



**Submission to inform the
Department of Justice and
Equality's consultation on
a new National Women's
Strategy 2017 – 2020**

FLAC, February 2017

About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence.

You can download/read FLAC's policy papers at
<http://www.flac.ie/publications/policy.html>

For **more information**, contact us at:

FLAC,
13 Lower Dorset Street, Dublin 1
01-8873600 | info@flac.ie | www.flac.ie | fb.me/flacireland | [@flacireland](https://twitter.com/flacireland)

Recommendations

- Increase funding for civil legal aid services in order to ensure that women have access to adequate and timely legal aid;
- Require the Legal Aid Board to review the financial eligibility criteria and adjust disposable income and capital limits and the amounts of all allowances stipulated as part of the means test for civil legal aid to realistic levels in order to take account of increases in the cost of living;
- Provide adequate human and financial resources to the Legal Aid Board on foot of such a review;
- Review the allocation of financial and human resources to the Legal Aid Board on the introduction of any new legislation which is likely to impact on civil legal aid services, such as the Domestic Violence Bill;
- Require the Legal Aid Board to carry out annual reviews of its financial eligibility criteria;
- Grant the Legal Aid Board discretion to provide legal services to applicants who establish legal need but do not satisfy the means test;
- End the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought;
- Initiate an information campaign about the equality remit of the Workplace Relations Commission, including as regards gender discrimination;
- Review Section 14 of the Equal Status Acts 2000 – 2015 to ensure that an effective remedy is available for discrimination that has a legislative basis;
- Designate the Workplace Relations Commission as a “prescribed” tribunal for the purposes of Section 27(2)(b) of the Civil Legal Aid Act 1995;
- Ensure that the Public Sector Duty is implemented to promote the mainstreaming of gender equality in all areas and sectors;
- Ensure that all gender impact assessments consider Ireland’s compliance with international human rights law, including obligations under the UN Convention on the Elimination of all forms of Discrimination against Women and the UN International Covenant on Economic, Social and Cultural Rights;
- Review the Habitual Residence Condition so as to eliminate its discriminatory impact on victims of domestic violence;
- Reverse the changes introduced in 2012 to the One Parent Family Payment.

Introduction

FLAC welcomes the opportunity to contribute to the Department of Justice and Equality's consultation on a new National Women's Strategy 2017 – 2020. FLAC is of the view that consultation with relevant stakeholders, interest groups and individuals should form a very valuable element of the strategy development process. The development of the strategy is especially timely given the State's recent examination under the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

While it is noted that the new National Women's Strategy arises from the completion of the previous strategy, which covered the period 2007 – 2016, FLAC would also draw attention to a new, broader obligation on the Department under section 42 of the Irish Human Rights and Equality Act 2014, for convenience referred to here as the Public Sector Duty. The Public Sector Duty provides one of the most important national mechanisms for mainstreaming gender equality and protecting the human rights of women in all their diversity. As such, the new strategy should take into account the requirements of the public sector duty and consider the need to:

1. Eliminate discrimination;
2. Promote equality of opportunity, and
3. Protect human rights.

Over and above the specific points raised in this submission, FLAC would also urge the Department to take this opportunity to expressly acknowledge the operation of the Public Sector Duty in the new strategy and, when reporting on the strategy, set out the methodology adopted to integrate the Public Sector Duty into it and its impact. Such express reference to the Public Sector Duty and how to implement it in practice would provide leadership and a valuable learning tool to other Government Departments undertaking similar strategies in the future.

In this submission, FLAC seeks to identify the issues for women and girls in Ireland which we believe are most important to address over the next four years. To this end, FLAC would suggest adding two more high-level objectives to those already proposed, namely:

- Realise rights through the civil legal aid scheme and;
- Promote gender mainstreaming through the rolling out of the Public Sector Duty.

New High-Level Objective: Realise rights through the civil legal aid scheme

Accessibility of the civil legal aid scheme

Civil legal aid is the gateway to the realisation and enforcement of rights that promote and protect women. According to the UN Committee on the Elimination of all forms of Discrimination against Women, a crucial element in guaranteeing that justice systems are economically accessible to women is the provision of free or low-cost legal aid, advice and representation in judicial and quasi-judicial

processes in all fields of law.¹ Furthermore, the UN Committee has recommended that systems of legal aid be accessible, sustainable and responsive to the needs of women.²

While increased levels of funding have been allocated to the Legal Aid Board in recent years, waiting lists and waiting times for consultations with solicitors in Law Centres remain too long. As of December 2016, approximately 1900 people are awaiting first consultations with Legal Aid Board solicitors.³ Furthermore, waiting times for initial consultations can currently be as long as twenty-five weeks.⁴ Additional resources for civil legal aid are urgently required to ensure that the rights contained in legislation and bills, such as the welcome provisions in the recently published Domestic Violence Bill, are meaningful and can be enforced. FLAC is also of the view that the Department of Justice and Equality should automatically review its allocation of resources to the Legal Aid Board when new legislation which is likely to impact on civil legal aid services is introduced.

Additionally, FLAC welcomes the announcement of the new chair of the Legal Aid Board, Mr Philip O'Leary, that the Board will undertake a review of the financial eligibility criteria for civil legal aid in 2017.⁵ One of the main issues identified in FLAC's 2016 report, "*Accessing Justice in Hard Times*", was the barrier posed by the means test to accessing legal aid, and in particular, the Board's outdated financial eligibility criteria, which were last reviewed in 2006.⁶ In this context it is relevant to note that income thresholds and allowances for civil legal aid are reviewed on an annual basis in Scotland.⁷

Financial eligibility for civil legal aid is assessed by reference to the applicant's disposable income and capital. The financial test is significant not only because it regulates whether a person is eligible for legal at all, but also because it determines the amount that the person will pay as a contribution to the cost of the service they receive. In this regard, it is relevant to note that the Board increased the financial contributions required of applicants for legal advice and representation in 2013, however no increases were made to the financial eligibility criteria applied to applicants.⁸

The Civil Legal Aid Regulations 2006 stipulate that an applicant's disposable income must be below €18,000 in order to pass the initial means test for civil legal aid. 'Disposable income' is total annual income, less allowable deductions. Allowable deductions include a maximum yearly accommodation allowance of €8000, spousal maintenance of €3500 and childcare costs of €6000 per child. These limits are far below the average annual cost of private rented accommodation, mortgage repayments, child care and spousal maintenance. To ensure women without sufficient means can access timely and effective justice, disposable income and capital limits and the amounts of all allowances should be

¹ UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women's access to justice*, Geneva: OHCHR, p.15.

² UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women's access to justice*, Geneva: OHCHR, p.15.

³ Legal Aid Board, 'Legal Aid Board reports steady demand for legal services', [press release], 16 December 2016.

⁴ Latest data available is for September 2016, available at <http://www.legalaidboard.ie/en/About-the-Board/Press-Publications/Statistics/> [accessed 09 February 2017].

⁵ F. Gartland, 'Eligibility for civil legal aid to be reviewed', *Irish Times*, 11 November 2016.

⁶ Free Legal Advice Centres (2016) *Accessing Justice in Hard Times*, Dublin: FLAC.

⁷ Scottish Legal Aid Board, *Civil legal aid info for applicants*, available at http://www.slab.org.uk/export/sites/default/common/documents/publications/leaflets/Info_for_Applicants_Leaflet.pdf [accessed 20 February 2017].

⁸ Civil Legal Aid Regulations, 2013 (S.I. No. 346/2013). In fact, the reverse occurred with the disposable capital threshold allowance reduced from €320,000 to €100,000.

adjusted to realistic levels or index-linked in order to take account of both the cost of living and the standard of living since 2006.

Furthermore, FLAC notes that there is no provision for the exercise of discretion in cases where a legal aid applicant fails to satisfy the means test but the requirements of justice demand legal representation. In these types of situations, the Legal Aid Board is constrained by the governing regulations, which demand that the financial criteria be rigidly applied. Accordingly, disposable income and capital thresholds have been described as “cliff edge thresholds”.⁹

Recently, FLAC was made aware of a very serious issue where a low-income couple who urgently needed access to legal representation to deal with an appalling healthcare issue concerning a child were denied civil legal aid as they failed the means test by the narrowest of margins. They could not, however, afford private legal representation. Civil legal aid was clearly required in this case but was not forthcoming.

FLAC is of the opinion that the Legal Aid Board should be afforded some degree of discretion in cases where the legal aid applicant has not satisfied the stipulated financial criteria but where a clear legal need is established. In deciding whether to exercise such discretion, the Legal Aid Board should assess the applicant's need to access legal services. The Legal Aid Board should also have regard to the financial capacity of the applicant to avail of private legal representation, if state-subsidised legal aid is not granted.

What outcomes should we aim to achieve?

- **Increase funding for civil legal aid services in order to ensure that women have access to adequate and timely legal aid;**
- **Require the Legal Aid Board to review the financial eligibility criteria and adjust disposable income and capital limits and the amounts of all allowances stipulated as part of the means test for civil legal aid to realistic levels in order to take account of increases in the cost of living;**
- **Provide adequate human and financial resources to the Legal Aid Board on foot of such a review;**
- **Review the allocation of financial and human resources to the Legal Aid Board on the introduction of any new legislation which is likely to impact on civil legal aid services, such as the Domestic Violence Bill;**
- **Require the Legal Aid Board to carry out annual reviews of its financial eligibility criteria;**
- **Grant the Legal Aid Board discretion to provide legal services to applicants who establish legal need but do not satisfy the means test.**

Civil legal aid fees for victims of domestic violence

One of the barriers facing victims of domestic violence in accessing justice is the requirement to pay financial contributions for state-funded civil legal aid. Civil legal aid services in Ireland, which are provided by the Legal Aid Board, play a vital role in ensuring that women with limited resources who

⁹ Joint Oireachtas Committee on Justice, Defence and Equality, Discussion with Chairman Designate of the Legal Aid Board, 18 January 2017, <https://www.kildarestreet.com/committees/?id=2017-01-18a.578> [accessed 23 January 2017].

have experienced domestic violence can access the protection of the legal system. In particular, civil legal aid provides women on low incomes with access to the courts for safety, protection and barring orders.

FLAC is concerned that women at risk of or who are victims of domestic violence are excluded from the civil legal aid scheme for financial reasons. This marginalisation can have significant risks, leaving women, who are disproportionately affected by domestic violence, in extremely vulnerable and dangerous situations.

In 2013, the minimum contribution for legal aid services provided by the Legal Aid Board increased from €50 to €130.¹⁰ This measure has had severe adverse implications for victims of domestic violence seeking or considering availing of state legal aid services, especially for those on low incomes. For victims of domestic violence in receipt of a basic social welfare payment, such as Supplementary Welfare Allowance, the minimum civil legal aid fee of €130 constitutes almost 70% of their weekly income.¹¹ For those under the age of 25, who receive a reduced rate of social welfare, the required contribution actually exceeds their weekly income by €30.¹²

Victims of domestic violence may also need to make recurring applications for legal aid which can be very costly, especially given the 2013 rise in required financial contributions. Frontline organisations working with victims of domestic violence have reported that many people accessing their services rely on state legal aid but this has become significantly less accessible. SAFE Ireland has noted that the 2013 increase in legal fees for advice and representation provided by the Legal Aid Board puts legal assistance out of reach for most women availing of SAFE's services, in particular for those reliant on state payments.¹³ Of immense concern is the fact that member organisations of SAFE Ireland have reported "making increased requests to the St Vincent de Paul Society to pay this minimum fee".¹⁴

However, even for those with greater levels of means, legal aid contributions can prove too costly. In some instances, required contributions for legal aid can reach four-figure sums. Access to justice and protection should not be dependent on the economic resources of a woman.¹⁵

¹⁰ Civil Legal Aid Regulations 2013 (SI No. 346/2013).

¹¹ Supplementary Welfare Allowance is a weekly allowance paid to people who do not have enough income to meet their needs and those of their families. The basic rate of Supplementary Welfare Allowance for people aged 26 and over is €186 per week.

¹² The basic rate of Supplementary Welfare Allowance and Jobseekers Allowance for 18 to 24 year olds is €100 per week and for 25 year olds is €144 per week.

¹³ SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

¹⁴ SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

¹⁵ In addition to SAFE Ireland, a number of other organisations have expressed concerns regarding the financial barrier posed by civil legal aid fees for victims of domestic violence, including FLAC, Women's Aid and the Law Society of Ireland. See FLAC (2016) *Accessing Justice in Hard Times*, Dublin: FLAC, p.18; Law Society of Ireland (2012) *Access to Justice: A Report of the Legal Aid Taskforce*, Dublin: Law Society of Ireland, p.18; Women's Aid (2014) *Submission to the Legal Aid Board Corporate Plan 2015 – 2018*, Dublin: Women's Aid, p.4.

It is relevant to note that a system of waiver does exist which permits the Legal Aid Board to waive an applicant's legal fees where failure to do so would cause "undue hardship". While the Legal Aid Board recommends that a "sympathetic approach" be taken to an application for a waiver in domestic violence cases,¹⁶ difficulties exist as to the operation of the waiver system in these types of cases. Some of the difficulties are outlined below:

- First, public awareness of the waiver system is low. In most instances, applicants are unaware that a system of waiver exists unless they contact a support service for victims of domestic violence. Lack of awareness of this waiver provision may deter victims of domestic violence, particularly women, from accessing the civil legal aid scheme.
- Secondly, applicants must wait for a decision in respect of their waiver application before a Legal Aid Board solicitor will file court proceedings. Sometimes victims of domestic violence may need immediate court protection and may not be able to wait the length of time required in respect of a decision on a waiver. Abolition of fees would ensure victims of domestic violence have speedier access to the courts.
- Thirdly, there is no automatic entitlement for victims of domestic violence to a waiver. Applicants must meet a high threshold in demonstrating that payment of a financial contribution will result in "undue hardship". Thus, concerns exist that victims of domestic violence may be refused a waiver and may subsequently be forced to stay in a violent situation. Abolition of fees would ensure that no woman in need of court protection would be refused legal assistance on financial grounds.

In addition, as stated above, the Legal Aid Board, like other public and statutory bodies, is subject to the Public Sector Duty which requires public bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and treatment for service users, and protect the human rights of service users.¹⁷ In this context, it is relevant to note that several domestic and international human rights bodies have emphasised the need for legal aid schemes to be accessible and have raised concerns regarding the cost of legal aid services provided to victims of domestic violence in Ireland.

The Irish Human Rights and Equality Commission has echoed FLAC's concerns regarding the fact that affordability of legal assistance for victims of domestic violence remains an issue for those on little or no income.¹⁸ In its 2011 Concluding Observations, the UN Committee against Torture urged the State to enhance its support and funding of support services provided to victims.¹⁹ Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights expressed specific concerns regarding the

¹⁶ Legal Aid Board, *Administrative Procedures Handbook*, available at <http://www.legalaidboard.ie/en/Freedom-of-Information/Administrative-Procedures-Handbook-10th-Edition.pdf> [accessed 16 December 2016].

¹⁷ Section 42 of the Irish Human Rights and Equality Commission Act 2014.

¹⁸ Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, Dublin: IHREC, p.38.

¹⁹ UN Committee against Torture (2011) *Concluding Observations of the Committee against Torture: Ireland*, Geneva: OHCHR, para. 27(b).

“insufficient support services” for victims of domestic violence and called on Ireland “to strengthen supports, including legal aid, for victims of domestic violence.”²⁰ Moreover, during Ireland’s May 2016 examination under the Universal Periodic Review mechanism, seven UN Member States recommended that state legal aid services for victims of domestic violence in Ireland be strengthened.²¹

Finally, the UN Committee on the Elimination of all forms of Discrimination against Women has stressed that certain general principles should be applicable to all legal aid systems, including that they be accessible, sustainable and responsive to the needs of women.²² In particular, the UN Committee has recommended that States parties remove economic barriers to justice by providing free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law.²³ Relevantly, FLAC raised concerns regarding the requirement for victims of domestic violence to make financial contributions for civil legal aid services when seeking court protection under domestic violence legislation at Ireland’s recent examination under CEDAW and anticipates that the UN Committee will deliver a strong recommendation on the issue when its Concluding Observations are released on March 6th.

What outcomes should we aim to achieve?

- **End the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought.**

Enforcement of employment and equality rights

Ireland’s employment protection and equality infrastructure has been subject to significant change in recent years. The Employment Appeals Tribunal, an independent body established to provide a fair, inexpensive and informal means for employees to seek remedies for infringements of their statutory employment rights and protections, was abolished in 2015. The Equality Tribunal, a dedicated tribunal which was established to investigate, hear and decide claims under the Equal Status and Employment Equality Acts, was also abolished.

Since October 2015, all complaints and disputes under employment and equality legislation are dealt with by the Workplace Relations Commission. All appeals of employment claims are dealt with by the Labour Court.

²⁰ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.22.

²¹ Office of the High Commissioner for Human Rights (2016) *Draft report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR. See recommendations 135.98, 136.36, 136.37, 136.39, 136.40, 136.41 and 136.42.

²² UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women’s access to justice*, Geneva: OHCHR, p.15.

²³ UN Committee on the Elimination of all forms of Discrimination against Women (2015) *General Recommendation No.33 on women’s access to justice*, Geneva: OHCHR, p.15.

FLAC is concerned at the potential adverse impact of the disestablishment of the Equality Tribunal on those experiencing inequality, including gender discrimination. In particular, FLAC is concerned at the absence of a specific tribunal dealing with claims of discrimination on the nine protected grounds, including claims of discrimination on the gender ground, and the low visibility of equality, including gender equality, in the work of the Workplace Relations Commission.

Additionally, the Equal Status Acts 2000 – 2015 prohibit gender discrimination in the provision of goods and services, the provision of accommodation and access to education. However, Section 14 of the Equal Status Acts precludes legal actions against legislative provisions. In practical terms, this means that any legislation which discriminates against women, or has a disproportionately negative impact on women, cannot be challenged under domestic equality legislation. For example, any legislative provision, including any provision required by social welfare legislation or civil legal aid legislation, which discriminates against or has a disproportionately negative impact on women, falls outside the scope of the Equal Status Acts.

Removal of the statutory exemption provided for in the Equal Status Acts would ensure better compliance with EU anti-discrimination law, in particular the Gender Equal Access to Goods and Services Directive.²⁴

Moreover, FLAC is concerned at the exclusion of the Workplace Relations Commission from the scope of the civil legal aid system in a blanket manner, without allowing for any examination of the particular facts of a given case. This means women cannot obtain legal aid for claims such as pregnancy-related dismissal or discrimination in relation to access to employment, employment promotion or in the provision of goods and services. The European Court of Human Rights has also ruled that the blanket exclusion of any area of law from a civil legal aid scheme breaches Article 6(1) of the Convention.

Additionally, while employers can often afford to pay for legal representation before the Commission, employees often cannot. Where an employee does not have such financial means and is faced with an experienced legal team on the other side, this can give rise to an inequality of arms in practice.

What outcomes should we aim to achieve?

- **Initiate an information campaign about the equality remit of the Workplace Relations Commission, including as regards gender discrimination;**
- **Review Section 14 of the Equal Status Acts 2000 – 2015 to ensure that an effective remedy is available for discrimination that has a legislative basis;**
- **Designate the Workplace Relations Commission as a “prescribed” tribunal for the purposes of Section 27(2)(b) of the Civil Legal Aid Act 1995.**

²⁴ Council Directive 2004/113/EC.

New High-Level Objective: Promote gender mainstreaming through the rolling out of the Public Sector Duty

FLAC notes that the consultation document for the new National Women's Strategy makes no reference to the Public Sector Duty. The duty requires public bodies to identify the human rights and equality issues relevant to its functions and to devise an action plan to address those issues. For the purposes of the 2014 Act, "functions" clearly has a very wide meaning and includes any activities undertaken pursuant to a power or duty. Furthermore, the range of public bodies which come within the scope of the Public Sector Duty is very wide, and includes government departments, local authorities, universities and bodies such as the Health Service Executive, the Courts Service and An Garda Síochána.

In fulfilling their duties under the 2014 legislation, public bodies must consider the human rights and equality impact, including the gendered impact, of their policies, services, budgets, procedures and practices. The requirement to gender proof budgetary proposals is particularly relevant for the Department of Social Protection in matters such as equal access to pensions.

The Public Sector Duty therefore requires public authorities, such as the Legal Aid Board and the Department of Social Protection, to take a proactive approach to tackling institutional gender discrimination, and promote the mainstreaming of gender perspectives in all other functions. Such an approach, which should be progressed through the new strategy, has the potential to ensure that women in all their diversity are at the heart of all public action, policy and procedure, and to complement actions which are required under European Union law.

What outcomes should we aim to achieve?

- **Ensure that the Public Sector Duty is implemented to promote the mainstreaming of gender equality in all areas and sectors.**

Embed gender equality in decision-making

Gender proofing of budgetary proposals

In July 2015, the UN Committee on Economic, Social and Cultural Rights noted with concern that austerity measures had been adopted during and after the economic crisis without proper assessments of their impact on economic, social and cultural rights.²⁵ This includes retrogressive measures which adversely impacted on the economic, social and cultural rights of women.

The new Programme for a Partnership Government contains a commitment to equality and gender proof budget proposals and to draw on the expertise of the Irish Human Rights and Equality

²⁵ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11(b).

Commission to support the proofing process.²⁶ According to the Programme, the aim of such proofing is to advance equality, reduce poverty and strengthen economic and social rights.²⁷

While this commitment is welcome, it is important that gender proofing is used not just to produce gender disaggregated data which assesses whether women are disproportionately affected by budgetary measures, particularly taxation and social welfare measures, but that this information is utilised to achieve tangible, positive outcomes for women by reducing social and economic gender inequalities.

Gender impact assessments must also be used to monitor compliance with Ireland's obligations under international human rights law and be geared towards respecting, protecting and fulfilling the human rights of women. Both the UN Convention on the Elimination of all forms of Discrimination against Women and the UN International Covenant on Economic, Social and Cultural Rights place specific obligations on Ireland in this regard.

For example, the UN Convention on the Elimination of all forms of Discrimination against Women requires that the spending of public money be consistent with achieving substantive equality between women and men.²⁸ Additionally, the UN International Covenant on Economic, Social and Cultural Rights obliges the State to use the maximum resources available to it to progressively realise economic, social and cultural rights, including the economic, social and cultural rights of women, to refrain from taking unjustifiable retrogressive measures and to ensure minimum essential levels of economic, social and cultural rights. These obligations provide the framework for assessing whether budgetary measures are complying with international human rights law and adequately protecting the human rights of women.

More generally, equality proofing of all budgetary proposals would ensure that women experiencing intersectional and multiple forms of discrimination such as Roma women, migrant women, Traveller women and women with disabilities are better protected.

What outcomes should we aim to achieve?

- **Ensure that all gender impact assessments consider Ireland's compliance with international human rights law, including obligations under the UN Convention on the Elimination of all forms of Discrimination against Women and the UN International Covenant on Economic, Social and Cultural Rights.**

²⁶ Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

²⁷ Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

²⁸ United Nations Development Fund for Women (now UN Women) (2006) *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*, New York: UNIFEM.

Advance socio-economic equality for women and girls

Impact of the Habitual Residence Condition on Victims of Domestic Violence

Migrant women who are victims of domestic violence can face particular obstacles in terms of accessing basic social welfare payments due to difficulties satisfying the Habitual Residence Condition.

The Habitual Residence Condition (HRC) is a qualifying condition for means-tested social welfare payments and Child Benefit, which was introduced in May 2004 in response to EU enlargement, in which applicants must show a sufficient connection to the State. In addition, all claimants of social welfare payments which are subject to the HRC must satisfy a “right to reside” test. The right to reside test seeks to ascertain whether the claimant has a lawful right to reside in Ireland. A person who does not have a right to reside cannot be regarded as habitually resident in Ireland.

In some circumstances, the immigration status of a victim of domestic violence, and their right to reside in Ireland, is derived from or dependent on that of the perpetrator. Where a relationship has broken down, and in the absence of an independent immigration status, victims of domestic violence no longer have a right to reside in Ireland and cannot satisfy the HRC. This can leave a victim of domestic violence in an extremely vulnerable and isolated situation.²⁹ Without access to a social welfare payment, a migrant woman who is a victim of domestic violence may not possess the financial resources required to successfully leave a violent relationship and may be unable to access necessary supports, such as a refuge.³⁰

In 2014, the UN Human Rights Committee noted “the existence of administrative and financial obstacles for marginalised women to access essential support services, particularly whose immigration status is dependent on their spouse or partner or who do not meet the habitual residence condition”.³¹ The UN Committee called on the State to “take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalised groups, have access to protection against perpetrators of violence”.³²

Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the discriminatory effect of the HRC on women who are victims of domestic violence in

²⁹ A victim of domestic violence whose immigration status is dependent on their spouse or partner can apply for an independent immigration status from the Irish Immigration and Naturalisation Service. If a victim of domestic violence obtains a right to residency in their own right, the Department of Social Protection then considers whether the woman is HRC compliant. For more information see Irish Immigration and Naturalisation Service (2012) *Victims of Domestic Violence: Immigration Guidelines*, Dublin: Department of Justice and Equality.

³⁰ SAFE Ireland (2013) *Report on the impact of the Habitual Residence Condition on women seeking protection and safety for themselves and their children from a domestic violence perpetrator*, Athlone: SAFE.

³¹ UN Human Rights Committee (2014) *Concluding Observations of the Human Rights Committee: Ireland*, Geneva: OHCHR, para.8.

³² UN Human Rights Committee (2014) *Concluding Observations of the Human Rights Committee: Ireland*, Geneva: OHCHR, para.8.

accessing social security benefits.³³ The UN Committee recommended that Ireland review the HRC so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalised individuals and groups.³⁴

What outcomes should we aim to achieve?

- **Review the Habitual Residence Condition so as to eliminate its discriminatory impact on victims of domestic violence.**

One Parent Family Payment

The One Parent Family Payment is a means-tested social welfare payment to support parents on low incomes who are parenting alone. Of the 215,000 lone parent families recorded as living in Ireland in 2011, over 186,000 households were headed by mothers.³⁵

Single-parent families currently have the highest consistent poverty rate of any family type in Ireland at 22.1%.³⁶ In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the number of people living in consistent poverty or at risk of poverty, particularly among single-parent families.³⁷

Prior to April 2011, a lone parent could receive the One Parent Family Payment if they met the qualifying criteria until their youngest child reached 18 years of age. However, new measures introduced in 2012 reduced the age threshold for the youngest child for new recipients to 14 years in 2012, 12 years in 2013, 10 years in 2014 and 7 years in 2015.

Lone parents with children between the ages of 7 years and 13 years may now be entitled to Jobseekers Transitional Payment. This payment aims to support lone parents into the workforce while they have young children. While lone parents in receipt of One Parent Family Payment can qualify for Family Income Supplement, which provides extra financial support to those on low pay, lone parents in receipt of Jobseekers Transitional Payment cannot. Unlike other jobseekers payments however, lone parents are exempted from the requirement to be available for, and genuinely seeking, full-time work.

A lone parent whose youngest child is aged 14 years or more must seek and accept full-time work under the same conditions and rules that apply to single people without children, without regard for the potential need for childcare.³⁸

³³ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

³⁴ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

³⁵ Government of Ireland (2012) *Census 2011 Profile 5: Households and Families*, Dublin: Stationery Office, p.22.

³⁶ Central Statistics Office (2015) *Survey on Income and Living Conditions (SILC) 2014*, Cork: CSO.

³⁷ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.24.

³⁸ In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the “very high cost of childcare services provided by private actors and the lack of affordable public childcare services” in

What outcomes should we aim to achieve?

- **Reverse the changes introduced in 2012 to the One Parent Family Payment.**

Ireland. UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.23.