or secondary legislation must be expressly conferred by primary legislation. Henry VIII clauses (statutory provisions that
confer delegated powers to amend primary legislation) are not regarded as constitutionally permissible in Ireland.³

8. Ireland’s system of local government is provided for in the Local Government Acts 1925 to 2019.⁴ The role of local government is recognised in Article 28A of the Constitution which was inserted in 1999. Local authorities in Ireland are responsible for the provision of public services and facilities such as housing, planning, roads, environmental protection, fire services, and maintaining the electoral register. Councils also play a role in supporting economic development and enterprise at a local level.

9. Local government is funded from the Local Government Fund which is a central fund comprising local property taxes, motor taxes, and a contribution from the exchequer. Other sources of funding include commercial rates (taxes), charges for local services, and specific state grants.

10. The Garda Síochána is the national police force. It operates under the Garda Síochána Act 2005.⁵ A Garda Commissioner is appointed by the Government and is responsible for the day-to-day running of the force. The Minister for Justice and Equality is accountable to the Oireachtas for the performance of the Garda Síochána. An independent Policing Authority was established in 2015 to oversee the performance of the Garda Síochána in relation to policing services.

11. Overall responsibility for the health care system lies with the Government and Department of Health. However, the operation of the system is directed on a day to day basis by a statutory agency known as the Health Services Executive (HSE). This operates under the Health Act 2004,⁶ as amended. The Irish health care system remains predominantly tax funded although there is also a sizeable domestic market in private healthcare.

12. There has been no change to the constitutional framework as a result of the Covid-19 pandemic.

II. Applicable Legal Framework

A. Constitutional and international law

13. Ireland is a dualist state. As a member of the European Union (EU), it has amended its Constitution on a number of occasions to provide for the primacy of EU Law in relevant areas.

14. The European Convention on Human Rights (ECHR) was incorporated by the European Convention on Human Rights Act 2003. The Act requires that the courts interpret and apply national provisions, as far as is possible, in accordance with the precepts contained in the ECHR. If a statutory provision or rule of law is not in accordance with the ECHR a Declaration of Incompatibility may issue. This does not affect the validity of the rule in Irish law with the consequence that claimants in rights-based litigation will generally, where possible, seek relief under the Constitution rather than the ECHR Act. The Constitution retains its primacy over the ECHR under the Act.

15. References to international standards and responses to Covid-19 appeared in a number of the measures introduced in Ireland. The powers conferred on the Minister for Health under the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020⁷ required the Minister in making regulations to have regard to the World Health Organization’s (WHO) declaration of a pandemic. The Minister was given a statutory discretion under section 10 to have regard in making such regulations to any relevant guidance provided by the WHO, European Centre for Disease Prevention and Control,
domestic bodies, and ‘other persons with relevant medical and scientific expertise’. The WHO’s International Health Regulations (IHR) had previously been implemented in Ireland by statutory instrument in 2006.8

B. Statutory provisions

16. Article 28(3)(3) of the Constitution provides a formal mechanism for the suspension of certain aspects of the Constitution during a period in respect of which the Houses of the Oireachtas have passed a resolution that a ‘national emergency’ exists. This Article is confined to situations of ‘war or armed conflict’ and so did not apply.

17. Nonetheless, the pandemic was described as an ‘emergency’ by the Oireachtas when enacting the March 2020 Acts (see Part IIA above). The long title of the Emergency Measures in the Public Interest (Covid-19) Act 2020 also made reference to a ‘public health emergency’,9 while both Acts also referred to the ‘immediate’, ‘manifest’, and ‘grave’ risk to human life and public health. The use of the language of ‘emergency’ in a statute does not have any formal legal consequences. There are previous precedents for such usage in Irish law.10

18. As of the date of submission of this report, the Oireachtas had enacted 13 separate pieces of primary legislation to address different elements of the State’s response to the Covid-19 pandemic. In brief, these were as follows:


• The Emergency Measures in the Public Interest (Covid-19) Act 2020,12 enacted on 27 March 2020, made amendments to various statutory regimes affected by the pandemic, including a three-month freeze on rents and evictions, the payment of wage subsidies to employees of affected industries, suspension of certain redundancy rules in employment law, and changes to the time limits, appeal mechanisms, and requirements to attend in person which previously applied under the planning, mental health, and civil registration systems.

• The Microenterprise Loan Fund (Amendment) Act 2020,13 enacted on 10 July 2020, provided for increased borrowing to fund a zero-interest loan scheme for affected businesses.

• The Financial Provisions (Covid-19) Act 2020,14 enacted on 17 July 2020, enabled the state to participate in the EU support scheme established by Article 1 of Council Regulation (EU) 2020/672 of 19 May 2020.15

• The Credit Guarantee (Amendment) Act 2020,16 enacted on 24 July 2020, provided the basis for a credit guarantee scheme. The scheme covered small and medium-cap businesses and offered an 80% guarantee to participating financial providers against losses on lending to eligible borrowers.

• The Residential Tenancies and Valuation Act 2020,17 enacted on 1 August 2020, extended the rent freeze and replaced the three-month moratorium on evictions with an increase in the notice periods required to terminate a tenancy for non-payment of rent until 10 January 2021.
• The Financial Provisions (Covid-19) (No. 2) Act, 18 enacted on 1 August 2020, dealt with various employment and social welfare matters such as an employment wage subsidy scheme, the warehousing of tax liabilities, and the introduction of a tax credit for money spent on holiday accommodation or dining in the State.

• The Companies (Miscellaneous Provisions) (Covid-19) Act 2020, 19 enacted on 1 August 2020, amended the existing company law system to allow for the deferral of statutorily-required meetings for a period, or for them to be conducted remotely.


• The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, 21 enacted on 6 August 2020, provided a statutory basis for public bodies, including coroners and the courts, to exercise their functions via remote means.

• The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020, 22 enacted on 11 September 2020, provided An Garda Síochána with powers to enter, inspect, and either issue or apply to court for closure orders in respect of licensed premises for failure to comply with public health directions.

• The Residential Tenancies Act 2020, 23 enacted on 24 October 2020, reintroduced and extended the prohibition on removal of tenants from their dwelling during specified emergency periods.

• The Health (Amendment) Act 2020, 24 enacted on 25 October 2020, introduced additional enforcement powers for An Garda Síochána. This included powers to impose fines and to issue directions to persons organising or attending an event in contravention of the Ministerial regulations regarding public health measures.

• The Finance (Miscellaneous Provisions) Act 2020, 25 enacted on 16 December 2020, made provision for certain forms of meetings required under banking and other laws to be held by remote means, and for the amendment of fiscal legislation to make provision for the lending of monies to the State by the EU.

• The Finance Act 2020, 26 enacted on 19 December 2020, gave effect to the Budget announcements of Government but also contained a number of specific Covid-related provisions, including regarding the deferral and warehousing of tax payments.

• The Planning and Development and Residential Tenancies Act 2020, 27 enacted on 19 December 2020, provided for the disapplication of certain time limits or periods required under planning laws, and for extension of tenant protection against eviction or rent increases during the period from January to April 2021.

19. The first two Acts identified formed the cornerstone of the state’s initial Covid-19 response. As explained in more detail below (see Part III.B), these were enacted rapidly at specially convened sittings of the Houses of the Oireachtas. The measures were supported by all opposition parties and passed without a formal vote. The President, acting on a request from Government as approved by the Seanad, disapproved the usual five-day waiting
period required by the Constitution and signed the measures into law almost immediately. This expedited process is permitted for ‘any Bill’ under Article 25(2) of the Constitution.

20. The statutory regime for dealing with infectious disease is provided for in the Health Act 1947, as amended. This legislation was introduced to address long-standing public health concerns regarding death rates from tuberculosis.

21. Section 31 of the Health Act 1947 as originally enacted conferred a power on the Minister for Health to make regulations providing for the prevention of the spread of an infectious disease. These regulations could cover, inter alia: the notification of diseases; communication of public health information; requiring persons to undergo medical examinations; requiring persons to remain in their homes; the burial of persons who died from infectious diseases; restrictions on the holding of wakes—a funeral custom in Ireland which typically attracts a large gathering; and restrictions on school attendance.

22. Section 38 of the Health Act 1947 as enacted allowed for the detention and isolation of persons who could not be effectively isolated in their homes. Such orders could be made by a chief medical officer who is of the opinion that a person is a probable source of infection with an infectious disease.

23. The constitutionality of the power to detain and isolate a person suffering from an infectious disease who is a probable source of infection was considered in 2009 by the High Court in S v HSE and ors. Those proceedings concerned a person with tuberculosis who had refused all treatment and was subject to a detention order which held her in an isolation regime in the treating hospital as a result. The High Court upheld the constitutionality of section 38 of the Health Act 1947 as supporting an important public interest objective. The Court observed that the limited safeguards in the 1947 Act were supplemented by the entitlement of an affected person to make a habeas corpus application at any time to the High Court to enquire into the validity of their detention.

24. In response to the Covid-19 pandemic, the Oireachtas introduced a number of amendments to the Health Act 1947.


26. Section 31A conferred a power on the Minister for Health to make regulations for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19, including the spread outside the State, or where otherwise necessary, to deal with public health risks arising from the spread of Covid-19. While this was a general enabling power, section 31A specifically provided that the regulations could include travel restrictions, requiring persons to remain in their homes, the prohibition of events which could reasonably be considered to pose a risk of infection to attendees, or requiring the institution of particular safeguards to prevent, limit, or slow the risk of infection. The Minister was required by section 31A(2) to have regard to various criteria including relevant international guidance, the advice of the Chief Medical Officer, the significant risks to human life and public health posed by Covid-19, and the resources of the health service including the number of health care workers and hospital capacity available at a given time. Contravention of the regulations could constitute a criminal offence, enforceable by An Garda Síochána.
27. Section 31B permitted the Minister to make an ‘affected areas’ order which would apply to any area or region in the State with sustained human transmission or with a high risk of importation of or infection from Covid-19.

28. Section 11 of the Health (Preservation and Protection and Other Emergency Measures in The Public Interest) Act 2020 inserted a new section 38A into the Health Act 1947.33 This empowered medical officers to order the detention or isolation of persons who were a potential source of infection, who posed a potential risk to public health and who could not be effectively isolated at home or in other accommodation agreed or arranged with the Health Services Executive. The medical officer who made the order was required to keep it under review and to ensure a medical examination was carried out as soon as possible and no later than within 14 days. A person subject to an order could request their detention be reviewed by a different medical officer.

29. The March 2020 legislation was debated and voted on by a reduced number of parliamentarians due to public health guidance on social distancing. While queries were raised by some present regarding the scope of the powers conferred by the legislation, both Bills were passed by agreement without a formal vote. The Seanad also passed a resolution for the purposes of Article 25(2) of the Constitution requesting the President to sign the legislation without the usual five-day waiting period. The President signed the measures into law almost immediately.

30. Section 2(3)(b) of the Health (Preservation and Protection and Other Emergency Measures in The Public Interest) Act 2020 provided for a sunset clause under which these powers would cease to have effect on 9 November 2020 unless extended by a resolution of both Houses of the Oireachtas.34 The Irish Council for Civil Liberties had called for the inclusion of such a clause in March when reports had circulated that emergency legislation was under consideration.35 In October, the powers were extended by resolution of the Houses of the Oireachtas until 9 June 2021.

31. Fines for breaches of restrictions were introduced from 24 November 2020 pursuant to the Health Act 1947 (Fixed Payment Notice and Dwelling Event Provisions) (COVID-19) Regulations 2020,36 discussed in further detail in Part IV.B below. Provision for these regulations and for the power to issue fixed notice fines was made in the Health (Amendment) Act 2020, which further amended the 1947 Act by inserting a new section 31C and 31D. 37

32. The constitutionality of both the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the Emergency Measures in the Public Interest (Covid-19) Act 2020 were the subject of judicial review proceedings in O’Doherty v Minister for Health.38 The High Court refused leave to bring the proceedings on the basis that the applicants had identified ‘no factual basis nor any supportive expert opinion’ to ground their application. At the time of submissions of this report, the decision is under appeal.

C. Executive rule-making powers

33. The most common form of delegated legislation in Ireland is the statutory instrument (SI). Most SIs take effect by order of the delegated office holder. In some cases, however, statutory instruments are laid before the Oireachtas for approval. This can be done by way of a negative oversight process under which the SIs take effect unless a resolution is passed
to annul them; or via a positive oversight process under which the laws cannot take effect until they have been approved by the Oireachtas. The latter is relatively rare.

34. The response of public authorities to Covid-19 in Ireland has been implemented through a mixture of primary legislation, SIs, and other forms of regulation or norm-setting which might broadly fall into the category of ‘soft law’ measures. The latter category has included Government directions that certain steps should be taken—for example, that public houses should close before any legal requirement to that effect was introduced—or the publication of advice by the Government or a relevant statutory agency about self-isolation, mask wearing, restrictions on international travel, etc. These are discussed in more detail in Part IV below.

35. While the framework for this response was provided for in primary legislation, the executive has generally been responsible for the design and introduction of specific health measures. From a positivist perspective, this has usually taken the form of SIs issued in the exercise of a delegated statutory power.

36. The legislation conferring the power on the Minister to introduce such restrictions contained a sunset clause which was subsequently extended by the Oireachtas. In addition, where restrictions have been introduced by way of SI, the SI has typically been stated to take effect for a period of time defined in the SI itself. If restrictions are extended or amended, this has been done through the enactment of a new SI.

37. As noted, however, these formal legal rules have also been supplemented by official guidance and advice. As discussed elsewhere (see Part II.D below), this has on occasions led to criticism that there was a degree of uncertainty over the legal status of certain advice. However, it is relevant to observe in this regard that the High Court confirmed in Ryanair v An Taoiseach that such advice could be judicially reviewed.

38. In general, measures introduced under the legislation enacted in 2020 in response to Covid-19 are susceptible to legal challenge. As discussed above (see Part II.B above), the Acts enacted in March as the primary response to the crisis were challenged in O’Doherty v Minister for Health. A number of actions have also been initiated in respect of some of the specific measures introduced under SIs. A total of 94 SIs introduced in 2020 referred to the Covid-19 pandemic in the title of the SI. The majority of these concerned public health measures and were introduced by the Minister for Health under the powers conferred upon him by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.39

39. Forty-four SIs were introduced by the Minister for Health under section 31A of the Health Act 1947, as amended. This section conferred powers on the Minister to make directions aimed at preventing or limiting the spread of Covid-19. By operation of section 5(5) of the 1947 Act, as amended,40 each of these regulations were required to be laid before each House of the Oireachtas using the negative oversight process.

40. These SIs gave a legal basis to several of the public health measures recommended by Government, including: restrictions of movement, internal and external travel, closure of premises, use of face coverings, limitations on gatherings and events, etc (for the specific details see Part IV.A below).

41. One SI was made under section 31B of the Health Act 1947, as amended. It designated the entire State as an area in which there was known or thought to be sustained transmission of Covid-19.41
42. A number of SIs were concerned with the arrival of persons via air or sea. The Health Act 1947 (Section 31A – Temporary Requirements) (Covid-19 Passenger Locator Form) Regulations 2020 were introduced in May 2020 and required persons other than children arriving at a port or airport to complete a Covid-19 Passenger Locator Form. This form contained details of where the person would be residing for 14 days after arrival. Various categories of persons were exempted from this requirement, including international transport workers, HGV drivers, diplomats, transiting passengers, and persons arriving from Northern Ireland. The 14-day period corresponded to the period for which arrivals from overseas were requested to restrict their movements under public health guidance. Restriction of movements meant staying in accommodation as much as possible and avoiding social situations. Outdoor exercise was permitted provided the person remained two metres from others.

43. This guidance was not given legal effect. This led to some controversy over the perceived risk of tourists arriving from other countries and failing to restrict their movements, especially during the summer period.

D. Guidance

44. The Government supplemented the primary and secondary legislation enacted by the Oireachtas by issuing guidance at various points throughout the crisis. Government guidance to the public and public authorities is published on the official Government website. There has been some uncertainty between what has constituted law and non-legally binding guidance. That has particularly arisen where there have been some differences in the advice or views expressed by official Government channels, individual Ministers, and individual members of the National Public Health Emergency Team (NPHET). There has also, at times, been a degree of public and press uncertainty as to the powers of the Garda Siochana to enforce aspects of the guidance.

45. The pandemic has featured a number of direct announcements and addresses by the Taoiseach. The first of these direct Covid-19 related announcements comprised a television broadcast by the Taoiseach on the evening of 12 March 2020 in which it was announced that schools, colleges, and childcare facilities would close; and that arrangements were to be made that persons entering Ireland through ports and airports would be fully informed and would self-isolate if they developed symptoms. It was also advised that gatherings of more than 100 people indoors and mass gatherings of more than 500 people outdoors should be cancelled; while restaurants and cafes were told that they ‘should look at ways that they can implement the public health advice on social distancing’. This advice had no formal legal basis.

46. This potential gap between official advice and the formal legal position was repeated during the pandemic. For example, on 15 March 2020, the Government ‘called on’ all pubs to close, partly in response to social media and newspaper reports of large gatherings in the Temple Bar area of Dublin. It was reported that some insurers initially told pubs that had closed in response to the ‘call’ that they were not covered for business interruptions as they had closed of their own accord because government advice did not amount to an order to close.

47. On 27 March 2020, the Taoiseach announced significant restrictions, including the direction that from midnight of that evening, ‘[e]verybody must stay at home in all circumstances’ with limited exceptions including exercise within a two kilometre radius of their home. It was also announced that non-essential shops and services would be closed. At the same time, the Government website carried an announcement that the list of what constituted essential workers would be ‘published as early as possible tomorrow’ with the advice in the interim being ‘for businesses and services which consider themselves an
essential service, is to remain open, pending publication of the list’.\textsuperscript{48} A list was published the following day on the Government website. However, regulations giving legal effect to the restrictions and identifying what constituted essential services were not enacted until 8 April 2020.

\textbf{48.} The Government has been advised throughout the pandemic by NPHET, which has no law-making powers and its role is advisory only. The Government initially followed its advice in most respects, until a high-profile divergence of views in October 2020. This is discussed below (see Part III.E). Representatives of NPHET have held daily press briefings during the pandemic at which they have answered queries from journalists. There has sometimes been confusion where there has been divergence between official Government policy guidance and the views expressed by NPHET representatives in response to these questions.

\textbf{49.} The guidance ‘requir[ing] anyone coming into Ireland … to restrict their movements for 14 days’ was the subject of legal challenge in \textit{Ryanair v An Taoiseach}.\textsuperscript{49} The State successfully defended the proceedings on the basis that the material published was advisory in character. The case is discussed in further detail in Part IV.A.2 below.\textsuperscript{50}

\section{III. Institutions and Oversight}

\textbf{A. The role of legislatures in supervising the executive}

\textbf{50.} Because the Government of the day depends on the confidence of Dáil Éireann, it is almost always comprised of parties or independent persons who together command a working majority.

\textbf{51.} Article 15(2)(1) of the Constitution states that ‘[t]he sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.’\textsuperscript{51}

\textbf{52.} While there have been significant changes to primary legislation by the Oireachtas, much of the detail has been by way of SIs. The delegation of rule-making power to Ministers via SI in Ireland is limited by the constitutional provision above which informs the application of the principles of administrative law.\textsuperscript{52} These include the requirement for parent acts to contain sufficient principles and policies to guide the exercise of the delegated power;\textsuperscript{53} and a prohibition on Henry VIII clauses (provisions in a primary Act which give the power for secondary legislation to include provisions which amend, repeal, or are inconsistent with the primary legislation).\textsuperscript{54} This means, constitutionally, that it is not permissible for the Oireachtas to confer bare powers on Government. The legislation that confers a rule-making power must impose sufficiently clear limits on the exercise of that power to satisfy the Article 15 principle that the Oireachtas is the ‘sole’ legislative power.

\textbf{53.} Nonetheless, while the constitution requires a degree of ex ante ‘oversight’, there is also a practice of requiring certain regulations or decrees to be placed before the Oireachtas. This is not required by the Constitution but may, on occasion, be taken into account when assessing the constitutionality of a delegation of power on Article 15 grounds.

\textbf{54.} Given its primacy, it is also, in principle, open to the Oireachtas to repeal subordinate legislation at any time.

\textbf{55.} Whether an SI is to be put before the House for approval or not depends on the parent statute. In the case of the public health measures introduced under the Health Act 1947, as amended, section 5(5) requires that these SIs must be laid before the Houses of the Oireachtas and can be annulled by a resolution of either House passed within a period of 21 days thereafter. A motion was moved in September 2020 to annul a regulation introducing
more stringent restrictions on movement and provision of services.\textsuperscript{55} This was defeated by 125 to 15 with two abstentions.

\textbf{56.} More generally, the powers conferred on the Minister for Health by Part 3 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 were subject to a sunset clause. They were due to expire on 9 November 2020 unless a resolution approving an extension was passed by both Houses. The powers were extended, as discussed in Part II.B.

\textbf{57.} In the case of the emergency provisions relating to social welfare payments, rents, and so on introduced under the Emergency Measures in the Public Interest (Covid-19) Act 2020, the Act provided for an ‘emergency period’ of three months which could be extended by order of the Government where the ‘making of such order is in the public interest’.\textsuperscript{56} Any such extension must be laid before the Houses, and could be annulled by a resolution of either House within 21 days. A similar system applied to Part 2 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.\textsuperscript{57}

\textbf{58.} The Oireachtas tests and challenges the Government’s performance chiefly through Leader’s Question-Time debate on coronavirus-related bills brought to the Oireachtas by Government, and through the functioning of the Special Committee on Covid-19 Response.

\textbf{59.} The Special Committee on Covid-19 Response was established on 6 May 2020 and reported to the Oireachtas on 8 October 2020. It was charged with examining the State’s response to the Covid-19 pandemic as it evolved from early 2020. The Committees’ powers included the power to invite submissions, hold hearings with stakeholders including Ministers, and draft and publish reports.\textsuperscript{58}

\textbf{60.} The Report of the Special Committee highlighted areas requiring ongoing oversight and accountability. Following this Report, these areas fell under the oversight of various sectoral joint committees of the Houses of the Oireachtas.

\textbf{61.} The Committee noted that the emergency legislation enacted by the Oireachtas enabled the Government, and the Minister for Health in particular, to make regulations that did not require approval by the Oireachtas. In practice, neither the Oireachtas nor this Committee had an opportunity to consider these regulations. Regulations were not published adequately and in some after they purported to come into effect which breached one of the basic tenets of the rule of law. In addition, ... legislation should be proofed from a human rights and a civil liberties viewpoint. There is also a long tradition of recognising the right to protest.\textsuperscript{59}

\textbf{62.} The Committee recommended that all Covid-19 related legislation has a short sun-set clause and, where legislation is being renewed, that it require the express approval of the Oireachtas to do so. Every opportunity must be given to the Oireachtas to consider measures prior to their enforcemen.\textsuperscript{60}
B. The functioning of the legislature where its ordinary business is disrupted

63. Ireland held a general election to the Dáil on 8 February 2020. As a result of that, the main political party in Government at the time, Fine Gael, lost a significant number of seats and it was accepted that a new coalition government would have to be formed. This did not happen until 27 June 2020 when the main party from the previous government (Fine Gael) entered into a coalition Government with two other political parties, Fianna Fáil and the Green Party, with the incumbent Taoiseach taking up the position of Tánaiste (Deputy Prime Minister).

64. Insofar as the business of the Dáil was concerned, there was concern about the legality of remote or hybrid sittings. Article 15(11) of the Constitution states: ‘[a]ll questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the chairman or presiding members.’ There was a concern that ‘present’ required physical presence.\(^61\)

65. This interpretation was supported by the fact that Article 15(1)(3) of the Constitution envisages that the Houses of the Oireachtas will sit in or near Dublin, but that the Oireachtas can sit in ‘such other place’ as they ‘may … determine’.

66. There are no Standing Orders of either House concerning the permissibility of meeting remotely via technological means, nor are there Standing Orders requiring the Dáil or Seanad to meet in Leinster House (the seat of the Oireachtas).

67. While it was argued by some commentators that remote sittings were permissible,\(^62\) the legal advice obtained by the Oireachtas expressed the view that remote sittings would not conform with Article 15 of the Constitution.\(^63\) As such, the Oireachtas proceeded to sit in physical sessions with adapted arrangements as described below in this Part. Notably, no ordinary committees sat between January and October 2020, when some of the most important legislative and regulatory decisions were made. A Special Committee on COVID-19 Response sat on 29 days between 6 May and 30 September 2020.

68. The Government announced on 12 March 2020 that NPHET (see Part III.E below) had recommended Ireland enter a ‘Delay Phase’ to include ‘reduction of workplace contacts, and implementation of remote working practices and teleconferencing where possible, and not to travel for meetings’. The Ceann Comhairle (Chair of the Dáil) proposed that there be reduced attendance at Leinster House and this proposal was discussed by the Business Committee of the Dáil. The Business Committee is a standing committee of the Dáil and all political parties and technical groups are represented on it. According to Standing Order 31(1),\(^64\) the Business Committee at its weekly meeting ‘shall consider the arrangements for the House and for the taking of its business in the following week.’

69. Standing Order 32(1) provides that ‘[a]s part of its deliberations, the Business Committee may consider proposals in relation to … (h) any other matter which it considers necessary or expedient for the conduct of business in the House’.\(^65\)

70. The Dáil debated the proposal from the Business Committee on 19 March 2020 which included arrangements for the taking of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020.\(^66\)
71. Initially, the Dáil sat in reduced numbers to a maximum of 30% attendance, with proportionate representation from each political party. Later, some Teachtaí Dála (TDs) (members of Dáil Éireann) opted not to attend Dáil statements on health, and instead provided prepared written statements to be read into the Dáil record.

72. The Dáil continued to sit with reduced numbers in Leinster House with Divisions of the House on motions take place in the Dáil Chamber in Leinster House with this reduced attendance. For divisions of the House on legislation, votes are held in a large venue (the Convention Centre) where all Members can attend in a safe, physically distanced manner.

73. On 28 January 2021, the Business Committee decided that the Dáil should sit in the Convention Centre and that the Seanad would alternate its sittings in Leinster House with those of Oireachtas Committees. The latter would be permitted to meet in Leinster House with up to eight such Committees permitted to meet at any one time.

74. The Ceann Comhairle’s original proposal in March 2020 that there be reduced attendance formed one aspect of the legal challenge in O’Doherty v Minister for Health.67 The applicants argued, in partial reliance on the decision of the UK Supreme Court in R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland,68 that the Court had a jurisdiction to review such matters. The High Court rejected this, concluding that the matters in question were non-justiciable under Article 15 of the Constitution.

75. A further issue which arose was the non-sitting of the Seanad for an extended period during the pandemic. This situation arose because of the stalemate over the formation of a new Government following the February 2020 election. Under the Constitution, the Seanad is composed of 49 elected members and 11 nominees of the Taoiseach. However, no nominations were made until the formation of the new Government. The legal advice provided to the Oireachtas was that the Seanad could not lawfully sit in the absence of the 11 nominees. This had the significant practical effect that the Houses of the Oireachtas were unable to pass primary legislation from 29 March until 27 June 2020.69

76. A number of the elected members of the Seanad initiated proceedings in which they contended that the Seanad could lawfully sit prior to the nominations being made. The plaintiffs argued that the constitutional drafters could not have envisaged that the Oireachtas would be prevented from enacting legislation in an emergency situation such as the Covid-19 pandemic. The Divisional High Court held that the text of the Constitution clearly and unambiguously required the Seanad to be comprised of its full complement of 60 members; and that the system of governance established by the People in the Constitution envisaged a Seanad including 11 nominees of the Taoiseach.70 This was described by the Court at paragraph 132 of the judgment as ‘an integral element of the constitutional architecture’. The Court observed in this regard that the Covid-19 situation could not influence the interpretation of the Constitution’s clear and unambiguous text.

77. The Seanad has sat in the Dáil chamber at times when it is not in use by the Dáil. The smaller numbers in the Seanad mean that its sittings can be held there while complying with advice on social distancing.

78. In more general terms, there has been some criticism about the level of parliamentary scrutiny of measures taken during the pandemic.71 The issue was addressed by the Special Committee on Responses to Covid 19 in its recommendations.72 Opposition parties were generally supportive of the necessity for restrictions but increasingly called for more information or transparency about the data or rationale for proposed measures. Particular criticism of the response came from individual parliamentarians, notably Michael
McNamara TD, the Chair of the Special Committee, whose concerns included a perceived unwillingness of political and media figures to scrutinise proposals:

We are in danger of moving into a totalitarian zone. There’s an orthodoxy that needs to be questioned. Nobody dared question the Bishop in 1950s Ireland, either in Leinster House or anywhere in official Ireland, and the people were oppressed and increasingly angry. The medics seem to have stepped into that role. Anyone who dares question them is shot down as a dangerous heretic.73

C. Role of and access to courts

79. The Courts Service of Ireland is the body responsible for the scheduling of court proceedings and management of the court facilities in the State. The procedures for courts are set out in the various court rules issued by the Rules Committee. These are supplemented by practice directions from the judiciary.

80. Following the announcement of the Delay Phase by the Government on 12 March 2020, the Courts Service issued a statement indicating that the courts would continue to operate with mitigating measures in place.74 Court offices remained open and courts continued to hear urgent matters.

81. On 31 March 2020, the Chief Justice of the Supreme Court, together with the Presidents of the other courts issued a further statement that all courts would deal only with urgent cases or concluding those at hearing.75 It was agreed that each Court President would work in conjunction with relevant Courts Service staff to determine the urgent cases which would need to continue to be heard and to put in place practical measures to ensure that those cases could be conducted safely. Transparent screens were placed in front of the judge and registrar in many courtrooms while limits were also placed on the number of persons who could be present in the courtroom.

82. The length of hearings was briefly limited to two hours following media coverage of advice given to members of the Oireachtas that persons should not be present in the same room for more than two hours.76 This was reversed shortly thereafter when further advice was obtained.77

83. Additional Practice Directions and Guidance were issued by the judiciary at various points as the pandemic progressed and the public health advice of the Government evolved. On 9 October 2020, the Chief Justice of the Supreme Court, together with the Presidents of each of the other court levels, issued a statement by way of guidance to the effect that all persons attending court should wear a mask and remain two metres apart.

84. The impact of the pandemic on court hearings has varied depending on the type of proceedings. Some practice areas, such as the wardship jurisdiction of the High Court, have continued to be heard physically throughout the pandemic. Others, such as jury trials or personal injury actions, were effectively suspended in some courts for periods of time.

85. The President of the High Court issued a statement on 26 June 2020 urging parties to engage in an effort to settle personal injury matters.78 She pointed out that 97% of personal injury claims settle, and 89% of these are settled on the day of the hearing. She requested that ‘parties do what they would have done over the past three months and over the next five weeks, had the court been able to list these claims for hearing in the normal way’.
86. Online proceedings have become a regular feature of the business of the courts since April 2020 and this has been particularly prevalent in the Superior Courts. During the annual Easter court vacation, the Courts Service ran mock trials with the assistance of counsel and solicitors to test the technology and procedures. These were then rolled out across a number of different courts with the first case being heard remotely by the Supreme Court on 20 April 2020. Almost all court business in the Court of Appeal was conducted remotely from April 2020 onwards, and 125 cases appeals were heard between that date and 10 July 2020.

87. The Irish courts have used ‘PEXIP’ for remote court hearings. This is a facility which is similar to Zoom, Microsoft Teams, Cisco Webex, or other platforms. It is possible to ‘dial in’ using a mobile phone (or landline). It is also possible to physically attend a court room and use audio visual equipment there to participate in online hearings. This facility has been used by litigants in person and counsel as required.

88. The Court Registrar is physically present in a courtroom during remote hearings. This allows the remote hearing to be recorded using the Digital Audio Recording (DAR) system that is a standard requirement of superior court hearings in Ireland. The location of the courtroom where the registrar will be sitting is identified in the Legal Diary which is published by the Courts Service the day before each sitting.

89. In addition, the general approach of the Courts Service staff and judiciary has been to reassure courts users that there is an appreciation of the challenges that some court users may face arising from remote hearings. This has been communicated formally and informally at hearings. Guidance has been available to court users about the new measures and the communication of these has been clear. It has also become standard practice for judges to formally remind all participants at the commencement of remote hearings of the prohibition on the recording of the proceedings.

90. The courts system has also permitted a number of matters to be dealt with by email rather than appearance. This has been encouraged for non-urgent matters.

91. Article 34(1) of the Irish Constitution requires that justice be administered in public. A number of measures have been taken to address this requirement in the context of remote hearings. Court proceedings are recorded digitally. The Courts Service have also put in place mechanisms for bona fide members of the press to have access to hearings. It is also possible for members of the public to attend court and listen to proceedings there, subject to capacity in accordance with the public health guidance.

92. There have been a number of legal challenges brought to the measures taken by the State to ameliorate the pandemic. In O’Doherty v Minister for Health, the applicants took judicial review proceedings in which they sought to challenge the constitutionality of both the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and the Emergency Measures in the Public Interest (Covid-19) Act 2020. The High Court refused leave to bring the proceedings in this case on the basis that the applicants had identified ‘no factual basis nor any supportive expert opinion’ to ground their application. The decision is presently under appeal (see Part II.E above for further High Court litigation).

93. In addition to the Ryanair v An Taoiseach case discussed in Part III.E above, three other sets of proceedings have been initiated—one challenging the restrictions placed on hospitality venues, one challenging the restrictions placed on places of religious
worship,\textsuperscript{88} and one concerning the alleged restrictions on game shooting.\textsuperscript{89} At the time of writing, these have not been determined.

\textbf{D. Elections}

\textbf{94.} There was a general election in February 2020 as discussed in Part III.B above.

\textbf{95.} An indirect election for Seanad Éireann took place after the 2020 Irish general election, with postal ballots due on 30 and 31 March 2020. Seanad elections usually take place by postal ballot and this was not a departure from the usual electoral procedure. The Seanad was unable to sit formally until the appointment by the incoming Taoiseach of his 11 nominees on 27 June 2020.

\textbf{E. Scientific Advice}

\textbf{96.} The body charged with advising the Government on the public health issues arising from the pandemic is the National Public Health Emergency Team (NPHET). NPHET was established on 27 January 2020 in the Department of Health and is chaired by the Chief Medical Officer. Membership is comprised of representatives from across the health and social care service including the Department of Health, Health Service Executive, Health Protection Surveillance Centre (HPSC), Health Information and Quality Authority (HIQA), and Health Products Regulatory Authority. There are a small number of members outside of these entities on NPHET itself. For example, a Professor of Medicine from Trinity College Dublin who is a consultant in infectious diseases at St. James’s Hospital, the Director of the National Virus Reference Laboratory in University College Dublin, and the President of the Irish College of General Practitioners are also members.

\textbf{97.} The Opposition called for the publication of the governance structures of NPHET and these were made available on 28 April 2020.\textsuperscript{90} This indicated that NPHET had also established a range of sub-groups, many of which involved external experts from the medical profession and relevant academic disciplines. The main sub-group appears to be the Expert Advisory Group (EAG), the mandate for which is stated to be as ‘an important source of independent, ongoing expert advice and support in public health emergencies’. The EAG also has its own research sub-group comprising representatives from the Department of Health, Health Service Executive, Health Research Board, Science Foundation Ireland, and academics.

\textbf{98.} Ten other sub-groups were established, namely the Acute Hospital Preparedness Subgroup; the Behavioural Change Subgroup; the Guidance and Evidence Synthesis Subgroup; the Irish Epidemiological Modelling Advisory Group; the Health Legislation Subgroup; the Medicines and Medical Devices Criticality Assessment Subgroups; the Pandemic Ethics Advisory Group; the Vulnerable Persons Subgroup; the Health Sector Workforce Subgroup; and the Diagnostic Testing Approaches Subgroup.\textsuperscript{91}

\textbf{99.} A further source of expert advice has been the Covid-19 Evidence Synthesis Team established by the Health Information and Quality Authority. This team has prepared reports that synthesise existing evidence and knowledge to inform national strategic decision-making. These evidence syntheses are performed at the request of NPHET and of related groups tasked with the national Covid-19 response. This team’s reports have generally been concerned with issues arising from areas where scientific knowledge is emerging or evolving, such as the merits of mask usage to reduce transmission; the duration of restriction of movement for individuals who may have been exposed to Covid-19;
the potential impact of differing testing scenarios; the duration of immunity and reinfection; and activities associated with higher risks of transmission.\textsuperscript{92}

100. The minutes of NPHET meetings are published, as are the letters from NPHET to the Minister for Health. Decisions made by NPHET are announced through press releases and these have been issued regularly throughout the pandemic, with the Chief Medical Officer—and at times the Deputy Chief Medical Officer—directly addressing the public by way of daily press briefings.

101. NPHET’s Terms of Reference include overseeing and providing direction,\textsuperscript{93} directing the collection and analysis of required data, directing communications at the local, regional, and national level, and evaluating the readiness of Ireland’s health service to manage Covid-19.\textsuperscript{94} NPHET oversees and provides direction, guidance, support, and expert advice on the development and implementation of a strategy to contain Covid-19 in Ireland.

102. The Government is not bound to follow the advice of NPHET and as the pandemic has progressed, there have been instances where the Government has expressly departed from the published NPHET advice.

103. On 4 October 2020, NPHET recommended that the State be put into ‘Level 5’ for four weeks.\textsuperscript{95} This is the highest level of restrictions (see Part IV.A below). The Government initially refused to do this and the Tánaiste was critical that this advice came into the public domain prior to the Government being informed or making a decision.\textsuperscript{96} The Government decided on 8 October 2020 to place the State in a lower level of restrictions (Level 3). There was significant controversy around these developments.\textsuperscript{97} The Government subsequently placed the State in Level 5 from 21 October–1 December 2020.\textsuperscript{98}

104. A further departure from NPHET’s advice took place in respect of the reopening of the hospitality industry in December 2020. NPHET recommended that on exiting Level 5, the Government should restrict restaurants and bars serving food to doing so on a ‘take away’ basis. This was stated to be with a view to ensuring that household visits could be permitted over the Christmas period.\textsuperscript{99} The Government rejected this advice and permitted dining in restaurants and bars from 4 December 2020.\textsuperscript{100}

105. There have also been differences between NPHET advice on travel and quarantine restrictions and the measures adopted by the Government. In May 2020, NPHET recommended a 14-day mandatory quarantine at a designated facility for international arrivals into Ireland.\textsuperscript{101} This was not implemented. NPHET representatives have also stated that travel into Ireland for Christmas was not safe and should be avoided while the Government maintained its approach of advising persons arriving by air or sea to self-isolate for recommended periods.\textsuperscript{102}

F. Freedom of the press and freedom of information

106. There has been no indication of any restrictions on press reporting by the Government during the pandemic.

107. Freedom of information is governed by the Freedom of Information Act 2014.\textsuperscript{103} The Information Commissioner is the office holder responsible for freedom of information in Ireland.\textsuperscript{104} There has been no suspension of the rights to freedom of information and the Information Commission has issued guidance noting the time limits for requests still apply, asking that arrangements be put in place to ensure the greatest possible compliance and
recommending that bodies consider proactively publishing material that is likely to be in high demand or particularly relevant to the crisis.

G. Ombuds and oversight bodies

108. The Ombudsman investigates and reports on maladministration by public bodies and this includes complaints in respect of the Health Service Executive, public hospitals, and nursing homes. There has been no suspension of investigations in health care settings but the Ombudsman has asked that citizens consider whether they really wish to make a complaint of that nature during the crisis and has also indicated the likely delay that might attend the investigation of such complaints.106

109. The Ombudsman has not reported on the investigation of any such complaints since March 2020. There was a completed investigation into the refusal of the Pandemic Unemployment Payment to an individual who was located in Poland when the pandemic interrupted travel. This was resolved in favour of the applicant.107

IV. Public Health Measures, Enforcement and Compliance

A. Public health measures

110. The public health measures taken since the start of the pandemic have included both guidance and formal legal measures. In some instances, there has been uncertainty over the status of some of these measures and whether they are mandatory or advisory in nature. The police have applied a graduated approach to enforcement which seeks to engage and persuade citizens to comply with the measures in place. This has been described by the Gardaí as a ‘4 Es’ approach—‘Engage, Explain, Encourage and Enforce’.108

111. The public signalling of restrictions commenced when the government announced on 9 March 2020 that the St. Patrick’s Day festivities which were scheduled to start on 17 March were cancelled due to the public health advice. The Taoiseach addressed the nation on 12 March 2020, stating that schools and childcare facilities were to be closed temporarily and encouraging home working. On 24 March 2020, citizens were asked to stay at home from midnight on 28 March until 12 April 2020. These restrictions were placed on a legal footing on 8 April 2020 by way of a statutory instrument.111

112. This was extended so that the restrictions lasted from March–May 2020. They were then eased between 18 May and August 2020 following the publication by the government of a ‘Roadmap for Reopening Society and Business’ (‘Roadmap’) on 1 May 2020. The Roadmap set out five phases for the gradual reopening of society and economic activity between May and August 2020: Phase 1 (18 May), Phase 2 (8 June), Phase 3 (29 June), Phase 4 (20 July), and Phase 5 (10 August) with gradual easing of restrictions predicted for each phase. The phases did not progress according to this original time frame and it was announced on 15 July 2020 that Phase 3 was to be extended for three weeks. On 4 August 2020, the start of Phase 4 was delayed for a further three weeks. Additional measures were announced on 18 August 2020.115

113. The Roadmap was replaced by a new framework on 15 September 2020, ‘Resilience and Recovery 2020-2021: Plan for Living with COVID-19’ (‘Plan’). The Plan comprised a risk management strategy for the following 6–9 months and was stated to allow individuals, families, businesses, and services better understand, anticipate, and prepare for the measures government might introduce to stop escalation of transmission of the disease. As
this suggests, the measures introduced at various stages did not always correspond precisely to those originally stated in the Plan.

**114.** The Plan sets out five levels of restrictions. Level 1 is the lowest level of restrictions with 10 visitors from up to three households permitted to visit a private home or garden. Gatherings outside one’s home or garden are permitted to have 50 people. One hundred or 200 attendees are permitted at indoor sports fixtures depending on the venue and up to 500 at outdoor events provided the venue has capacity for 5,000. Weddings may have 100 guests. There are no restrictions on domestic travel at this level and bars, cafes, and restaurants can remain open with protective measures. So called ‘wet pubs’ that do not serve food are also open at this level. Casinos, nightclubs, and discos remain closed at Level 1.

**115.** At Level 2, visitors to one’s home or garden are limited to six people from up to three households. Gatherings elsewhere are limited to six people indoors or 15 outdoors. Fifty people may attend a wedding. Indoor sports fixtures may have 50 attending, or 100 if the venue is large enough. For other indoor events, the limit is 50 people rising to 100 if the venue is large enough. Bars, cafes, and restaurants are open at this level but only 6 people from up to 3 households may sit together and the same restrictions apply to wet pubs. Again, there are no restrictions on domestic travel.

**116.** Level 3 allows garden/home visits from one other household only and all social or family gatherings are banned. There can be no indoor gatherings or sports fixtures with the exception of elite sports. Twenty-five people may attend weddings at this Level. Bars, cafes, and restaurants are open for outdoor dining for 15 patrons only and takeaway or delivery. Wet pubs are open with additional restrictions. Travel is limited to one’s county or region save for work or education or other essential purposes.

**117.** At Level 4, no home/garden visits are permitted and the restrictions on sports fixtures, travel, other gatherings, and dining remain as at Level 3. At this level, wet pubs may only open for outdoor service limited to a maximum of 15 customers. Only six people may attend a wedding at Level 4.

**118.** Level 5 is the highest level of restrictions under the Plan and, at this Level, the additional restrictions are that all sports fixtures are cancelled, bars, cafes, restaurants, and wet pubs may offer only take away or delivery, and travel is restricted to five kilometres from one’s residence for exercise—one may also travel for essential purposes.

**119.** Restrictions were reimposed in September and October 2020. Some of these were eased in December 2020 in three stages—the first being the reopening of retail and services such as hairdressers and gyms (with restrictions) from 1 December 2020, followed by the reopening of hospitality on 4 December and, finally, the easing of restrictions on inter-county movement and household visits on 18 December 2020, (again, with some restrictions maintained). These measures were stated to be in place until 6 January 2021 with a review to take place closer to that date. Due to a significant increase in cases, restrictions were reintroduced earlier from 24 December 2020 with the closure of restaurants, hairdressers, and gastro pubs, followed by a ban on inter-county travel after 26 December. Household visits were reduced to one other household from 27 December.
1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc)

120. The Taoiseach addressed the nation on 12 March 2020, stating that schools and childcare facilities were to be closed temporarily and encouraging home working. On 24 March 2020, he announced that from 27 March until 12 April 2020, persons other than those who were essential workers should stay at home in all circumstances except for shopping, to get medicines, to care for relatives, and brief exercise. Exercise was permitted within two kilometres of one’s home. Those measures were extended until 5 May.

121. The government published a Roadmap for Reopening Society and Business on 1 May 2020, and it was announced that between then and 15 May, the distance within which people could exercise was five kilometres from their home. On 8 June, people were allowed to travel within their own county or 20km from their home or the further of the two. On 29 June, restrictions on domestic movement were lifted.

122. On 15 September 2020, when the Resilience and Recovery 2020-2021: Plan for Living with COVID-19 was announced, the country was placed into Level 2. However, further restrictions at Levels 3 and 4 were implemented in specific counties between 15 September and 21 October. From midnight on 21 October 2020, the State entered into Level 5 with restrictions on movement other than for essential purposes, including exercise within five kilometres from one’s home. These measures, which were to last until 1 December 2020, included a penalty for breaking this rule.

123. From 1 December 2020, all movement restrictions within counties were lifted and it was announced that from 18 December 2020 to 6 January 2021, restrictions on inter-county travel would be lifted. Due to a rise in cases, from midnight on 30 December 2020, Ireland was placed in Level 5 with the restriction of travelling no more than five kilometres from one’s home for exercise and a general statement that people should stay at home.

2. Restrictions on international and internal travel

124. As noted in Part IV.A.1 above, there were measures restricting movement from one’s home without a reasonable excuse. Specified reasons for travel were prescribed at different points as work, provision of essential services, medical reasons, farming, education, accessing childcare, attendance at a funeral, fulfilling a legal obligation, or accessing essential retail services. The restrictions ranged from restricting persons to a 2km, 5km, or 20km radius from their home to a prohibition on the crossing of county boundaries.

125. While the various distance-related restrictions were for the purposes of exercise only, this was understood by many people as a general requirement to remain within these areas for all purposes.

126. On 8 June 2020, people were allowed travel within their own county or 20km from their home or the further of the two. On 29 June, restrictions on domestic movement were lifted and travel throughout the country was permitted.

127. On 7 August 2020, the Taoiseach announced a series of measures for counties Kildare, Laois, and Offaly following significant increases in Covid-19 cases in those three counties. The measures came into effect from midnight that day and remained in place for two weeks. The measures included a prohibition on residents of the three counties travelling outside their county.
128. National restrictions on movement were reimposed on 15 September 2020, at which stage the country was placed in Level 2 of the Plan. Dublin was subject to additional restrictions under which it was recommended that people not leave the county. Level 3 was introduced for Dublin from midnight 19 September 2020, for Donegal from midnight 25 September, and for all other counties from midnight 6 October 2020. Cavan, Monaghan, and Donegal moved to Level 4 from midnight 15 October 2020. Levels 3 and 4 both involved restrictions on crossing county boundaries.

129. On 22 October 2020, the State entered into Level 5 with restrictions on exercise other than within five kilometres of one’s home. These measures, which were to last until 1 December, included a penalty for breaking this rule. From 1 December, all movement restrictions within counties were lifted and it was announced that from 18 December to 6 January, restrictions on inter-county travel would be lifted.

130. In the early stages of the pandemic, there was controversy over the arrival of flights from Northern Italy to Dublin on the weekend of 7 March 2020. An international rugby match had been scheduled between Ireland and Italy for that weekend. The match was cancelled earlier that week but there were calls for the government to also take steps to prevent the flights from going ahead. The Minister for Health rejected this, stating that ‘we don’t have a travel ban in the European Union, there isn’t a global travel ban in place and it is a fact of life that people will continue to move from one member state to another’.

131. On 10 March 2020, the Tánaiste and Minister for Foreign Affairs advised against travel to Italy, and on 13 March 2020, the Tánaiste advised citizens to exercise caution before travelling to EU Member States. On 14 March 2020, non-essential travel to the Czech Republic, Cyprus, Denmark, Malta, Poland, and Slovakia was included within this advice. On 15 March, citizens in Spain were urged to travel home. On 20 March, a general travel advisory was issued urging citizens abroad who wished to return to Ireland to do so promptly. On 27 March, the Tánaiste advised against all non-essential overseas travel.

132. The Government published a ‘Green List’ on 21 July 2020 of countries to which citizens could travel without any requirement to restrict their movements on returning to Ireland. The list included EU/European Economic Area (EEA) countries with a 14-day cumulative disease incidence rate of 25 or less per 100,000, based on data provided by the European Centre for Disease Prevention and Control (ECDPC). Fifteen countries were on the ‘green’ list published in July: Malta, Finland, Norway, Italy, Hungary, Estonia, Latvia, Lithuania, Cyprus, Slovakia, Greece, Greenland, Gibraltar, Monaco, and San Marino. The NPHET advice remained to avoid overseas travel including to these countries. The list was to be reviewed every fortnight on the basis of the same data. The list was amended periodically. For example, the list was amended on 17 September with the changes to take effect from midnight on 21 September. The revised list comprised Cyprus, Finland, Germany, Iceland, Latvia, Lithuania, and Poland.

133. The status of the guidance was the subject of judicial comment in Ryanair v An Taoiseach. These proceedings involve a challenge to the legality of the guidance issued by Government ‘requir[ing] anyone coming into Ireland … to restrict their movements for 14 days’. The State defended the proceedings on the basis that the material published was advisory in character. The High Court expressed the view, in partial reliance on the decision of the New Zealand High Court in Borrowdale v Director-General for Health, that guidance could be amendable to judicial review if it amounted to a clear disregard of constitutional norms such as, for example, representing unequivocally that there was a legal obligation on pain of penalty to comply with a particular measure. The High Court
held that the information published by the government represented an accurate portrayal of the legal status of the travel advice. The High Court also rejected the argument that the conferral by the Oireachtas of a power to disseminate information on infectious diseases on the Minister by way of statutory instrument did not preclude the Government from providing information or advice in other forms in the exercise of the executive power under the Constitution. It also held that the publication of the travel advice was not inconsistent with EU law or the right to freedom of movement guaranteed thereunder.

134. On 8 October 2020, the government announced that from 12 October the increase in the 14-day rate across Europe meant that there were no countries on the green list.\textsuperscript{135}

135. The green list system was abandoned and replaced with the EU Recommendation on a coordinated approach to travel restrictions in the context of COVID-19 which was agreed by the Member States on 13 October 2020.\textsuperscript{136} This ‘traffic lights’ approach provided for regions across the EU and EEA to be categorised as green, orange, red, or grey, on the basis of the risk levels associated with Covid-19.\textsuperscript{137} A combined indicator map is published each week by the ECDPC, based on agreed criteria, including the 14-day cumulative incidence rate, testing rate, and testing positivity rates.\textsuperscript{138}

136. All passengers arriving into Ireland from overseas were obliged to complete a Covid-19 Passenger Locator Form before entry.\textsuperscript{139} In line with the EU Recommendation, there were no entry restrictions on passengers travelling from green regions. Passengers entering Ireland from red, orange, and grey regions were requested to restrict their movements for 14 days. This request did not apply to certain categories of travellers: international transport workers, including workers in aviation, maritime, and road haulage sector, travellers with an essential function or need as set out in paragraph 19 of the EU Recommendation,\textsuperscript{140} passengers arriving from an ‘orange’ region, who have received a negative/not detected’ result from a Covid-19 Polymerase Chain Reaction (PCR) test taken within three days of departure to Ireland.\textsuperscript{141}

137. Travellers from countries outside the EU/EEA were treated under this system as travellers from red/grey regions, including in relation to certain exempted categories.

138. The Department of Foreign Affairs continued to advise against non-essential travel overseas, other than to countries that are part of the EU ‘traffic lights’ approach, where the advice is to exercise a high degree of caution—this includes Great Britain but not Northern Ireland. Pre-departure Covid-19 testing was made available at airports.\textsuperscript{142}

139. When Ireland re-entered Level 5 on 31 December 2020, internal travel restriction, of no more than five kilometres from one’s home for exercise, were reimposed.

\textbf{3. Limitations on public and private gatherings and events}\n
140. There were concerns in early March 2020 about the potential transmission risk of large numbers of visitors arriving into Ireland for St. Patrick’s Day. The Chief Medical Officer stated on 4 March that he saw no reason why the festival should not go ahead as planned. However, a number of local parades were unilaterally cancelled by their organisers in the days after this. Ultimately, an announcement was made on 9 March that the festival would be cancelled.

141. On 24 March 2020, citizens were asked to stay at home, save for essential reasons, from midnight 28 March until 12 April 2020. This was extended twice and not lifted until 18
May. All sporting events were cancelled at this time also. Funerals and weddings were limited to 25 attendees, later increased to 50.

142. People aged over 70 and other vulnerable people were asked to ‘cocoon’ and avoid all meetings with others. It was suggested that they avoid retail and rely on others for groceries, etc. Community groups, the Gardaí, and local Gaelic Athletic Association (GAA) sports clubs provided assistance to cocooners. Many supermarkets allocated dedicated times for cocooners to shop.

143. There were various restrictions imposed on the numbers permitted to attend certain forms of event. The measures ranged from a limit of 50 indoors and 100–200 outdoors, to more restrictive measures which prohibited or limited indoor gatherings to five other persons and limited outdoor events to 15. Different levels applied to a small number of specific forms of gathering, notably weddings and funerals.

144. On 18 May 2020, the country entered into ‘Phase 1’ of the Roadmap and it was permitted to meet friends or family outside, within five kilometres of your home, in groups of no more than four. Older people and those who were ‘cocooning’ were to continue to stay at home, except for brief outdoor exercise within five kilometres of their home.

145. From 8 June 2020, these measures were relaxed as the country moved to Phase 2, with some elements of Phase 3 brought forward. It was permitted to meet up to six people from outside one’s own household both indoors and outdoors for social gatherings. Persons aged over 70 or medically vulnerable were advised to continue to stay home as much as possible. While they could welcome small numbers of people to their own home, they were advised to maintain social distancing.

146. From 15 July 2020, social visits to people’s homes were limited to a maximum of 10 people from no more than four different households and restrictions of 50 people at indoor gatherings and 200 at outdoor gatherings were extended until 10 August. This was following a decision to delay entering into Phase 4 of the Roadmap due to rising case numbers.

147. On 7 August 2020, the Taoiseach announced the first localised restrictions in Ireland during the pandemic. Residents of counties Kildare, Laois, and Offaly were not permitted to leave their own county other than for limited reasons. Restaurants, bars, cinemas, gyms, and other indoor recreational or cultural facilities were also closed in these areas. Indoor gatherings were restricted to a maximum of six people from no more than three households in total, with outdoor groups limited to 15 people. Places of worship could remain open for private prayer but it was advised that religious services should be delivered online or through remote means. A maximum of 25 people were permitted to attend funerals. The measures were lifted on 21 August for Laois and Offaly but remained in place for Kildare for a further two weeks.

148. On 18 August 2020, the government announced new restrictions on gatherings limiting all outdoor events to 15 people. Indoor events were limited to six people with exceptions for religious services, weddings, and businesses such as shops and restaurants. Religious services and weddings were permitted to have 50 people.

149. Shortly after this announcement, a significant public controversy arose when it was reported that more than 80 persons had attended a dinner on 20 August 2020, following a golf event organised by the Oireachtas Golf Society. The event led to the resignation of a number of office-holders in attendance, including the Minister for Agriculture Dara Calleary
TD, the Leas-Cathaoirleach (Deputy Chair) of the Seanad Senator Jerry Butttimer, and EU Commissioner for Trade Phil Hogan.\textsuperscript{158}

\textbf{150.} The event had also been attended by a recently appointed Supreme Court judge. Mr. Justice Seamus Woulfe had been the Attorney General to the previous Government. He was appointed directly to the Supreme Court by the incoming Government. As the Judicial Council Act 2019 had not yet been commenced, an ad hoc inquiry was announced by the Chief Justice into the attendance of the judge at the event.\textsuperscript{159} The report by former Chief Justice Denham concluded that ‘Mr. Justice Woulfe did nothing involving impropriety such as would justify calls for his resignation from office. Such a step would be unjust and disproportionate’ and stated that it would be open to the Chief Justice to deal with the matter by way of informal resolution.\textsuperscript{160} However, further controversy arose when a transcript of the reviewer’s interview with Mr. Justice Woulfe was published.\textsuperscript{161} Media reports suggested that a number of scheduled meetings between the Chief Justice and Mr. Justice Woulfe were cancelled.

\textbf{151.} Subsequently, the Chief Justice took the unusual step of publishing some of the correspondence exchanged with Mr. Justice Woulfe during this process. Notably, the correspondence concluded with the expression by the Chief Justice of his view that the judge ought to resign; and the expression by Mr. Justice Woulfe of the reasons why he believed that would not be appropriate.\textsuperscript{162}

\textbf{152.} The measures imposed on 18 August continued until 18 September 2020, at which stage the Government’s Plan was in place. At that date, Dublin was placed in Level 3 and all outdoor events were limited to 15 people. All indoor events were limited to six people, except for religious services, weddings, and businesses, such as shops and restaurants. The remainder of the country was placed into Level 2.\textsuperscript{163}

\textbf{153.} Donegal was placed in Level 3 on 25 September 2020. All other remaining counties were placed into Level 3 from 6 October 2020.\textsuperscript{164} Donegal, Cavan, and Monaghan, which are located along the border with Northern Ireland, were placed into Level 4 on 18 October 2020. This came a few days after the Northern Ireland executive had introduced a ‘circuit-breaker’ set of restrictions on 14 October 2020 because of concerns over levels of infection in Northern Ireland.

\textbf{154.} On 21 October 2020, the entire country was placed on Level 5 for a six-week period, and people were required to stay at home.\textsuperscript{165} This precluded any visits to other people’s homes or gardens, except in cases where an extended household was appropriate to support defined groups of persons judged to be at risk of social isolation. It was permitted to meet one other household in an outdoor setting, provided that was not a home or garden.

\textbf{155.} In November 2020, fixed penalties were introduced for a range of breaches of the regulations. These included a fine of €100 for leaving one’s place of residence without reasonable excuse and €150 for attending a social gathering in a private dwelling with a €500 fine for anyone organising same.\textsuperscript{166}

\textbf{156.} These measures were eased from 18 December to 6 January 2021 when Level 3 was reinstated. During that period, it was permissible to visit another household and for up to three households to gather.\textsuperscript{167} Ireland’s re-entry into Level 5 from 31 December 2020 meant the reintroduction of the highest level of restrictions with no household visits permitted and no gatherings permitted.\textsuperscript{168}
157. Sporting events were subject to specific measures during this period. The first set of regulations introduced on 8 April 2020 did not contain any exemption for sporting activities with the consequence that both formal training and competition were prohibited. Exemptions were subsequently introduced for elite training and later for elite competition or non-contact outdoor training of no more than 15 persons.

158. Exercise within a two kilometre radius of one’s home was permitted. This was increased to five kilometres on 5 May 2020. From 18 May, it was permitted to exercise outdoors with 3 other persons from a different residence provided it was within five kilometres of one’s home.

159. On 9 June 2020, this was increased further to a 20km radius. In addition, it was permitted to exercise outdoors with a maximum of 14 other persons. An exception to the 20km limit was included for elite sports people, defined as a person competing at a senior level in a Sport Ireland-funded elite scheme or a professional soccer or rugby player, to participate in organised training.

160. From 29 June 2020, events—including sporting events—could be organised outdoors provided the maximum number of persons attending did not exceed 200. This permitted the return of spectators up to 200 attendees.

161. Due to concerns over rising case numbers, attendance at competitive sporting events was restricted to necessary persons only from 3 September 2020. A subsequent report also linked increased transmission rates in certain areas to specific sporting events, notably county finals in Gaelic football and hurling. These matches take place between local clubs. There were reports that there had been significant increases in cases in a number of Local Electoral Areas in which the victorious teams were based. Training was restricted to groups of no more than six persons indoors, or for no more than 15 persons outdoors. Training could include more than one group provided that the groups would not comingle or otherwise come into physical contact with members of other groups. These restrictions did not apply to training for elite sportspeople within defined categories.

162. Over the next two months, the numbers permitted to attend training or events within these categories differed in accordance with the Levels being applied to different local areas. When the country moved to Level 5 from 22 October 2020, elite sporting events or training sessions were permitted to take place provided they were attended only by necessary persons. Outdoor training was also permitted for children in groups of less than 15.

163. The reimposition of Level 5 restrictions on 31 December 2020 reimposed the highest level of restrictions on these activities with the sole exception that persons from up to two households could meet outdoors for exercise with each household restricted to within five kilometres of their respective home.

4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)

164. On 12 March 2020, the Taoiseach in an address to the nation from Washington DC (where he was attending St. Patrick’s Day events) announced the closure of schools, colleges, and childcare facilities, and citizens were asked to work from home where possible. On 15 March, after ordering the closure of bars, the government advised against house parties.
165. Schools, creches, and childcare facilities were closed from 13 March 2020 until the commencement of the school year 2020/2021 at the end of August/early September. There was some Summer Provision for students with special needs.

166. The Annual Leaving Certificate, due to take place in May 2020, was postponed and a system of calculated grades was implemented to allocate ‘points’ to students intending to apply for third level courses. This system was based on an estimated percentage mark given by a teacher involved in the education of the student, which was then entered into an algorithmic process to produce what was described as a ‘calculated grade’.

167. For students who wished to sit them, Leaving Certificate Examinations were held in November 2020, although the results of this sitting would be too late to permit entry to university in the 2020/2021 academic year.

168. In Burke v Minister for Education, a successful High Court challenge was brought against the proposed system by a student who had been educated at home by his mother, who was a qualified teacher. The Department of Education indicated that it could not accept an estimated grade from a teacher who was closely related to a student. The consequence of this was that the student could not receive a calculated grade. His sole option would be to sit the November examinations in person. This would have had the significant effect that the student would not receive results in time to attend a third-level institution in the 2020/2021 academic year. The High Court expressed the view that an independent teacher could have been involved in an assessment of the student such that the refusal to provide a calculated grade was unfair and irrational.

169. The Junior Cycle examinations due to take place in September 2020 were cancelled and replaced with alternative school-based assessments.

170. The reopening of both primary and secondary schools was preceded by the publication of a Roadmap for the Full Return of Schools.

171. Universities, while remaining functional, significantly reduced their on-campus activities with only essential teaching taking place on campus in most institutions. When restrictions began to be eased, these arrangements remained in place and there was no mass return to campuses in Ireland in September 2020. The Minister for Education announced that teaching should be provided online from September 2020—initially this was directed to Dublin institutions and on 25 September this was extended nationwide. There were reports of house parties and gatherings taking place near some campuses and both the Gardaí and university disciplinary organs took action in relation to same.

172. Non-essential business premises were by law required to close between 13 March and 8 June 2020. The list of essential retailers included supermarkets, suppliers of food products and alcohol.

173. Non-essential retail was permitted to reopen from 8 June 2020, with shopping centres opening on 15 June. Pubs serving food, restaurants, cafes, hotels, gyms, cinemas, and hairdressers reopened on 29 June. All of these were closed again when the country entered Level 5 between 22 October and 1 December 2020.

174. There were various restrictions on the hospitality industry. These ranged from closure and limited opening hours to a prohibition on the service of alcohol in the absence of persons ordering a ‘substantial meal’ of not less than €9 value at the same time, and requirements to operate with restricted indoor capacity, with limited outdoor capacity only, or on a takeaway basis. The measures required differed from time to time.
and on a geographical basis. Regulations also required operators of these premises to keep a record of persons attending at the premises for 28 days for contact tracing purposes.²⁹

**175.** So-called ‘wet pubs’ in Dublin—pubs which serve alcohol but not food—were highly restricted. These premises were not permitted to reopen save for takeaway orders. ‘Wet pubs’ in other parts of Ireland were permitted to open on 21 September 2020. This was the fourth date identified for reopening after the Government had previously indicated it hoped to reopen on 20 July, 10 August, and 31 August. Each of these dates were deferred due to concerns over the public health position at the time. These pubs closed again on 22 October 2020 when Level 5 restrictions were re-introduced. An Ernst and Young report commissioned by the Government reported that there was an identified increase in the 14-day disease incidence rate per 100,000 10 days after the re-opening of wet pubs in every county other than Dublin (where they had remained closed).¹⁸⁸ Nightclubs have also remained closed throughout the pandemic.

**176.** Parks were not closed during the lockdown, though children’s playgrounds were closed between 13 March and 8 June 2020. Access to popular coastal swimming areas was effectively blocked at the height of the general lockdown. Playgrounds have remained open since 8 June. Dedicated park hours for cocooners were advertised in public parks.

**5. Physical distancing**

**177.** There was no legally mandatory physical distancing requirement between members of the public. The public health guidance has consistently been that a distance of two metres be maintained between individuals. There was an extensive campaign to promote physical distancing including the provision of visual guides on footpaths and billboards. Businesses in the hospitality and entertainment industry were issued guidelines by Fáilte Ireland (National Tourism Development Authority of Ireland) to maintain various social distancing protocols in place after the general lockdown ended, including the spacing out of customers on their premises.¹⁸⁹

**6. Use of face coverings and personal protective equipment (PPE)**

**178.** The public health guidance on face coverings evolved during the pandemic. Initially, NPHET did not recommend their use citing the potential risks with improper usage. This advice changed following a report by the Health Information Quality Authority.¹⁹⁰

**179.** Mandatory usage of face coverings was instituted on 13 July 2020 in respect of persons over the age of 13 for public transport,¹⁹¹ and from 10 August 2020 in retail premises and other businesses.¹⁹² The latter covers shopping centres, libraries, cinemas and cinema complexes, theatres, concert halls, bingo halls and museums, hairdressers, nail salons, tattoo parlours, travel agents, bookkeepers, and launderettes and dry cleaners. It is an offence to ‘enter or remain in’ such premises without a face covering without reasonable excuse.¹⁹³

**180.** There is an obligation on the occupier, manager, or person in charge of premises to take reasonable steps to inform those entering the premises of their obligations and to promote compliance.¹⁹⁴

**181.** In the case of public transport, the failure to comply with a request from a public transport official was made a penal offence and public transport officials were entitled to seek the assistance of the Gardaí in enforcing compliance. This is distinct from the position in retail premises etc. where the failure to wear a face mask itself comprises an offence.
On 22 November 2020, an SI introduced fixed penalty fines of €80 for non-compliance with face covering requirements.  

In practice compliance in retail and commercial settings is generally on a voluntary basis. There have been some cases of police enforcement, for example, in December 2020, three individuals were reportedly fined for refusing to wear a face covering.  

There is an illustrative list of reasonable excuses for not wearing a face covering including an inability to wear a face covering due to illness, and the obligation does not apply in the case of public transport to drivers in their own compartment or separated by screens. Members of the Gardaí are also exempt.  

Face coverings have not been required in primary schools and are generally not required for children under the age of 13 unless they are attending secondary school where face coverings are required under the Department of Education and Skills Guidance. Teachers in both primary and secondary schools are also required under the Department of Education Guidance, to wear face masks when two metre physical distance cannot be maintained.  

7. Isolation of infected individuals and quarantine of individuals suspected of infection

Section 11 of the Health (Preservation and Protection and Other Emergency Measures in The Public Interest) Act 2020 inserted a new section 38A into the Health Act 1947. This came into effect on enactment on 20 March 2020 and provided for the detention or isolation of persons who were a potential source of infection with Covid-19, who posed a potential risk to public health and who could not be effectively isolated at home or in other accommodation agreed or arranged with the Health Services Executive. The medical officer who made the order was required to keep it under review and to ensure a medical examination was carried out as soon as possible and no later than 14 days. A person subject to an order could request their detention to be reviewed by a different medical officer. These powers appear not to have been used during the pandemic.  

The initial public health advice in February and March 2020 concentrated on the perceived risk of arrivals from areas with high rates of transmission. This referred initially to China with other countries later being included. The advice was that any person who had travelled from an affected area in the last 14 days or had been in close contact with a confirmed case in the last 14 days and was concerned that they may have symptoms should immediately isolate themselves from others and contact their GP by phone.  

The requirement to self-isolate was later expanded to cover persons with symptoms, persons awaiting a Covid-19 test result, or those with a positive test result.  

The advice has consistently been that self-isolation should be for a period of 14 days. Public health advice distinguished between self-isolation and restriction of movements. Self-isolation involved avoiding all contact with other people, including persons in your home as far as possible. Restriction of movement permitted persons to leave their home alone for exercise but advised that contact with other people should be avoided as much as possible. Shopping was permitted but only if necessary. Restriction of movement was advised for contacts of a confirmed case of Covid-19, or arrivals into Ireland from other countries. This did not apply to residents of or arrivals from Northern Ireland.
190. As the proceedings in Ryanair v An Taoiseach confirmed, these restrictions were advisory only. The decision also confirmed, however, that they could in principle be susceptible to judicial review.

8. Testing, treatment, and vaccination

191. Three different stages (contain, delay, and mitigate) of the pandemic have been referred to in Ireland and different people were tested depending on the phase and advice from European Centre for Disease Prevention and Control. Ireland’s testing strategy has varied according to the relevant phase with some disruption where resources and systems were not adequate for purpose.

192. The first case of confirmed Covid-19 in the Republic of Ireland was on 29 February 2020. At this point, Ireland was in the containment phase. Everyone who was in contact with the case was contact traced. From early March 2020, symptomatic persons returning from affected regions and their contacts were tested.

193. On 12 March 2020, NPHET announced Ireland was entering the Delay Phase. When the WHO called on all countries to test every suspected case of Covid-19 on 16 March 2020, there were five hospital sites around the country, in addition to the National Virus Reference Laboratory (NVRL), providing testing.

194. From 26 March 2020, priority for testing was symptomatic people in specific groups, including: close contacts of a confirmed case; health care workers who are front facing/ have regular patient contact; groups most at risk of severe infection such as persons with diabetes, immunosuppressed, chronic lung disease, chronic heart disease, cerebrovascular disease, chronic renal disease, chronic liver disease, and smokers; household contacts of at-risk groups; staff and residents of nursing homes and other residential care settings and those in direct provision; homeless people; Roma and travelling community settings where symptom management is difficult; prison staff and inmates where it may be difficult to implement self-isolation advice; and pregnant women to ensure they can be managed safely in hospital, minimising the risk of spread in the maternity hospital. Nursing homes were prioritised for testing in April 2020.

195. GPs, hospital doctors, and specialists could refer people for testing. Individuals could ring a helpline where they were encouraged to contact their GP by phone. GPs and GP out of hours services carried out triage over the phone and, since mid-March 2020, people were encouraged to contact their GP by phone as first point of contact.

196. Initially, testing took place in hospitals. In the first week of March 2020, the National Ambulance Service began testing in people’s homes. On 17 March the first drive-through testing centre opened in the national stadium, Croke Park, Dublin. By 30 March 2020, there were 47 testing centres operating, in a variety of different places, including healthcare facilities, sporting grounds, and closed airports.

197. Throughout March and early April 2020, there were continuous issues with delays in testing with many people waiting 7–10 days for test results. On 1 April 2020, the HSE and the Minister for Health apologised for delays in test results for Covid-19 citing the global shortage of testing kits, reagents, and other essential equipment. The HSE said it was making every effort to improve turnaround times.
198. The backlog of persons awaiting results grew to 35,000 at one stage and there was an incident in April 2020 where it was reported almost 100 people may have received incorrect results. 209

199. By 27 April 2020, 153,054 tests had been carried out in Ireland, 41,470 of which were carried out over the previous week—37,000 of these tests were carried out in the nursing home sector on both staff and residents.

200. While officially it was stated that tests were being turned around in a 24–36-hour period, there continued to be media reports of delays in test results for people, particularly those in the community. 210

201. The criteria for testing were expanded in March 2020 to include any person with one of the identified symptoms of a cough, fever above 38 degrees Celsius, or shortness of breath. This led to a significant increase in referrals which, in turn, generated a backlog in the testing and tracing system. As a result, the criteria for testing were changed to require two of these symptoms. Pending referrals were cancelled with those who had been referred having to contact their GPs again to be assessed under the new stricter criteria. The test criteria issued to GPs by the HSE changed on 28 April and again on 6 May 2020. 211 The criteria for referral for testing were significantly broadened to cover people with one of a large range of specified symptoms as well as their close contacts. Loss of taste and smell were later added as a symptom in May.

202. There was reported to be tension between NPHET and the Health Service Executive as the latter took issue with commitments given by NPHET about the level of testing that would be provided. 212 A Roadmap to enhance capacity and turnaround for Covid-19 Testing and Tracing was released by the HSE on 14 May 2020 announcing an increase in testing and tracing capacity. 213

203. In April 2020, NPHET established a task force to explore Covid-19 testing. On 27 July, they were critical of the State’s testing and tracing system. 214 Concern was expressed about a lack of capacity to carry out PCR testing, the key feature of the State’s testing strategy. In April, the task force had recommended that more robust governance, management, and co-ordination structures were required. It also cautioned that human resources and infrastructure in universities, industry, and research centres was not being fully utilised. Members of the task force said on 27 July 2020 that their recommendations were ignored and that no feedback was given from NPHET on their report. 215

204. The Department of Health disputed the idea that suggestions from the task force had been ignored and further said that NPHET relied on advice from the WHO and ECDPC, and its own membership. 216

205. Testing capacity was increased over later months by expanding capacity in Ireland and by securing additional testing capacity from laboratories in Germany. The system appeared to have been working effectively after a few months.

206. The vaccination programme commenced in Ireland on 29 December 2020. 217

9. Contact tracing procedures

207. Testing and contact tracing in Ireland has been organised by the Health Services Executive, using a system based on referrals for testing by GPs.
Initially, testing and contact tracing was confined to close contacts of confirmed cases or persons from a limited number of affected areas such as China or Northern Italy.

The contact tracing system involves making contact with a person who has received a positive test and requesting details of the people and places they have visited in the 48 hours before symptoms started. Contact tracers are based at a number of established contact tracing centres and have completed an HSE training programme. If a person tested positive with no symptoms, the contact tracer only requests details of people and places in the 24 hours before the test took place. Contact tracers will then contact close contacts of the person to inform them that they are advised to be tested for Covid-19 and to restrict their movements for 14 days. This period applies even if the test returns a negative result. Contact tracers will try and call close contacts up to five times over two days. Close contacts are defined using guidance from the Health Protection Surveillance Centre and include any individual who had greater than 15 minutes of contact with a confirmed case at a distance of less than two metres.

There is also provision for so-called enhanced tracing where confirmed cases are asked to provide details for a period longer than the usual 48 hours. This can be for up to 14 days. Enhanced tracing has been used for certain complex settings such as nursing homes or meat processing plants. NPHET representatives stated in September 2020 that they did not have the time or resources to conduct this in all cases as the priority was preventing onward transmission from current known cases. However, it was announced that the intention is that a general system of enhanced tracing for a period of up to seven days would commence from the middle of December onwards.

There was controversy in early October 2020 over an incident in which an increase in referrals exceeded capacity in the contact tracing system. This led to a decision being made to request 1,971 people to notify their own close contacts.

The system is supplemented by a contact-tracing mobile phone app, Covid Tracker. The app is designed to use Bluetooth signals from mobile phones to track close contacts with persons who have tested positive for Covid-19. As of the date of this report, the app has 1.3 million active users from a registered user base of 2.2 million. Figures indicate that so far 10,100 users have been alerted by the app that they were a close contact of a positive case.

A significant number of cases—typically more than 30%—have been registered by the HSE as cases of ‘community transmission’. This refers to cases in which contact tracing does not identify the likely source of the infection so that it is unknown how the person became infected.

Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc.

The first case of Covid-19 in a nursing home was identified on 29 February 2020. A decision was taken on 13 March 2020 to suspend routine inspections of nursing homes to avoid spread via inspections. Specific areas of concern and risk were listed in correspondence from the Chief Inspector to the Department of Health on 13 March 2020. Risk inspections resumed in late May 2020 and focused primarily on those centres that had reported confirmed cases of Covid-19.
215. The Health Protection Surveillance Centre of the HSE developed Interim Public Health, Infection Prevention & Control Guidelines on the Prevention and Management of COVID-19 Cases and Outbreaks in Residential Care Facilities. Separate guidance on admissions, visits, and other matters were also issued by the HPSC. Under the Plan, visits to nursing homes were permitted under Level 1 with protective measures, and under Level 2 with enhanced protective measures. For Levels 3–5, the Plan stated that there should be no visits save ‘in critical and compassionate circumstances’. This applied to indoor visits only and window visits were permitted. Some limited visits were permitted in some nursing homes, such as for families of those residents who were facing the end of their lives. There were strict controls around physical distancing, the use of screens, and the number of people that were permitted to visit.

216. Under HPSC guidance for nursing homes that came into effect from 7 December 2020, an updated definition was provided for ‘critical and compassionate circumstances’. It provided that, subject to risk assessment in each case, nursing home residents may receive: up to one visit by one person per week under Levels 3 and 4 of the framework under the Plan; and up to one visit by one person per two weeks under Level 5. It also noted that every practical effort should be made to accommodate an additional visit on compassionate grounds during the period of a major cultural or religious festival or celebration of particular significance to the resident, such as the Christmas and New Year period.

B. Enforcement and compliance

1. Enforcement

217. The military have not played any role in enforcing public health regulations. The primary responsibility for enforcement has been An Garda Siochána (the police). However, only certain of the public health measures announced by Government have had legal effect, and the Gardai have been conferred with enforcement powers in relation to only a certain portion of these.

218. Plans were announced on 13 March 2020 by the Garda Commissioner to respond to the pandemic. These plans were stated to maximise the availability of Gardaí for high visibility policing and included new roster arrangements, postponing retirements, extracting 319 recruit Gardaí to allocate to front-line duties with appropriate supervision, and redeploying Gardaí who work at the Garda College to frontline duties. The organisation also hired 210 vehicles.

219. There has been a degree of public uncertainty at various points of the pandemic regarding the basis and scope of these enforcement powers. Perhaps most notably, the announcement of the first national ‘lockdown’ on 27 March 2020 was accompanied by references from both Government and the Gardai to the role of the Gardai in enforcing the measures. The Gardai announced that they would be conducting high-visibility patrols and checkpoints. While the purpose of this was described in some reports as encouraging compliance, other media reports made reference to the Gardai acting ‘to ensure the public comply with new measures’.

220. In fact, the measures in question were not given legal effect until 8 April 2020 when Health Act 1947 (Section 31A -Temporary Restrictions) (Covid-19) Regulations 2020 was introduced. The Minister for Health was described in media reports as having stated that
these regulations would give the Gardai extra or additional powers to enforce the measures.229

221. This divergence between formal enforcement and advice has been noted by the Policing Authority in its reports. It has recorded in this most recent report that ‘there is some survey evidence that a great many more people believe they have been the subject of the use of new garda powers than the enforcement incidents reported by the Garda Síochána. This refers in the main to those drivers who believe they have been directed, as opposed to being advised or encouraged, to discontinue a journey’.230

222. The same approach was adopted in October 2020 when the announcement was made by the Government that the country was entering Level 3 restrictions. This included a requirement that persons not leave their counties other than for essential reasons. The Gardai had not been provided with powers to enforce this restriction. However, a high-profile policing operation entitled Operation Fanacht (‘wait’ in Gaelic Irish) was announced. This involved checkpoints at 132 locations including major roads and motorways at which Gardai would ask motorists the purpose of their journey and advise people to turn back if they were acting contrary to the regulations.231 The operation led to significant traffic delays on major arterial routes.232

223. The Minister for Justice and Equality requested the Garda Commissioner to compile and publish weekly data on the use of these powers, with a view to ensuring transparency. Garda publications recording data on the use of these powers can be accessed on the website of An Garda Síochána.233 The Minister also requested the Policing Authority to report regularly on the use of the powers.

224. Between 8 April and 31 October 2020, the Gardai exercised powers under Covid-19-related regulations 702 times.234 This included for the purposes of inspecting licensed premises as well as individual breaches of the regulations. Of the latter category, eight incidents related to breaches regarding face coverings, five incidents related to breaches regarding international travel, 11 incidents of suspected breaches of regulations by retailers, and 37 incidents relating to other breaches, for example, organising events which breached regulations.

225. The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 was enacted on 11 September 2020 to provide for additional inspection and enforcement powers for premises with alcohol licences.235 The Act also conferred a power on Gardai to object to the renewal of a licence for premises in respect of which there had been an actual or suspected failure to comply with public health directions. It was reported that this power was used to object to the renewal of a licence by a Dublin premises that was the subject of controversy after video footage emerged of a staff member standing on a bar pouring shots into customers’ mouths.236

226. On 22 November 2020, further powers were given to the Gardai to impose fixed penalty fines of: €80 in relation to breaches of the regulations requiring face coverings on public transport and in certain retail premises; €100 for leaving their place of residence without a reasonable excuse; €150 for attending an unlawful event in a private dwelling; and €500 for organising events that breached the limits imposed on the numbers attending. These powers to enforce fixed payment notices were conferred by the new section 31C of the Health Act 1947,237 as inserted by section 4 of the Health (Amendment) Act 2020.
227. The regulations giving effect to fixed penalty notices were introduced under section 31A (6C) of the Health Act 1947, as inserted by section 3 of the Health (Amendment) Act 2020.  

228. Section 5 of the Health (Amendment) Act 2020 inserted a new section 31D into the Health Act 1947. This conferred powers on a member of An Garda Síochána to direct a person suspected of intending or attempting to enter a dwelling to attend an event to leave the vicinity, and to attend at a dwelling, request the identity of the occupier, and direct the occupier to require all non-residents to leave a dwelling where an unlawful event was suspected of taking place. Failure to comply with a direction under section 31D is a summary offence, punishable by fines up to €1000 and/or imprisonment for up to one month.

229. The Act did not confer a power on Gardai to enter a dwelling for these purposes.

230. The use of anti-spit hoods was permitted from the outset of the pandemic because of concerns over an infection risk from persons spitting or coughing at members of An Garda Síochána. The Irish Council for Civil Liberties has called on the Gardai not to use anti-spit hoods. The most up to date figures indicate that, as of 31 October 2020, these have been used 118 times, including six times on persons under 18.

2. Compliance

231. The Government has reported high levels of compliance across all areas of the regulations. The NPHET Behavioural Change Sub Group also carried out analysis of measures such as handwashing, social distancing, and self-isolation, noting in April 2020 that there was ‘no sign of lockdown fatigue … yet’.

232. The Department of Health commissioned weekly public opinion surveys which it published on its website from 4 May 2020 onwards. The polls captured a range of self-reported behavioural changes, such as handwashing, movement outside the home, and face coverings. On 5 May 2020, the poll reported that 87% of people were staying home more rather than going out, and 16% of adults were wearing face masks in public places—this is not required under the restrictions where masks are required only in certain situations (see discussion above at Part IV.A.6). By 21 December 2021, the number had risen to 93%, with 98% then reporting their use ‘every time’ on public transport and 96% reporting their use ‘every time’ when shopping.

233. The poll on 21 December 2020 also noted that 45% of people thought everyone was following the guidelines, with 32% thinking half of the people were following the guidelines and 8% thinking almost everyone was following the guidelines. Only 2% thought almost nobody was following the guidelines and 11% that most people were not.

234. The Central Statistics Office also published research on the impact of the restrictions which gave some information on compliance levels. In November 2020, when the country was living under Level 5 restrictions, almost two-thirds (65.2%) of respondents rated their compliance with current government advice and guidelines as high, compared with three-quarters (75.4%) of respondents rating their compliance as high in August 2020. Respondents reporting high compliance was lowest in June (59.9%) when the country was just about to enter Phase 3 of the Roadmap and highest in April (80.6%) approximately a month after initial Covid-19 restrictions were implemented.
V. Social and Employment Protection Measures

A. Social protection measures

235. Ireland rapidly introduced a range of new social protection measures from March 2020 in response to the pandemic, including: the Covid-19 Illness Benefit;\textsuperscript{246} the Temporary Covid-19 Wage Subsidy Scheme (TWSS),\textsuperscript{247} replaced by the Employment Wage Subsidy Scheme (EWSS);\textsuperscript{248} and the Covid-19 Pandemic Unemployment Payment (PUP).\textsuperscript{249} Of a labour force of approximately two million, the Department of Social Protection reported that over 1.2 million received at least one payment of PUP, TWSS, or EWSS in 2020 with an average payment of EUR 7,200, and total social welfare expenditure in 2020 increased by 46% to almost EUR 30.6 billion compared to 2019.\textsuperscript{250}

236. The measures were generally backed by the political parties in an effort to achieve a cohesive national response. Many were extended throughout 2021 and 2022. All are now closed.\textsuperscript{251}

1. Social assistance

237. The rate of unemployment rose from 5% in February 2020 to 30.5% in April 2020.\textsuperscript{252} The Department of Social Protection reported that expenditure on social assistance schemes in 2020 was €16.5 billion, 51.5% greater than that reported for 2019, largely due to the introduction of the Covid-19 supports including the PUP, TWSS, and EWSS.\textsuperscript{253}

238. Those in receipt of social welfare payments are paid a Christmas Bonus each year in the sum of 100% of the normal weekly payment; the 2020 and 2021 bonuses were extended to PUP recipients.\textsuperscript{254}

239. The Department of Children operated a Temporary Wage Subsidy Childcare Scheme until 28 June 2020.\textsuperscript{255}

240. The School Meals Programme provides funding allowing participating schools to issue food parcels to students. While the programme normally applies only throughout the academic year, it was extended through the period of school closures in 2020 and continued over the summer holidays in 2021 in response to Covid-19.\textsuperscript{256}

241. The Commission for Regulation of Utilities, the independent energy regulator, has the power to introduce moratoria on disconnections under the Electricity Regulation Act 1999.\textsuperscript{257} The Commission introduced a moratorium on disconnections of gas and electricity in response to Covid-19 for 42 weeks between March 2020 and May 2021; this moratorium was lifted on 1 June 2021.\textsuperscript{258}

242. The Government enacted a series of pieces of legislation to protect tenants at risk of losing their tenancy due to Covid-19. The Emergency Measures in the Public Interest (Covid-19) Act 2020 introduced measures to prohibit rent increases and termination of tenancies by landlords for a period of three months from 27 March 2020.\textsuperscript{259} These protections were extended until 1 August 2020.

243. Concerns were raised within the Government about the constitutionality of ongoing rent freezes.\textsuperscript{260} No challenges regarding the constitutionality of rent freezes during Covid-19 appear to have been launched to date, however the constitutionality of rent freezes continues to be a topic of parliament and media discussion beyond the pandemic.\textsuperscript{261} More specific protections for tenants suffering financial hardship as a result of Covid-19 were enacted under the Residential Tenancies and Valuation Act 2020, enacted 1 August
2020, which introduced temporary provisions to defer rent increases and extend notice periods for termination of tenancies for a failure to pay rent, until 10 January 2021.\textsuperscript{262}

\textbf{244.} The Planning and Development, and Residential Tenancies, Act 2020 extended the protections until 12 April 2021.\textsuperscript{263} The protections were further extended by the Residential Tenancies Act 2021.\textsuperscript{264} The rent increase and eviction protections for tenants economically impacted by Covid-19 were extended until 12 January 2022 under the Residential Tenancies (No 2) Act 2021, enacted 9 July 2021.\textsuperscript{265}

\textbf{245.} Further steps have been taken following the pandemic measures in response to the ongoing housing crisis; a moratorium on serving notices of termination of tenancy until April 2023 was introduced under the Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022, enacted on 29 October 2022.\textsuperscript{266}

\textbf{246.} New rules on rent supplement (a means-assessed, short-term income support) were introduced in March 2020 to support tenants in private rented accommodation struggling to pay rent throughout the pandemic, and were extended throughout 2021.\textsuperscript{267} In August 2020, the Minister for Social Protection announced temporary measures to make rent supplement more easily accessible to survivors of domestic abuse; it was announced in November 2021 that this initiative would be made permanent.\textsuperscript{268}

\textbf{247.} The banking sector introduced measures to support those affected by Covid-19 on a voluntary basis as opposed to being required by law—\textemdash in contrast to the protections for tenants. Members of the Banking and Payments Federation Ireland (BPFI) (banks and non-bank mortgage lenders and credit-servicing firms) agreed in March 2020 to offer mortgage payment breaks of up to three months and subsequently agreed to extensions of a further three months.\textsuperscript{269} Customers availing of payment breaks would not have their credit rating affected.

\textbf{248.} Customers with buy-to-let properties were afforded flexibility including the option of three-month payment breaks, allowing those landlords to exercise forbearance towards their tenants.\textsuperscript{270}

\textbf{249.} The industry-wide option to apply for a payment break expired on 30 September 2020. Although the European Banking Authority stated that banks could offer further payment breaks without affecting customers’ credit ratings in response to the second wave of Covid-19,\textsuperscript{271} the BPFI noted that Irish banks did not intend to do so,\textsuperscript{272} and the Central Bank of Ireland noted that focus shifted in 2021 from wide ranging Covid-19 payment breaks to case-by-case assessment.\textsuperscript{273}

\textbf{250.} Most financial institutions appear to have paused repossession proceedings in respect of residential properties in response to Covid-19 though no statutory moratorium was introduced requiring them to do so.\textsuperscript{274}

\textbf{251.} A new housing strategy, ‘Housing for All’, was launched by the Government on 2 September 2021.\textsuperscript{275} The strategy comprises the Government’s long term housing plan up to 2030 and estimates that Ireland will need an average of 33,000 new homes each year from 2021 to 2030. It contains a range of actions to increase housing supply and affordability and to eradicate homelessness. The Department of Housing published data on 25 November 2022 indicating a record number of people, in excess of 11,000, in emergency accommodation.\textsuperscript{276}
Ireland’s healthcare system is comprised of the publicly-funded system in tandem with a private system. In response to Covid-19, arrangements were entered between the Government and the private hospitals to enable access to the private system to address capacity concerns in the public system.\(^{277}\)

### 2. Social insurance

The PUP was established under the Social Welfare (Covid-19) (Amendment) Act 2020, enacted on 5 August 2020.\(^{278}\) Employees and self-employed persons who lost their job as a result of the pandemic (on or after 13 March 2020) were entitled to receive the PUP, in the amount of €203–350 per week. The amount depended on the person’s average weekly earnings. The Social Welfare (Covid-19) (Amendment) Act 2020 refers to the PUP payments made prior to its enactment as having been made under a statutory provision allowing for supplementary welfare allowance in urgent cases.\(^{279}\) It has been questioned as to whether the latter provision was an appropriate legal basis upon which to administer the PUP.\(^{280}\)

The legislation sets out the eligibility criteria for receipt of the payment, including that the employment was lost as a direct consequence of Covid-19. The rate of payment introduced was a significant increase on standard social welfare payments, with little opposition.

The PUP initially closed to new applicants from 8 July 2021,\(^ {281}\) and the rates were reduced on a phased basis from 7 September 2021.\(^ {282}\) The PUP scheme reopened on 7 December 2021 for those laid off as a result of the introduction of a further round of public health restrictions commencing on that date, including the closure of nightclubs and 50% capacity limits for indoor events.\(^ {283}\) The PUP finally closed to new applicants on 22 January 2022.\(^ {284}\) Jobseekers' allowance and other social welfare supports continue to be available. There were 239,580 PUP recipients in the week ending 22 March 2020, the first week of the scheme.\(^ {285}\) The number of recipients peaked at 605,539 the week ending 3 May 2020.\(^ {286}\) The Department of Social Protection reported in July 2021 that the number of PUP recipients was at its lowest since March 2020 (192,296 people, down from 481,000 in February 2021) likely due to the reopening of indoor hospitality.\(^ {287}\)

Ireland has no statutory sick pay scheme and employees absent due to sickness either avail of their employer’s sick pay scheme or apply for statutory illness benefit.\(^ {288}\)

The Covid-19 Illness Benefit was introduced under the Social Welfare (Consolidation) Act 2005 as amended by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.\(^ {289}\) It was payable to both employed and self-employed persons absent from work due to a diagnosis of Covid-19 or who had been advised to isolate by their doctor or the Health Service Executive. The rate of benefit was EUR 350 per week, an increase on the pre-existing standard rate of benefit of EUR 203 per week. This benefit ended on 30 September 2022 and standard illness benefit rates apply as of 1 October 2022.\(^ {290}\) The Department of Social Protection’s annual statistical report on social welfare services for 2020 noted an increase in expenditure on illness and disability schemes of EUR 263 million in 2020, of which the enhanced Covid-19 Illness Benefit cost EUR 57 million.\(^ {291}\)

A controversy arose in June 2020 regarding the entitlement of PUP recipients to continue receiving the payment if they holidayed abroad.\(^ {292}\) The Minister subsequently clarified that holiday entitlement rules for the PUP would be the same as those for
jobseekers’ payments and that both could travel to Green List countries without impacting their payment.  

259. Where those in receipt of the PUP or payment under the EWSS applied for social insurance payments (e.g., State pension or maternity benefit), they were treated as if they had been paying the insurance contributions per the social insurance class they were paying prior to stopping work.  

3. Tax relief and other social measures  

260. Where employees are required to work from home in compliance with Government recommendations, they may be regarded as ‘e-working’ and can be paid a sum of EUR 3.20 per day tax-free. Where an employer does not contribute to home expenses, employees may claim certain deductions on expenses incurred in the course of their employment, such as electricity, heat, and broadband.  

261. No benefit-in-kind charges apply where employees are provided with office equipment by their employer, where an employer provides temporary accommodation for an employee to prevent the spread of Covid-19, and where an employer incurs the cost of Covid-19 testing in the workplace.  

262. Where an employer incurs the cost of retraining an employee as part of a redundancy package, the cost up to EUR 5,000 is usually exempt from income tax if completed within six months of the termination of employment. This timeframe was extended throughout Covid-19, until 1 May 2021.  

263. Individuals who perform childcare services in their own home may avail of an income tax exemption; Revenue confirmed that where a person performs these services in the child’s home as opposed to their own on public health grounds, they may still qualify for the exemption.  

B. Employment protection measures  

1. Economic support for employers  

264. The Emergency Measures in the Public Interest (Covid-19) Act 2020, enacted 27 March 2020, gave effect to a new scheme, the TWSS. The TWSS was designed to support employers in keeping employees on their payroll throughout the crisis period. Employees could be laid off or on reduced hours or pay, and receive the support directly from their employers through the payroll system. The TWSS applied to employers whose business had been significantly adversely affected by Covid-19. The level of subsidy depended on the employee’s weekly average take-home pay.  

265. Changes to the TWSS were announced by the Minister for Finance in April 2020 to address various issues, in particular that the amount of the subsidy for some lower-paid employees was less than the PUP. The subsidies were altered to address this.  

266. The TWSS was replaced by the Employment Wage Subsidy Scheme (EWSS) from 1 September 2020. The new scheme was established under the Financial Provisions (Covid-19) (No 2) Act 2020. Under the EWSS, eligible employers who kept staff on their payroll received a flat rate subsidy of EUR 203–350 per employee per week, the amount determined by reference to the employee’s pre-pandemic salary. To qualify, the employer had to show that turnover or customer orders had fallen by 30% as a result of Covid-19. In
contrast to the TWSS, this scheme applied to new hires and seasonal workers. The EWSS ended on 31 May 2022. 304

267. The Government launched the Covid-19 Restrictions Support Scheme on 6 November 2020. 305 This scheme was available to companies and the self-employed significantly impacted by the public health restrictions and was established in the Finance Act 2020. 306 The scheme ended on 22 January 2022. 307

268. The Enterprise Support Grant of EUR 1,000 to support self-employed people restarting their business was also continued. 308

269. The Covid-19 Credit Guarantee Scheme was introduced to incentivize financial institutions to support businesses in Ireland. 309 It offered an 80% Government guarantee to facilitate up to EUR 2 billion in lending to eligible small and medium enterprises (SMEs) negatively affected by the pandemic. It was extended to 30 June 2022. 310 A successor to the scheme, the Covid-19 Loan Scheme, was announced on 4 July 2022, offering SMEs loans of between €25,000-1,500,000, with terms of one to six years, and unsecured loans of up to €500,000. 311

2. Worker protection from dismissal and other contractual protections

270. No legal modifications were made to the freedom of employers to dismiss employees, nor were alterations made to allow or restrict variation of contractual terms, as a result of Covid-19.

271. Changes were, however, made to the law on claiming redundancy; where an individual was laid off or put on short-term work due to Covid-19, they were not entitled to claim redundancy for a period. 312 This measure was aimed at reducing the number of insolvencies and permanent job losses over the course of the pandemic. It was extended a number of times and ended on 30 September 2021. 313 Workers have since been able to trigger redundancy and access redundancy payments in the usual way.

3. Other worker protections

272. The PUP and Covid-19 Illness benefit were made available to both employees and the self-employed.

273. Existing legislation applicable to employers aims to further diversity and inclusion and prohibit direct and indirect discrimination on various grounds. 314 Employers must provide reasonable accommodation to employees with disabilities. 315

274. Short-time work support in Ireland is a form of jobseekers’ benefit for employees placed temporarily on a shorter working week. 316 The rate depends upon the average weekly earnings in the governing contribution year. Where an employee was laid off due to Covid-19, the employer could apply for the EWSS and continue to pay the employee most or all of their pay. Where the employer closed the business due to Covid-19, the employee could apply for the PUP.

4. Health and safety

275. Employers owe a duty of care to their employees to ensure a safe place to work and safe work systems, under both the law of torts and statute. Existing legislation provides for protections for employees and employer/employee duties. 317 Employers have a statutory duty to manage and conduct work activities to ensure, as far as reasonably practicable, the safety, health, and welfare at work of their employees. 318 Employers’ duties, common law and statutory, continue to apply where the employee is working remotely. A failure by an employer to take due care to protect employees from the reasonably foreseeable risks
arising from Covid-19 may give rise to a claim in negligence. These risks not only include physical risks from contracting the virus but also mental health risks, including the risk of overwork and feelings of isolation while working from home. The Government published a national protocol in May 2020, developed and agreed in consultation with employer and employee representative groups, on the return to the workplace, to be overseen by the Health and Safety Authority. It outlined guidance for employers on support for workers who may be suffering from anxiety or stress upon returning to the workplace after a period of isolation.

276. A new Code of Practice on the right to disconnect was signed on 1 April 2021, providing guidance for employers on allowing employees to switch off outside normal working hours. The right to disconnect has not, however, been formally enshrined in legislation to date.


5. Activation

278. EUR 200 million was invested in training and education, work placement schemes, and recruitment subsidies, including: 10,000 additional places on work placement schemes for those unemployed more than six months; 35,000 additional places in further education delivered through a range of initiatives; the Apprenticeship Incentivisation Scheme; and the JobsPlus scheme which will provide 8,000 recruitment subsidies for employers employing people under 30 on the PUP.

279. The Government’s Pathways to Work Strategy 2021-2025 set out a range of new measures assisting people in returning to work and education.

6. Social partners

280. A new public sector agreement negotiated between the Government and the Irish Congress of Trade Unions was agreed in December 2020. It provided for pay increases of 2% aimed at those on lower incomes over the following two years.

281. The Work Safely Protocol on preventing the spread of Covid-19 in the workplace followed high-level dialogue between the Government and trade union and employer representatives and has been revised following discussion at the Labour Employer Economic Forum, a forum for high level dialogue between the Government, trade unions and employer representatives.

282. Employer and employee representative bodies also played an active role regarding the wage subsidy schemes. An anomaly in the operation of the TWSS was flagged by unions in April 2020 when it emerged that women returning from unpaid maternity leave were ineligible for the scheme. Revenue subsequently confirmed the anomaly would be addressed retrospectively.

283. Unions representing healthcare workers lobbied for recognition of the contribution of members’ roles in responding to Covid-19 and referred the matter to the Labour Court. A recommendation was issued on 22 September 2021 in which the Labour Court recommended that the parties should make every effort possible to achieve clarity as regards potential arrangements to address the claim at the earliest opportunity, including effective engagement with the Trade Union side. A tax free payment of up to EUR 1000 was subsequently announced by the Government in January 2022 for eligible healthcare workers in recognition of their work throughout the pandemic.
while over 190,000 workers are entitled to the payment, an estimated 66,000 have not yet received it.\textsuperscript{332}

\textbf{284}. The Code of Practice on the Right to Disconnect of 1 April 2021 was developed by the Workplace Relations Commission with contributions from the trade union and business representative groups, ICTU and IBEC.\textsuperscript{333}

\section*{7. Other legal measures}

\textbf{285}. Ireland currently has no statutory mechanism by which employees can request flexible working—with the exception of reasonable accommodation for employees with disabilities. The Government’s National Remote Work Strategy, however, was launched in January 2021 with the stated aim of making remote work a permanent feature of the workplace post-pandemic.\textsuperscript{334} New legislation is expected to be enacted by the end of 2022, the Work Life Balance and Miscellaneous Provisions Bill 2022,\textsuperscript{335} which integrates the previously published Right to Request Remote Working Bill.\textsuperscript{336} It is expected that employees will have the right to request remote working under this integrated Bill. The Bill has the stated purpose of giving effect to the EU Work-Life Balance Directive.\textsuperscript{337} The Programme for Government included a commitment to achieving 20\% home-working in the public sector by the end of 2021.\textsuperscript{338}

\textbf{286}. While there is no specific legislation covering the monitoring of employees, the general principles in the Data Protection Act 2018,\textsuperscript{339} General Data Protection Regulation,\textsuperscript{340} and ECHR apply.\textsuperscript{341}

\section*{VI. Human Rights and Vulnerable Groups}

\textbf{287}. The Covid-19 pandemic exacerbated long-lasting and intersectional inequalities present in Irish society, taking an especially high toll on women, members of the Traveller community, children from disadvantaged groups, older people, persons with disabilities, people in custody, and non-nationals.\textsuperscript{342} Whereas rights were not entirely suspended by the Government and the \textit{Oireachtas} (the National Parliament of Ireland), the Minister for Health received broad powers to limit human rights. A wide range of regulations, which imposed criminal liability on aspects of daily life were introduced.\textsuperscript{343}

\textbf{288}. Problematic trends \textit{vis-à-vis} the rule of law and the enjoyment of human rights, especially by vulnerable groups, have been identified in the academic commentary on the pandemic. First, the ‘blurring of the boundary between legal requirements and public health guidance.’\textsuperscript{344} Second, the ‘potential for emergency measures and their enforcement to disproportionately affect certain disadvantaged and more vulnerable groups, including the significant effect of indirect enforcement.’\textsuperscript{345} Third, the absence of human rights-related expertise and knowledge in the decision-making structures addressing the pandemic, or in the systems that oversee these decisions. A lack of consultation with impacted groups has also been remarked upon.\textsuperscript{346}

\textbf{289}. One of the recurring issues in the human rights commentary around Ireland’s response to the pandemic has been on the role, composition, and \textit{modus operandi} of the National Public Health Emergency Team (NPHET) for Covid-19. The latter has been described as ‘the mechanism for coordinating the health sector response to significant public health emergencies. It facilitates the sharing of information between the Department of Health and its agencies. It is a long-standing structure which has been utilised over many years to provide a forum to steer strategic approaches to public health emergencies in Ireland and mobilise the necessary health service responses.’\textsuperscript{347} The structure has been criticised for its lack of diversity of scientific and health perspectives, the under-
representation/absence of specific groups in society therein, and the dearth of expertise/knowledge of human rights and equality principles and good practices.348

A. Civil liberties

290. The Irish Constitution guarantees the freedoms of expression and peaceful assembly.349 Despite calls to ‘include small, safe protest as a reasonable excuse in the Emergency Health regulations with clear guidelines on how people could exercise their right to protest in a pandemic-safe manner, protest was not included as an exception to the general restrictions on events at any level.’350 Statutory instrument (SI) No 168 of 2020, Regulation 10A as amended by SI No 171 of 2021, Regulation 2, established that ‘[a]ttendance at a dwelling event for “social or recreational purposes” attracted a criminal penalty from 31 December 2020’.

291. Against this backdrop, it is important to recall a highly mediatised case where Ireland’s Supreme Court upheld a decision to dismiss a challenge by Gemma O’Doherty and John Waters against the constitutionality of laws introduced in response to the Covid-19 pandemic.351 As noted, ‘[t]he applicants considered that the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 and Emergency Measures in the Public Interest (Covid-19) Act 2020 were unconstitutional and sought leave to seek judicial review claiming it was in the public interest.’352 Another relevant case involved two Irish women who were arrested by Gardaí after refusing to quarantine at a designated hotel facility following their return to Ireland from the United Arab Emirates in 2021. In this case, the applicants sought ‘various declarations from the courts including that certain provisions of the 1947 Health Act are invalid, unconstitutional and contrary to the European Convention on Human Rights’.353

292. It has also been suggested that there were inconsistencies in An Garda Síochána (the Irish police force) policing of different groups of protest organisers. While the policing of the Dingle fisherfolk protests was regarded as an example of good practice, in the case of Debenhams store workers’ protests, the approach to policing by Gardaí changed considerably from one location to another across the country, with some protests being tolerated and others dispersed or forcibly broken.354

293. The right to freedom of thought, conscience, and religion is protected by the Constitution.355 Yet, gatherings for religious purposes were restricted at different intervals during the pandemic. Despite exceptions being made for attendance by limited numbers at weddings and funerals, the initial restrictions have been described by some commentators as disproportionate to the objective pursued.356 Following the extension of the sacraments ban after 5 July 2021, the Government was criticised by representatives of the Catholic Church in Ireland for the ‘communication and handling of Covid-19 restrictions around religious sacraments during the summer in letters to Taoiseach Micheál Martin.’357 Overall, it has been argued that ‘a blanket ban on religious services, except for weddings and funerals, could be a disproportionate measure.’358 Concern has also been expressed about a suggested lack of clarity regarding these restrictions and the inconsistency in the way they were policed.359

294. The right to liberty and freedom from arbitrary detention is also enshrined in the Constitution.360 Amendments to the Mental Health Act (2001) were brought in to provide for emergency measures due to the pandemic,361 with specific implications for detention on mental health grounds. The measures allowed inter alia: ‘for changes to the process for reviewing detention by a Mental Health Tribunal … . [The act] permits an independent examination by any consultant psychiatrist who is not treating the patient and not just those on its designated panel.’362 The measures also removed procedural safeguards in relation to submission regarding the patient.363 The Irish Human Rights and Equality Commission
(IHREC) raised concerns about these amendments and measures and highlighted they may be unconstitutional, in addition to violating human rights law. Concerns were also raised regarding the—now discontinued—mandatory hotel quarantine, which was described as ‘a form of deprivation of liberty and is a form of State detention.’

B. Privacy

295. The Constitution includes protections for the family and affirms that ‘the dwelling of every citizen is inviolable.’ The right to privacy has been recognised as an ‘unenumerated constitutional right.’

296. During the pandemic, Ireland adopted new tracking technologies, raising concerns on the right to privacy of people living under its jurisdiction. These include: a CovidTracker app, airport checks, and the pandemic unemployment payment, and Covid-19 passports/vaccine certificates. While it was argued that the Irish Government did not systematically assess the possible impact of technology on the users’ right to privacy through the principles of necessity and proportionality, concerns have also been raised as to the effectiveness and transparency in the usage of these measures.

C. Gender

297. The Irish crisis management response to the pandemic has been described as displaying a ‘gender-blind approach.’ This was rooted in a ‘political grammar’ of togetherness, asking for solidarity and volunteerism enmeshed in paternalism where women were called upon to support one another and the policies of lockdown. In terms of representation, while women were almost as equally represented as men in NPHET and its expert advisory group (EAG), both chairs—and public figures overwhelmingly represented in the media—of NPHET and EAG were men. The prioritisation of reopening/resuming of other services, including exemptions from Covid-19 level five restrictions for training and matches in male-dominated elite sport and professional athletes, rather than childcare providers, screening services for forms of cancer affecting women, abortion, and maternity care-related provisions illustrate the arguably gender-blind and discriminatory approach of the State in terms of women’s rights and gender equality.

298. During the pandemic, ‘85% of women said their caring responsibilities had increased ... [and] 55% of women said they had “less time than usual” to look after their own mental health and wellbeing.’ The pandemic has had a disproportionately negative effect on women who are traditionally over-represented in caring and house-keeping jobs and in the informal sector.

299. The so-called ‘shadow pandemic’ of gender-based violence, and specifically violence against women, has affected women disproportionately across the world, including in Ireland. By mid-2020, An Garda Síochána had already reported a 25 per cent increase in domestic abuse during the lockdown. The Irish Government was criticised for a “chronic lack of action” in dealing with domestic and gender-based violence after the delay in publishing two reports on the provision of services and on emergency accommodation. As noted in the official Garda’s report on domestic, sexual and gender-based violence crime levels and operational response in Ireland in 2022, ‘[d]omestic abuse has shown increases since 2013, whilst some of the increase in recent years is attributable to Covid-19-related restrictions, the rate of recorded abuse has continued to rise post-lockdown.’ More specifically, ‘[i]n the first quarter of 2022, domestic abuse calls and incidents were 13% higher than the same time in 2021 (figures up to and including 3rd April 2022). Another area of concern was the pandemic-related limitations to in-person services operated by Tusla, the national Child and Family Agency, as especially at-risk children may have been
caught in vulnerable or harmful situations without interaction with adults outside their families.\footnote{381}

300. Yet, Ireland was commended for at least four ‘positive measures or exemplary practices’ in its response to intimate partner violence during the pandemic. These included a national interagency action plan for domestic abuse in Ireland’s Covid-19 response, accompanied by over EUR 160,000 in funding from the Department of Justice. Second, the Garda’s proactive approach of contacting previous domestic violence victims as part of Operation Faoiseamh. Third, Tusla, Ireland’s Child and Family Agency, also provided over EUR 60,000 in funding to cover Covid-19-related expenses incurred by service providers. Fourth, the Irish judicial services ensured continuity of services by prioritising domestic violence cases.\footnote{382}

\textbf{D. Ethnicity and race}

301. The pandemic has had a disproportionately negative effect on the enjoyment of human rights by migrants and ethnic minorities, especially in terms of their employment and income, housing, health and well-being, education, and immigration services.\footnote{383} Workers’ exposure to discrimination and exploitation increased with disadvantaged children bearing the brunt of school closures both in terms of education, mental health, and freedom from violence and abuse.\footnote{384}

302. There have been reports of a rise in racist attitudes and attacks against people of Asian descent blamed for the origins of Covid-19 in China.\footnote{385} According to the Irish Network Against Racism (INAR), racist hate speech and graffiti in 2020 increased significantly, with the former doubling compared to 2019. Out of 700 reports of hate incidents, 159 cases involved criminal offences in 2020, with 51 cases of racist assaults; this constitutes ‘the highest ever rate of assaults reported to iReport.ie, continuing the pattern of 2019.’\footnote{386}

303. While ‘the existing criminal laws of the State party do not include substantive racist hate crime offences or provide for aggravating circumstances for such a crime,’\footnote{387} a General Scheme Criminal Justice (Hate Crime) Bill was introduced by the Justice Minister in April 2021.\footnote{388} An amended Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 (105) sponsored by the Minister of Justice is currently before the Dáil Éireann (House of Representatives), at the second stage.\footnote{389}

\textbf{E. Disability}

304. The Constitution enshrines the right to equality.\footnote{390} The latter is interpreted expansively as referring to people’s immutable characteristics that are crucial to their identity and sense of self, and that have been at times grounds for discrimination or stereotypes against them.\footnote{391} Furthermore, ‘equality legislation, principally the Employment Equality Acts 1998–2015 and the Equal Status Acts 2000–2018, prohibits discrimination on the ground of disability in employment and in the provision of goods and services, and impose obligations on public and private employers and on service providers in terms of reasonable accommodation.’\footnote{392} However, ‘Covid-19 has given rise to significant risks of discrimination and the undermining of rights for persons with disabilities.’\footnote{393}

305. While Ireland ratified the United Nations (UN) Convention on the Rights of Persons with Disabilities, legislative and administrative challenges remain to guarantee the equal enjoyment of human rights by persons with disabilities. These challenges have been compounded by the pandemic and include: the absence of systematic consideration of human rights and equality considerations from the beginning of the crisis; the under-representation of persons with disabilities and relevant groups from decision-making and oversight bodies to the Government response to the pandemic; the differential and
disadvantageous treatment of persons with disabilities in congregated settings; the absence of specific measures tackling the differential and compounded impacts of the crisis on both impairment groups and persons with disabilities who also belong to other equality groups.  

**306.** Of note, ‘while progress has been made, significant gaps and vulnerabilities in existing policy and services—including slow progress in implementing the State’s own policy of de-congregation, and the contingent nature of some supports, such as personal assistants—has resulted in a disproportionate impact on people with disabilities.’  

In its initial report (November 2021) to the Committee overseeing the implementation of the UN Convention on the Rights of Persons with Disabilities, Ireland declared the following: in the context of the Covid-19 pandemic, ‘NPHET established a Vulnerable Persons Subgroup to provide guidance on the specific preparedness, measures and actions needing to be taken to protect vulnerable groups and individuals. The Vulnerable Persons Subgroup included representatives of disability and mental health service users’ organisations.’  

The Government reported, inter alia, of having introduced expanded Summer Programmes in 2020 to children with certain disabilities and additional needs.

**F. Elderly**

**307.** Specific measures were brought in to curb the spread of Covid-19 and reduce the loss of life especially for vulnerable people, including older persons. These measures included: ‘travel restrictions within and to/from the State; restrictions requiring people to remain at home, the prohibition of events, and “any other measures that the Minister considers necessary in order to prevent, limit, minimise or slow the spread of Covid-19.”’  

As reported by Nursing Homes Ireland (NHI), despite ‘the visiting restrictions to nursing homes, cancellation of residential respite, and issuing of public health guidance and more restrictive measures, there have been outbreaks of Covid-19 in nursing homes.’ This situation was caused by ‘inadequate supplies of Personal Protective Equipment, inadequate physical distancing in facilities, low staffing levels, cases of nursing home staff who tested positive for the virus being asked to continue working, poor communication by nursing homes about the welfare of residents with relatives, lack of infection controls within the homes; staff working in both one or more care facilities as well as in general hospitals.’

**308.** As noted in an independent report, ‘[o]ne of the most immediate concerns following the announcement of visiting restrictions [on nursing homes] was the impact on residents of social isolation and separation from their families.’ The detrimental effects of ‘cocooning’ (at home or in nursing homes, often in isolation from others) on older persons have been raised with regards to ‘loneliness and isolation with potential public health impacts.’

**G. Children**

**309.** Socio-economic inequalities in Ireland have grown because of the pandemic, including amongst children and youth. Research points to two reasons for this: first, ‘negative effects on wellbeing and mental health have been disproportionately borne by more vulnerable groups.’ Second, ‘the sharp shock to the economy of pandemic-related restrictions’ has affected disproportionately people in precarious jobs, where youth and lower-income groups tend to be over-represented. As noted by the Nevin Economic Research Institute, ‘[t]he evidence suggests that young people, especially young women, those with lower levels of education, those working in occupations with relatively low skills requirements and those working in sectors shutdown by decree (Accommodation and Food,
Wholesale/Retail & Construction) have been most likely to be negatively impacted by covid.\textsuperscript{405}

**310.** The growing inequalities are apparent when considering, for example: the digital divide and literacy; the situation of children with special educational needs; and the situation of younger children.\textsuperscript{406} As an illustration of this, the privatised and paid-for nature of early childhood and after-school care provision has served ‘as a constraint for low-income families, highlighting the importance of community-based provision ... in catering for more socio-economically disadvantaged groups.’\textsuperscript{407} As noted by the same research review, ‘46 per cent of those in households with dependent children were extremely or very concerned about the pandemic’s interruption of education, and a further 43 per cent were somewhat concerned. Levels of “extreme” concern were more than twice as high among those living in the most disadvantaged areas. School closure will also have affected access to additional support for some groups of students provided through schools, including literacy/numeracy supports through the DEIS programme, learning supports and supports for those for whom English is a second language.’\textsuperscript{408}

**311.** Whilst schemes such as the Pandemic Unemployment Payment (PUP) and the Temporary Wage Subsidy have temporarily mitigated the decline in income for those in the lowest income categories, it was expected that the phasing-out of these schemes in the aftermath of the pandemic, together with forecasted high rates of unemployment, would have a negative impact on living standards for many families.\textsuperscript{409} During the Covid-19 pandemic, family carers in Ireland had specific and time-bound social welfare supports they could avail of.\textsuperscript{410}

**H. Prisoners**

**312.** It has been asserted that ‘Ireland’s approach to managing Covid-19 in prisons has been quite successful, with far fewer cases than some prison systems in other parts of the world.’\textsuperscript{411} Nevertheless, this positive outcome has come at a significant price in terms of access to visits and regimes run in prison. The lack of transparency on how prisons are run and Government decisions regarding the vaccination programmes therein have also been criticised.\textsuperscript{412}

**313.** Whereas ‘amendments to the Prison Rules 2007 in July 2020 grant the [Irish Prison Service (IPS)] Director General and prison governors the ability to restrict or suspend the entitlement to physical recreation and exercise in line with public health advice and the Infectious Diseases Regulations 1981,’\textsuperscript{413} there was no set time limitation for these changes to the regime at the time of writing. These changes are significant as the Prison (Amendment) Rules 2020 affirm,\textsuperscript{414} with caveats, that every prisoner should be able to spend at a minimum two hours outside their cells to have ‘meaningful human contact.’\textsuperscript{415} A source collaborating with the IPS noted that access to the gym and other facilities like school, work, and training workshops are resuming but on a scaled back basis, with only a few prisoners allowed in, thereby limiting the overall access.\textsuperscript{416}

**314.** Of concern was the curtailment of physical visits to prisoners, which negatively affects the mental health and psycho-social support especially of young adults incarcerated in Irish prisons. While video visits continued at certain conditions throughout the pandemic,\textsuperscript{417} the IPS announced in July 2021 that visits could resume in person in selected prisons.\textsuperscript{418} As of July 2022, while all visitors continue to be subject to temperature screening and asked questions about Covid-19 upon arrival in prison, the number of physical visits and visitors to Irish prisons was permitted to increase further.\textsuperscript{419}
I. Non-citizens

315. The direct provision (DP) system existing in Ireland since 1999 has long been the object of severe criticism by multiple and varied stakeholders in Irish society and international human rights bodies. The Irish Citizens Information service defines the DP as ‘the accommodation, food, money and medical services you get while your international protection application is being assessed or while you are an asylum seeker, which means the same thing.’ Covid-19 further exacerbated the difficult living conditions of people who live in the DP centres across Ireland.

316. As DPs constitute congregated settings where social distancing is very difficult or impossible to maintain, the Government has been advised time and again to ‘provide single or household occupancy accommodation as an essential measure to ensure social distancing and to limit the spread of the virus.’

317. Other issues that remain to be addressed include: the continuous existence of the DP accommodation in shared living space; unclarity about the temporary accommodation scheme for healthcare workers; the inability for DP inhabitants to access the PUP; the insufficiency of the daily expenses amount for people living in DP; the lack of a vulnerability assessment regarding people in DP; and uncertainty and backlogs in implementing protection procedures.

J. Indigenous peoples

318. As noted in the introduction to Part VI, the pandemic has significantly impacted vulnerable groups, including the Traveller community, an indigenous minority group in Ireland, and has illustrated the interdependent nature of the right to housing to the rights to health and to life, amongst others. After decades of active campaigning by Traveller groups, in 2017 ‘the Irish government granted formal recognition to the Traveller community as a distinct ethnic group – a move hailed by campaigners as an important step towards ending the discrimination faced by the community.’

As noted by the Irish Human Rights and Equality Commission, ‘[w]hile the Traveller community accounts for approximately 1% of the general population, it represents approximately 1.8% of all COVID-19 confirmed cases as of 25 November 2020.’ The continuous violations of Travellers’ right to secure and adequate housing have generated a disproportionate impact of the pandemic on this community, highlighting the need for Ireland to take action in this area even more urgent.

Parts I-IV:

Prof Eoin Carolan, University College Dublin

Dr Ailbhe O’Neill, Trinity College Dublin

Parts V-VI:

Seána Glennon, Sutherland School of Law, University College Dublin

Dr Silvia Gagliardi, Sutherland School of Law, University College Dublin

Footnotes:

1 Irish Constitution of 1937 (Bunreacht na hÉireann).
2 *Pigs Marketing Board v Donnelly (Dublin) Ltd* [1939] IR 413 (High Ct).

3 *Harvey v Minister for Social Welfare* [1990] 2 IR 232 (Supreme Ct).


6 Health Act 2004.


10 See, for example, the Financial Emergency Measures in the Public Interest Act 2009.


16 Credit Guarantee (Amendment) Act 2020.


28 Health Act 1947 (as amended).

29 Health Act 1947, s 31.

30 Health Act 1947, s 38.

31 *S v HSE and ors* [2009] IEHC 106 (High Ct).


33 Health (Preservation and Protection and Other Emergency Measures in The Public Interest) Act 2020, s 11.

34 Health (Preservation and Protection and Other Emergency Measures in The Public Interest) Act 2020, s 2(3)(b).

35 Irish Council for Civil Liberties, ‘ICCL says emergency legislation must include sunset clause’ (17 March 2020).


37 Health (Amendment) Act 2020.

38 *O’Doherty v Minister for Health* [2020] IEHC 209 (High Ct).


40 Health Act 1947 (as amended), s 5(5).

41 The Health Act (Affected Areas) Order 2020 (SI 120/2020) (10 April 2020).


43 See, for example, Digital Desk, ‘Tour operator cancels guided cycle after learning tourists from US had not self-isolated after arriving’ The Irish Examiner (Online, 12 July 2020).


46 P O’Dwyer, ‘Donohue told insurers they risked ‘irreparable damage’ to reputation’ *The Business Post* (Dublin, 31 May 2020).


49 *Ryanair v An Taoiseach* [2020] IEHC 673 (High Ct).

50 *Borrowdale v Director-General of Health* [2020] NZHC 2090 (High Ct).

51 Irish Constitution of 1937 (Bunreacht na hÉireann), art 15.2.1.

52 For a detailed account of Irish Law in this area, see G Hogan and G Morgan, *Administrative Law in Ireland* (5th edn, Round Hall 2019).

53 *Bederev v Ireland* [2016] IESC 34 (Supreme Ct); *O’Sullivan v Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 IR 751 (Supreme Ct).

54 *Harvey v The Minister for Social Welfare* [1990] 2 IR 232 (Supreme Ct).


57 Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, s 4(4) and (5).


63 S Murray, ‘Ceann Comhairle tells TDs legal advice says virtual Dáil sittings would be “unconstitutional”’ The Journal (Online, 21 April 2020).

64 Standing Orders relative to Public Business 2020.

65 Standing Orders relative to Public Business 2020.


67 *O’Doherty v Minister for Health* [2020] IEHC 209 (High Ct).


70 *Bacik v An Taoiseach* [2020] IEHC 23 (Divisional High Court).
See the overview in Oran Doyle and David Kenny, ‘Submission to the Oireachtas Special Committee on Covid-19 Response’ (1 September 2020).


Larissa Nolan, ‘Clare TD says return to full lockdown is “act of tyranny”’ Business Post (Dublin, 18 October 2020).


Courts Service, ‘Statement of the Chief Justice and the Presidents of each Court Jurisdiction’ (31 March 2020).

A O’Loughlin, ‘All physical court sittings to be limited to two hours a day’ Irish Examiner (Online, 20 May 2020)

O O’Donnell, ‘Courts Service told no Covid rule on two-hour sitting’ RTE (Online, 21 May 2020)

C O’Keeffe, ‘Top judge urges people to settle personal injury cases’ Irish Examiner (Online, 26 June 2020)

Courts Service, ‘Virtual Remote Courts Piloted in Ireland this morning’ (20 April 2020)

See President of the Court of Appeal, ‘Court of Appeal update Wednesday 21st October 2020’ (21 October 2020).

See President of the Court of Appeal, ‘Statement on 10 July 2020’ (10 July 2020).

See President of the Court of Appeal, ‘Court of Appeal - Notice regarding Remote Hearings - 15/05/2020’ (15 May 2020) [8].

See, for example, The Courts Service of Ireland, ‘Guidance for Participants at Remote Supreme Court Hearings - 23/04/2020’ (23 April 2020).


See President of the Court of Appeal, ‘Court of Appeal - Notice regarding Remote Hearings - 15/05/2020’ (15 May 2020).

O’Doherty v Minister for Health [2020] IEHC 209.

Press Up Ltd v Minister for Health 2020/6859 P.

Ganley v Minister for Health 2020/825 JR.

Flannery v Commissioner of an Garda Síochána 2020/826 JR.


93 NPHET Terms of Reference (11 February 2020).

94 Department of Health, ‘NPHET Terms of Reference’ (17 February 2020).


98 Department of the Taoiseach, ‘Ireland placed on Level 5 of the Plan for Living with COVID-19’ (19 October 2020, updated 22 October 2020).


100 Department of Health, ‘Statement from the National Public Health Emergency Team’ (27 November 2020, updated 30 November 2020)


102 See, for example, ‘Are we allowed to travel home for Christmas or not?’ Irish Times (Online, 14 November 2020).


112 Department of the Taoiseach, Department of Health, ‘Roadmap for reopening society and business’ (18 June 2020, updated 7 August 2020).

113 Department of the Taoiseach, ‘Statement by the Taoiseach’ (15 July 2020, updated 8 April 2021).


116 Department of the Taoiseach ‘COVID-19 Resilience and Recovery 2021 - The Path Ahead’ (15 September 2020).

117 Department of the Taoiseach ‘Briefing on the government’s response to COVID-19’ (30 November 2020, updated 1 December 2020).

118 Department of the Taoiseach ‘Ireland placed on Level 5 Restrictions of the Plan for Living with COVID-19 - with a number of specific adjustments’ (22 December 2020, updated 23 December 2020).


121 Department of the Taoiseach, ‘Briefing on the government’s response to COVID-19’ (10 April 2020).

122 Department of the Taoiseach, Department of Health, ‘Roadmap for reopening society and business’ (18 June 2020, 7 August 2020).

123 Department of the Taoiseach, Department of Health, ‘Easing the COVID-19 restrictions on 8 June (Phase 2)’ (5 June 2020, updated 24 July 2020).


125 L Burne, ‘Simon Harris says banning flights from Italy due to coronavirus will “not be effective”’ The Extra (Online, 4 March 2020).

126 Michael O’Scannail, Irish citizens are recommended not to travel to Italy - Coveney, The Irish Independent, 10 March 2020.


128 Department of Foreign Affairs, ‘Tánaiste calls on Irish tourists in Spain - who want to fly home - to do so by midnight Thursday’ (15 March 2020).

129 Department of Foreign Affairs, ‘General Travel Advisory for Irish citizens traveling overseas’ (20 March 2020).
130 Department of Foreign Affairs, ‘NOTICE – “avoid all non-essential travel at this time”’ (12 March 2020).

131 S Hurley, ‘Government adds 15 countries to ‘green’ list for travel’ RTE (Online, 22 July 2020).

132 Department of Foreign Affairs, ‘Updates to Green List’ (17 September 2020).

133 Ryanair v An Taoiseach [2020] IEHC 461 (High Ct).

134 Borrowdale v Director-General for Health [2020] NZHC 2090 (High Ct of New Zealand).

135 ‘No countries will be on green list from Monday’ RTE (Online, 8 October 2020).


137 Department of Foreign Affairs, ‘EU Traffic Lights Approach to Travel’ (accessed 27 April 2021).


139 Department of the Taoiseach, Department of Health, ‘COVID-19 Passenger Locator Form’ (23 July 2020, updated 1 April 2021).

140 Department of Health, ‘EU Council Recommendation and travel for an Essential Purpose’ (6 November 2020).

141 Department of An Taoiseach, ‘Travelling to Ireland during the COVID-19 pandemic’ (23 July 2020).


143 Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19) (No. 7) Regulations 2020 (SI 442/2020) (17 October 2020); while Cavan, Donegal, and Monaghan were in Level 4 (from mid-October 2020), only six persons could attend a wedding.


145 ‘Stay at home’ - Taoiseach announces further Covid-19 restrictions’ RTE (Online, 28 March 2020).


150 Department of the Taoiseach, Department of Health, ‘Easing the COVID-19 restrictions on 18 May (Phase 1)’ (2 May 2020, updated 12 June 2020).


152 ‘At a glance: what’s new from 8 June and beyond on roadmap’ RTE (Online, 7 June 2020).


158 A Moore and P Hosford, “I should not have attended the event”: Minister apologises for attendance at golf event in breach of health guidelines’ Irish Examiner (Online, 20 August 2020).


161 ‘Transcript of Review Conducted by the Honourable Ms. Justice Denham’ (8 September 2020).

162 ‘Read in full: Letters between Chief Justice and Seamus Woulfe’ RTE (Online, 10 November 2020).

163 ‘Taoiseach announces entire country is now on Level 2 of new Covid Plan’ The Journal (Online, 15 September 2020).

164 Department of An Taoiseach, ‘All remaining counties to join Donegal and Dublin on Level 3 under Ireland’s Plan for Living with COVID-19’ (6 October 2020).

165 Department of An Taoiseach, ‘Ireland placed on Level 5 of the Plan for Living with COVID-19’ (19 October 2020).


168 Department of the Taoiseach, ‘Ireland placed on full Level 5 Restrictions of the Plan for Living with COVID-19’ (30 December 2020).


176 ‘GAA: Link established between Covid-19 cases and county finals says Ulster chief McAvoy’ BBC News (Online, 6 October 2020).


183 Burke v Minister for Education [2020] IEHC 418 (High Ct).

184 Department of Education, ‘Roadmap for the Full Return of Schools’ (7 August 2020).

‘Third-level tuition to go online for next two weeks’ RTE News (Online, 25 September 2020).

‘UCC students face expulsion if they breach Covid-19 guidelines’ Irish Times (Online, 27 September 2020); ‘Gardai shut down 35 student house parties and arrest five people during University of Limerick Freshers' Week’ The Journal (Online, 2 October 2020).

‘Covid-19 infections rose in counties where pubs reopened – study’ RTE News (Online, 29 November 2020); Department of An Taoiseach, ‘Data Analytics Insights: 27.11.2020’ (27 November 2020).


HIQA, Evidence summary for face mask use by health people in the community (21 August 2020).


Ibid, reg 4(1).

Ibid, reg 4(4).


C Lally, ‘Three fined for face mask breaches since new offence created’ Irish Times (Online, 10 December 2020).


Health Service Executive, ‘Patient information sheet for self-isolation at home’ (3 April 2020).

Health Service Executive, ‘How to self-isolate’ (updated 23 February 2021).

Ryanair v An Taoiseach [2020] IEHC 461 (High Ct).

Department of Health, ‘Statement from the National Public Health Emergency Team’ (17 April 2020).

For the media briefing by Paul Reid, Head of the Health Service Executive, where he stated delays in testing due to lack of availability of reagent, see Laura Hogan, ‘HSE “will have capacity” to carry out 4,500 virus tests per day’ RTE (5 April 2020).

J Power, ‘Coronavirus: Incorrect test results for ‘less than 100’ investigated’ Irish Times (Online, 14 April 2020).

See for example, H McGee, ‘The Inside Story of Ireland’s Contact Tracing Operation’ Irish Times (Online, 11 April 2020).

HSE, ‘Contact tracing COVID-19 testing’ (28 April 2020).

See letter ‘19 April 2020 - CEO Paul Reid to Secretary General Jim Breslin’ (19 April 2020) between the HSE and NPHET in relation to concerns over commitments made by NPHET regarding testing. See also Dáil Éireann Debate (14 May 2020), vol. 993, no. 2.


Department of Health, ‘Statement from the National Public Health Emergency Team - Tuesday 29 December’ (29 December 2020).

HSE, ‘Contact tracing COVID-19 testing’ (28 April 2020).


Health Information and Quality Authority, ‘Regulatory response by HIQA and the Chief Inspector of Social Services to COVID-19’ (10 March 2020).


See, for example ‘Gardai announce policing measures ahead of midnight lockdown as list of essential workers emerges’ Irish Independent (Online, 27 March 2020).


See, for example, Paul Reynolds, ‘Covid-19: Harris signs regulations for extra garda powers’ RTE (Online, 8 April 2020).


Cormac O’Keeffe, ‘Garda checkpoints are back – but what can they actually do?’ Irish Examiner (Online, 7 October 2020).

Conor Lally and Jennifer Bray, ‘Super checkpoints will cause major traffic congestion, Harris warns’ Irish Times (Online, 7 October 2020).

These are contained in regular press releases, see eg An Garda Síochána ‘An Garda Síochána Welcomes Continued High Compliance by Public with Health Guidelines’ (May 2020).


Health Act 1947, as inserted by section 4 of the Health (Amendment) Act 2020, s 31(c)

Health (Amendment) Act 2020, s 3.

Health Act 1947, s 31(d).

Department of the Taoiseach, ‘Briefing on the government's response to COVID-19’ (18 December 2020).


L Delaney and P Lunn, ‘No signs of lock-down fatigue in Ireland ... yet’ Irish Times (Online, 2 April 2020).


Department of Social Protection, ‘Minister Humphreys announces Christmas Bonus will be paid to over 1.6 million people the week beginning 7th December’ (26 November 2020, updated 27 November 2020); Department of Social Protection, ‘Minister Humphreys announces payment of Christmas Bonus to 1.4 million people next week’ (1 December 2021, updated 7 December 2021).

Department of Children, Equality, Disability, Integration and Youth, ‘Reopening Funding Packages for Childcare Services: Further Information’ (1 July 2020).

Department of Social Protection, ‘Minister Humphreys Extends School Meals Programme Funding to Schools Over the Summer Holidays’ (21 June 2021, updated 31 December 2021).

Electricity Regulation Act 1999, s 9.

Commission for Regulation of Utilities, ‘Moratorium on electricity and gas disconnections to be lifted from 1st of June’ (12 May 2021).

P Leahy, ‘Rent freeze and ban on evictions extended until August 1st’ Irish Times (Online, 20 July 2020); see also Blake v AG [1982] IR 117 (Supreme Court of Ireland); and Re Article 26 and the Housing (Private Rented Dwellings) Bill 1981 [1983] 1 IR 181 (Supreme Court of Ireland).

M Carolan, ‘Would a freeze on rents be constitutional in Ireland?’ The Irish Times (Online, 5 March 2022).


Residential Tenancies Act 2021.

Residential Tenancies (No 2) Act 2021.

Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022.


T Douglas, ‘Domestic violence survivors granted easier access to rent supplement on a permanent basis’ The Journal (Online, 11 November 2021).

J Brennan and H McGee, ‘Coronavirus: Banks agree mortgage breaks and repossession deferrals’ Irish Times (Online, 18 March 2020).


D Coyle and J Brennan, ‘Payment breaks on loans get green light again from watchdog’ Irish Times (Online, 2 December 2020).

C Weston, ‘Banks resist new system-wide payment break option’ The Independent (Online, 8 January 2021).


K Holland, ‘Record number of homeless people in State as figure passes 11,000’ The Irish Times (Online, 25 November 2022).


283 A Daly, ‘Taoiseach: Nightclubs to close next Thursday, 50% capacity cap for indoor events and strict rules for hospitality’ The Journal (Online, 3 December 2021).


292 J Horgan-Jones, ‘Q&A: What’s going on with the Pandemic Unemployment Payment?’ Irish Times (Online, 27 July 2020).

293 Department of Social Protection, ‘Statement by Minister Humphreys on Pandemic Unemployment Payment’ (29 July 2020, updated 30 July 2020).


295 Revenue, ‘Remotely working from home’ (22 April 2022).

Revenue, ‘Retraining costs exemption in a redundancy package (ended 1 May 2021)’ (13 July 2021).

Revenue, ‘Temporary concessions made to reliefs and exemptions’ (13 July 2021).


I Miley, ‘Minister announces amendments to wage subsidy scheme’ RTE (Online, 15 April 2020).

Letter from Paschal Donohoe TD, Minister for Finance and Public Expenditure and Reform, to Niall Cody, Chairman, Revenue Commissioners (16 April 2020).


Department of Finance, ‘Government launches the Covid Restrictions Support Scheme (CRSS) to support businesses significantly impacted by Covid-19 restrictions’ (6 November 2020).


Nano Nagle School v Daly [2019] IESC 63 (Supreme Court of Ireland).


Department of Enterprise, Trade and Employment, ‘Minister Humphreys publishes National Return to Work Safely Protocol’ (9 May 2020), see also s 6 ‘Social Partners’.


Department of the Taoiseach, ‘Helping People, Especially Young People, Get Back to Work’ (23 July 2020), see also [27].


Revenue, ‘Revenue confirm TWSS changes for employees who have been on maternity, adoptive and certain other benefits paid by DEASP are now in place’ (8 June 2020).


The Labour Court, Recommendation No. LCR22464 (22 September 2021).


C Finn, ‘Around 66,000 workers still waiting on EUR 1000 pandemic bonus payment’ The Journal (Online, 30 November 2022).

Department of Enterprise, Trade and Employment, ‘Code of Practice on the Right to Disconnect’ (1 April 2021, updated 16 June 2021), see [41].


‘Right to request remote work integrated into bill’ The Law Society (Online, 10 November 2022).


Data Protection Act 2018.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. 


Constitution of Ireland (Bunreacht na hÉireann) of 29 December 1937, arts 40(6.1), 40(6.2).

O’ Doherty and Waters v The Minister for Health and the Attorney General [2020] IEHC 209 (Supreme Court of Ireland).

V/Lex Justis, O’Doherty v The Minister for Health, (Online, 13 May 2020).

‘Two Dublin women arrested after Dubai trip bid to halt prosecution for Covid quarantine breach’ The Journal (Online, 8 November 2022).


Constitution of Ireland (Bunreacht na hÉireann) of 29 December 1937, art 44(2.1).


J Wilson, ‘Government accused of being “profoundly disrespectful” to church’ The Irish Times (Online, 10 September 2021).

J Wilson, ‘Government accused of being “profoundly disrespectful” to church’ The Irish Times (Online, 10 September 2021).

J Wilson, ‘Government accused of being “profoundly disrespectful” to church’ The Irish Times (Online, 10 September 2021), 42–43.

Constitution of Ireland (Bunreacht na hÉireann) of 29 December 1937, art 40(4.1).


Department of Health (Ireland), ‘Minister for Health announces removal of all States from the list of designated States for Mandatory Hotel Quarantine’ (25 September 2021).


Constitution of Ireland (Bunreacht na hÉireann) of 29 December 1937, art 40(5).


Department of Health (Ireland), ‘National Public Health Emergency Team (NPHET) for COVID-19: Governance Structures’ (June 2020), 18-21.

Department of Health (Ireland), ‘Ireland placed on Level 5 of the Plan for Living with COVID-19’ (October 2020).

Department of Health (Ireland), ‘Ireland placed on Level 5 of the Plan for Living with COVID-19’ (October 2020), 348.


C Lally, ‘Domestic Violence Reports up 30% in Some Areas Since Lockdown, says Garda’ The Irish Times (Online, 27 April 2020).

M O’ Halloran, ‘“Horrific rise in domestic violence’ but a ‘chronic lack of action’, TD says’ The Irish Times (Online, 29 June 2021).


RAND Europe, ‘The Covid-19 pandemic and intimate partner violence against women in the EU’ European Institute for Gender Equality (5 March 2021), 27.


389 Oireachtas ‘Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 (Bill 105 of 2022)’ (16 November 2022).

390 Constitution of Ireland (*Bunreacht na hÉireann*) of 29 December 1937, art 40(1).


399 Nursing Homes Ireland, ‘COVID-19 / Coronavirus: Visitor Restrictions announced by Nursing Homes Ireland’ (6 March 2020).


From: Oxford Constitutions (http://oxcon.ouplaw.com). (c) Oxford University Press, 2023. All Rights Reserved.date: 08 August 2023

416 Email from contact person in civic society organisation working with the IPS to Silvia Gagliardi (30 August 2021) (on file with author).


418 IPS, ‘Announcement on Recommencement of Physical Visits to Wheatfield and Portlaoise Prisons’ (8 July 2021).

419 IPS, ‘Visiting a Prison’ (11 July 2022).


425 IHREC, ‘Submission to the Joint Committee on Key Issues affecting the Traveller Community’ (February 2021), 17.

426 IHREC, ‘Submission to the Joint Committee on Key Issues affecting the Traveller Community’ (February 2021), 17.