

# ICCL Submission to the Independent COVID-19 Evaluation

**August 2025**

# Table of Contents

<b>List of Acronyms .....</b>	<b>3</b>
<b>Introduction .....</b>	<b>5</b>
<b>The Irish Covid-19 Response I: Law and Enforcement.....</b>	<b>9</b>
<b>Legal Framework.....</b>	<b>9</b>
Human Rights in an Emergency .....	9
Human Rights Principles Guiding ICCL’s Work .....	9
National Legal Response to Covid-19 .....	10
The First Emergency Health Act.....	10
Other Primary Legislation in Response to Covid-19 .....	12
Regulations Made Under the Emergency Legislation .....	13
Evidence-Based and Transparent Decision-Making .....	16
Electoral Events During National Emergencies.....	18
Recommendations .....	19
<b>The Irish Covid-19 Response II: Impact on Rights .....</b>	<b>22</b>
<b>Impact of Covid-19 Response on the Right to Protest .....</b>	<b>22</b>
Legal Framework - Right to Protest .....	22
Impact of the Restrictions on the Right to Protest .....	22
Recommendations: .....	23
<b>Impact of Covid-19 Response on Events and Gatherings .....</b>	<b>24</b>
Legal Framework - Right to Religious Freedom and Right to Respect for Private and Family Life .....	24
Impact of Restrictions on Religious Events and Gatherings.....	24
Restrictions on Other Events .....	26
Recommendations .....	26
<b>Impact of Covid-19 Response on the Right to Free Movement .....</b>	<b>27</b>
Legal Framework- Right to Free Movement .....	27
Impact of the Restrictions on the Right to Free Movement.....	27
Recommendations .....	28
<b>Impact of Covid-19 Response on the Right to Privacy and Data Protection .....</b>	<b>29</b>

Legal Framework – Right to Privacy and Data Protection.....29

Impact of Tracking Technologies on the Right to Privacy and Data Protection.....29

Recommendations .....35

## List of Acronyms

- **CEDAW** - Convention on the Elimination of all Forms of Discrimination against Women
- **CRC** - Convention on the Rights of the Child
- **CRPD** - Convention on the Rights of Persons with Disabilities
- **DPP** - Director of Public Prosecutions
- **DRI** - Digital Rights Ireland
- **ECHR** - European Convention on Human Rights
- **ECtHR** - European Court of Human Rights
- **HSE** - Health Service Executive
- **ICCL** - Irish Council for Civil Liberties
- **ICCPR** - International Covenant on Civil and Political Rights
- **IDEA** - International Institute for Democracy and Electoral Assistance
- **IEHC** - Irish High Court Judgment
- **IHREC** - Irish Human Rights and Equality Commission
- **INCLO** - International Network of Civil Liberties Organizations
- **MIT** - Massachusetts Institute of Technology
- **NBC CT** - National Broadcasting Corporation Connecticut
- **NPHEM** - National Public Health Emergency Team
- **NUI** - National University of Ireland
- **PPE** - Personal Protective Equipment
- **RTÉ** - Raidió Teilifís Éireann
- **SEM** - Strategic Emergency Management
- **SI** - Statutory Instrument
- **TCD** - Trinity College Dublin
- **TD** - Teachta Dála, member of the Irish Parliament (Dáil)
- **TEU** - Treaty on European Union
- **TFEU** - Treaty on the Functioning of the European Union

- **UN** - United Nations
- **WHO** - World Health Organisation

## Introduction

The Covid-19 pandemic was an unprecedented crisis, the likes of which had not been experienced in living memory. No part of Irish life was unaffected, and thousands of people were left grieving loved ones. The duty of the State to protect our rights to life and health was the primary focus of national authorities, leading to severe restrictions on a wide range of other rights.

We must not forget the extent of these restrictions and how they brought the State and An Garda Síochána into the regulation of ordinary life. The experience afforded us a glimpse into the experience of other jurisdictions where police checkpoints, curfews and criminalisation of community activity are commonplace. At the Irish Council for Civil Liberties (ICCL), we believe that this experience has also made us appreciate how precious our civil liberties are.

It is important to recognise that, in many respects, our society and our State showed their best qualities during the pandemic. But our democracy was also strained as new laws and health measures were introduced in haste and without standard levels of scrutiny. National emergencies such as Covid-19 cannot be used as an excuse for opacity when individual liberties and human rights are at stake. On this count, it is the view of ICCL that Ireland fell short of what could have been expected, and it is critical that lessons are drawn from the Covid-19 pandemic experience about maintaining the rule of law and democratic processes in any future emergencies.

ICCL has consistently called for a human rights-based review<sup>1</sup> of the government's pandemic response. The Independent Covid-19 Evaluation offers a welcome opportunity to reflect on the Covid-19 experience - the actions that were taken by the State, the level of oversight of and support for measures, what worked and what didn't, how rights were balanced, the (un)intended consequences of decisions and, above all, what we can learn for the future. It is our sincere hope that the evidence presented by ICCL in this submission will contribute meaningfully to this process of reflection and evaluation. Crucially, we do not need to wait for another pandemic to take action. Some of our recommendations can be implemented in the short-term as a way to prepare for any future likely emergencies, whether related to extreme weather, security threats, cyberattacks, or future public health crises.

ICCL began monitoring the government's response to the outbreak of Covid-19 in Ireland in March 2020. We consistently campaigned for a human rights-based approach to all restrictions on rights during the pandemic, calling for a demonstration by government that each restriction was prescribed by law, necessary in a democratic society, and proportionate to a legitimate aim, as well as time-bound to the duration of the emergency. We repeatedly called for an approach informed

---

<sup>1</sup> ICCL writes to Taoiseach about Covid Review, April, 2023 <https://www.iccl.ie/news/iccl-writes-to-taoiseach-about-covid-review/>

by fundamental human rights principles, including prioritising protection and support for those most at-risk, and ensuring no measure could lead to discrimination.

A human rights-based approach to the pandemic was called for by a range of other actors too. Early in the pandemic, the World Health Organisation (WHO) Director stated that;<sup>2</sup>

*"All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights".*

The United Nations Secretary-General and the UN High Commissioner for Human Rights called on all states to conform with human rights law and standards throughout the pandemic.<sup>3</sup> The Trinity College Dublin (TCD) Covid-19 Law and Human Rights Observatory was a consistent source of detailed legal analysis on the impact of the pandemic response on constitutional rights.<sup>4</sup> The Irish Human Rights and Equality Commission (IHREC) also made important contributions on key issues, most significantly through its report on Ireland's emergency powers during the pandemic, produced in conjunction with the TCD Observatory.<sup>5</sup>

This submission to the Covid-19 Evaluation focuses on the key role of oversight and the impact of the State's response on protest, movement and privacy. It presents some of the content and recommendations of our May 2021 report *Human Rights in a Pandemic: A Human Rights Analysis of the Irish Government's Response to Covid-19*.<sup>6</sup> As some time has passed since the report was published, this submission also includes updates on democratic freedoms and digital rights.

Finally, it is critical to note that the impact of the pandemic did not fall equally on all members of society. The State recognised its disproportionate impact on women and girls in its eighth periodic report submitted to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 2024<sup>7</sup> but a State-level analysis of the impact on marginalised groups is largely absent. This submission offers a general analysis of the impact on Irish society. For a more in-depth analysis on affected groups (older people, immigrants, Travellers, children and women)

---

<sup>2</sup> WHO Director General, Media Briefing, March 2020. <https://www.who.int/publications/i/item/addressing-human-rights-as-key-to-the-covid-19-response>

<sup>3</sup> UN Secretary-General, *We are all in this together: UNSG delivers policy brief on Covid-19 and human rights*, April 2020, <https://www.ohchr.org/en/stories/2020/04/we-are-all-together-ungsg-delivers-policy-brief-covid-19-and-human-rights> and see *Statement by Michelle Bachelet*, UN High Commissioner for Human Rights on Human Rights Impact of Covid-19, 45<sup>th</sup> Session of the Human Rights Council, September 2020 and see range of work at <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>

<sup>4</sup> See Trinity College Dublin, Covid-19 Law and Human Rights Observatory <https://www.tcd.ie/law/tricon/covidobservatory/index.php>

<sup>5</sup> Conor Casey, Oran Doyle, David Kenny and Donna Lyons, *Ireland's Emergency Powers during the Covid-19 Pandemic*, Report prepared for The Irish Human Rights and Equality Commission by The COVID-19 Law and Human Rights Observatory <https://www.ihrec.ie/app/uploads/2021/02/Irelands-Emergency-Powers-During-the-Covid-19-Pandemic-25022021.pdf>

<sup>6</sup> ICCL, *Human Rights in a Pandemic; A Human Rights Analysis of the Irish Government's Response to Covid-19*, June 2021 <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>

<sup>7</sup> Committee on the Elimination of Discrimination against Women, *Eighth periodic report submitted by Ireland under article 18 of the Convention*, November 2024 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FIRL%2F8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FIRL%2F8&Lang=en)

and recommendations on related equality issues, see section 3 of the *Human Rights in a Pandemic* report.<sup>8</sup>

### **Summary of key recommendations to ensure a human rights-based response to future emergencies:**

- Ensure that the Covid-19 Evaluation is an open, honest and fully transparent reflection on actions that were taken by the State during the pandemic and that this extends to learning from actions that had a negative impact on human rights and democratic processes, whether intended or not.
- Ensure that advisory bodies such as NPHEt are fully independent of government, properly resourced, and have a broad range of expertise, including on human rights.
- Ensure that where emergency measures or restrictions on human rights are introduced, that these are subject to meaningful scrutiny and oversight by the Oireachtas, and that they are demonstrably compatible with Ireland's human rights obligations.
- Ensure that any restrictions on human rights are proportionate, the least restrictive possible and clearly communicated to the public, An Garda Síochána and public bodies.
- Ensure that all public bodies fully respect their duty to promote equality, combat discrimination, and protect the rights of all those who use their services during emergencies, in line with the Public Sector Equality and Human Rights Duty.
- Amend the Electoral Reform Act 2022 to facilitate the holding of electoral events to be held during emergencies, in collaboration with the Electoral Commission.
- Ensure that any digital or artificial intelligence solutions deployed in response to emergencies are effective, in addition to promoting trust and being necessary, proportionate and rights-respecting.

---

<sup>8</sup> ICCL, *Human Rights in a Pandemic A Human Rights Analysis of the Irish Government's Response to Covid-19*, June 2021, <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>

- Ensure there are mechanisms in place to assess the impact of emergency measures on human rights, including by giving a consultative, advisory role to IHREC.
- Focus on ensuring compliance with emergency measures through positive reinforcement of messaging, targeted communication and the provision of supports, using criminal law as a last resort.

# The Irish Covid-19 Response I: Law and Enforcement

## Legal Framework

### Human Rights in an Emergency

There are two ways States can lawfully restrict rights in an emergency. The first is to make a declaration of a derogation – or exemption – from specific rights, as provided for in international treaties, including the European Convention on Human Rights (ECHR).

The second is to limit rights within the permitted framework of human rights law. This requires governments to take only those measures that are necessary, proportionate and consistent with their national and international legal obligations.<sup>9</sup> This is discussed in detail below.

The Irish Constitution provides that constitutional human rights norms may be limited in the event of an emergency caused by a war or armed rebellion.<sup>10</sup> Absent these circumstances, the Irish Courts have made clear that all restrictions on constitutional rights must be proportionate.<sup>11</sup>

### Human Rights Principles Guiding ICCL’s Work

Human rights law and ordinary rule of law principles place further requirements on governments when providing for limitations on rights in law. We consider, based on well-established human rights and rule of law principles, that the government’s approach to restricting rights in an emergency should always incorporate the following six principles. We have used these principles to inform our analysis throughout this submission.

1. Without a derogation, rights can be limited but not suspended.<sup>12</sup>
2. Legislation should be subject to scrutiny, consultation and oversight by Parliament.
3. Legislation should be demonstrably compatible with human rights law.<sup>13</sup>

---

<sup>9</sup> *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, HRC A/HRC/37/52, March 2018.

<https://documents.un.org/doc/undoc/gen/g18/054/36/pdf/g1805436.pdf?OpenElement>

<sup>10</sup> Constitution of Ireland, Article 28. <https://www.irishstatutebook.ie/pdf/en.cons.pdf>

<sup>11</sup> *Heaney v. Ireland* [1994] 3 IR 593 <https://ie.vlex.com/vid/heaney-v-ireland-793146069>

<sup>12</sup> *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, HRC A/HRC/37/52, March 2018.

<https://documents.un.org/doc/undoc/gen/g18/054/36/pdf/g1805436.pdf?OpenElement>

<sup>13</sup> IHREC, *Guidance Note on Covid-19 and the Public Sector Equality and Human Rights Duty*, August 2020

<https://www.ihrec.ie/documents/guidance-note-covid-19-and-the-public-sector-equality-and-human-rights-duty/>

4. Law must be clear, precise and accessible, and must be communicated clearly to the public.
5. Evolving responses to the emergency must be demonstrably connected to evidence of effectiveness and need.
6. Access to justice and accountability must be maintained.

## National Legal Response to Covid-19

Principle 2 above provides that laws should be scrutinised, debated and approved by our elected representatives. This principle arguably takes on an even greater importance during a pandemic where public trust in government is vital to ensure compliance with public health advice. Principle 3 provides that legislation should be demonstrably compatible with human rights law. Principle 4 sets out that the law must be clear, precise and accessible, and must be communicated clearly to the public. This section examines the emergency legislation passed by government in response to Covid-19 in light of these three principles.

### The First Emergency Health Act

The Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 (the Emergency Legislation), amending the Health Act 1947, was the bedrock legislation on which most subsequent regulations restricting rights were based. It was debated in the Oireachtas between 18 and 20 March 2020 and signed into law on 20 March 2020.<sup>14</sup> The Act granted the Minister for Health extensive powers to make legal regulations restricting people's movement, travel, gatherings and events as well as "any other measures that the Minister considers necessary in order to prevent, limit, minimise or slow the spread of Covid-19".<sup>15</sup> It also expanded the right of medical officers to detain those who were a "potential source of infection" and removed some safeguards for people detained on that basis.

ICCL did not oppose the Emergency Legislation. Placing restrictions on rights on a legal footing is required to meet the first criteria of the human rights framework - ensuring restrictions are "prescribed by law". We understood that the urgency of the situation, in addition to the many unknowns about the virus or how it would spread, required immediate action to protect the rights to life and health. ICCL made a comprehensive submission<sup>16</sup> to members of the Oireachtas

---

<sup>14</sup> *Emergency Measures in the Public Interest (Covid-19) Act 2020* <https://www.oireachtas.ie/en/bills/bill/2020/4/>

<sup>15</sup> *Emergency Measures in the Public Interest (Covid-19) Act 2020* s.31A(1)(h) <https://www.oireachtas.ie/en/bills/bill/2020/4/>

<sup>16</sup> ICCL Submission on the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020, March 18, 2020. <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-analysis-emergency-COVID19-legislation.pdf>

outlining some key concerns with the draft Bill. We published a briefing note<sup>17</sup> on the human rights implications of the law and we campaigned for the government to adopt a human rights framework in its response.<sup>18</sup> We called for a clear human rights test to be included in the making of all regulations, better safeguards for people who may be detained, consultation with relevant stakeholders, oversight by the Oireachtas and a sunset clause to ensure the legislation would not apply beyond the emergency. We noted the power conferred on the Minister to create new criminal offences and the expansion of Garda powers of arrest; and we called for any law creating new criminal offences to be drafted clearly and narrowly and for excessive discretionary police powers to be avoided.

The legislation was rushed through both houses of the Oireachtas in three days preventing in-depth scrutiny of the Bill.<sup>19</sup> A number of TDs and Senators proposed amendments addressing some of ICCL's concerns but when they were rejected by government, they stated that they would not push for them given the urgency of the situation.<sup>20</sup>

One amendment was proposed by the government - a sunset clause of 9 November 2020 - which ICCL welcomed.<sup>21</sup> As that date approached, ICCL called for a full parliamentary review of the legislation. The date for renewal offered the Oireachtas the opportunity to reopen some of the issues that were put aside during the debate in March. However, ICCL was disappointed to learn two weeks before the date for renewal that the legislation was due to be debated for only 45 minutes. Following advocacy by ICCL and others underlining the importance of sufficient time for debate this was extended, but ultimately only lasted two hours.<sup>22</sup> We consider two hours entirely insufficient to allow for any real parliamentary scrutiny and note that this practice continued until the measures were repealed. This lack of oversight undermined a key pillar of our democracy - Oireachtas scrutiny of laws - and prevented a review of whether the law responded appropriately to established needs.

As seen in other jurisdictions,<sup>23</sup> there is evidence that the poor standard of democratic oversight of pandemic-related legislation spread to the passage of other legislation in Ireland, negatively

---

<sup>17</sup> ICCL Briefing on Covid-19 Emergency Legislation, March 2020. <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-briefing-on-COVID-19-emergency-legislation.pdf>

<sup>18</sup> See e.g. Doireann Ansbro, Our human rights cannot be sacrificed in fight against Covid-19, Irish Examiner, March 2021.

<sup>19</sup> <https://www.oireachtas.ie/en/bills/bill/2020/3/?tab=debates>

<sup>20</sup> Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020: Committee and Remaining Stages 19 March 2020 <https://www.oireachtas.ie/en/debates/debate/dail/2020-03-19/11/>

<sup>21</sup> See ICCL, Monitoring Human Rights during the Pandemic, Update 1, 13-20 March 2020. <https://www.iccl.ie/wp-content/uploads/2020/06/Update-1-Your-rights-in-the-pandemic.pdf>

<sup>22</sup> Jack Horgan Jones, Extra Day to Dáil debate on extending State's powers during pandemic, The Irish Times, October 2020. <https://www.irishtimes.com/news/ireland/irish-news/extra-day-to-dail-debate-on-extending-state-s-powers-during-pandemic-1.4386040>

<sup>23</sup> European Parliament: Impact of COVID-19 measures on democracy and fundamental rights Best practices and lessons learned in the Member States and third countries, November 2022 [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734010/IPOL\\_STU\(2022\)734010\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734010/IPOL_STU(2022)734010_EN.pdf)

affecting the system of checks and balances.<sup>24</sup> In July 2022, ICCL led a coalition of 23<sup>25</sup> organisations in writing to the Oireachtas Business Committee and the leaders of all political parties to express dissatisfaction with the abuse of the legislative process by the government. Insufficient time was repeatedly allocated for the discussion of complex legislation, large volumes of technical additions to bills were added as amendments with little to no time allocated for examination, debates were routinely curtailed or guillotined, and important legislative stages were curtailed or merged to expedite the legislative process. The Business Committee responded to the letter in November 2022, but with no substantive plans to address the concerns raised. The government continued to engage in these poor practices as late as December 2022 with the amalgamation of key stages of a number of complex bills, including during debates on the Planning and Development and Foreshore (Amendment) Act 2022.<sup>26</sup> More recently we have seen such practices continue with the much criticised truncated debate on the Planning and Development Act 2024,<sup>27</sup> in addition to the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024<sup>28</sup> and the Ministers and Secretaries and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act 2025.<sup>29</sup>

## Other Primary Legislation in Response to Covid-19

Other primary legislation introduced by the government expanded Garda powers further in a variety of ways. The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020<sup>30</sup> allowed for the inspection of premises without a warrant and closure of premises orders by gardaí. ICCL expressed concern at the wide discretion afforded to gardaí under the Act and questioned the feasibility and necessity of the Act, given the provisions relating to some premises appeared impossible to enforce. We echoed these concerns when the Health (Amendment) Act 2021<sup>31</sup> was introduced,

---

<sup>24</sup> Eoin Carolan, Silvia Gagliardi, Seána Glennon, Ailbhe O'Neill, *Ireland: Legal Response to Covid-19*, The Oxford Compendium of National Legal Responses to Covid-19 [OCC19], January 2025 <https://oxcon.ouplaw.com/display/10.1093/law-occ19/law-occ19-e19?p=emailACoOzeGLP5Eqs&d=/10.1093/law-occ19/law-occ19-e19>

<sup>25</sup> ICCL Open Letter on Parliamentary Procedures July 2022 <https://www.iccl.ie/wp-content/uploads/2022/07/Open-Letter-on-Parliamentary-Procedures-July-15th-2022.pdf>

<sup>26</sup> J Vivian Cooke, *Department rushes and fumbles new planning legislation, under unexplained pressure, A timeline of U-Turns*, Village Magazine, December 2022 <https://villagemagazine.ie/department-rushes-and-fumbles-new-planning-legislation-under-unexplained-pressure-a-timeline-of-u-turns/>

<sup>27</sup> Paul Cunningham, *Dáil passes planning system legislation*, RTÉ News October 2024, <https://www.rte.ie/news/politics/2024/1009/1474329-planning-legislation/>

<sup>28</sup> ICCL writes to Minister for Justice and Senators re: proposed naturalised citizenship amendments July 2024 <https://www.iccl.ie/news/iccl-writes-to-minister-for-justice-and-senators-re-proposed-naturalised-citizenship-amendments/>

<sup>29</sup> Marie O'Halloran, *Legislation to increase number of Ministers rushed through Dáil, passing by 92 votes to 72*, Irish Times, February 2025 <https://www.irishtimes.com/politics/oireachtas/2025/02/12/legislation-to-increase-number-of-ministers-rushed-through-dail-passing-by-92-votes-to-72/>

<sup>30</sup> Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 <https://www.irishstatutebook.ie/eli/2020/act/14/enacted/en/html>

<sup>31</sup> Health (Amendment) Act 2021. <https://www.irishstatutebook.ie/eli/2021/act/1/enacted/en/html>

which provided for fixed penalty notices (fines) for breaches of many of the restrictions. This Act significantly changed the enforcement landscape given that prior to the Act, a person could only be punished for breaching the Covid-19 restrictions after a decision by the Director of Public Prosecutions to pursue a case and a criminal trial. ICCL called for the following amendments<sup>32</sup> to better meet principles 2 and 3 outlined above when the legislation was subject to review:

- **Human Rights Impact Assessment:** A requirement to carry out a human rights impact assessment should be included.
- **Need for a meaningful proportionality test:** A requirement that the government would carry out a meaningful proportionality test when restricting rights, including by ensuring all limits on rights were the least restrictive possible to achieve the aim of protecting public health.
- **Better consultation:** A requirement for consultation with IHREC whenever regulations are made that severely impact rights.
- **Better scrutiny:** A requirement that the Oireachtas has pre-legislative scrutiny over each set of regulations unless the particular exigency of the public health situation requires an urgent response.
- **Oireachtas approval:** A requirement that the Oireachtas should approve all regulations within a certain period of time.
- **Non-discrimination clauses:** A requirement that efforts be made to minimise the potential discriminatory impacts of emergency powers through the insertion of non-discrimination clauses in relevant legislation.
- **Limits on broad powers:** A requirement that any emergency powers granted to a minister under emergency legislation are limited to those that are urgent, necessary and proportionate.
- **Regular review:** A requirement for a substantive review of the exercise of emergency powers both by the Minister for Health and An Garda Síochána.

## Regulations Made Under the Emergency Legislation

The fourth principle above requires that laws must be clear, precise and accessible.

Following the entry into force of the regulations made under the Emergency Legislation in April 2020, ICCL monitored and analysed key provisions that infringed rights.<sup>33</sup> In particular we called for

---

<sup>32</sup> ICCL analysis of the renewal of Emergency Covid-19 powers Submission to all Members of the Oireachtas May 2021 <https://www.iccl.ie/wp-content/uploads/2021/05/ICCL-analysis-of-renewal-of-emergency-powers-.pdf>

<sup>33</sup> ICCL, Monitoring Rights During the Pandemic, <https://www.iccl.ie/iccl-monitoring-rights-during-the-pandemic/>

proportionate sanctions, including the removal of criminal penalties for the exercise of rights and for an explicit exception to the regulations on events involving the safe exercise of the right to protest.

In the first weeks of the pandemic, it was understandable that regulations were drafted and published quickly to ensure the government could respond to the uncertain and worsening public health situation. However, as the pandemic wore on, ICCL considers that the process for drafting, publishing and communicating the content of regulations could have been much improved. In our September 2020 submission to the Oireachtas Special Committee on Covid-19 Response,<sup>34</sup> we noted that there was a general sense of confusion around what was contained in each set of regulations and we called for much greater clarity. We note the observation in IHREC's report on the exercise of the Covid-19 emergency powers that:

*"The government's making, and presentation of regulations raises serious rule of law concerns. Regulations have applied retroactively, are frequently not published for several days after they are made, are misleadingly described in official communications, and are inadequately distinguished from public health advice."<sup>35</sup>*

We supported IHREC's strong recommendation that the government:

*"should at all times and in all communications maintain a clear distinction between measures that are legally obligatory and public health advice. In particular, the government should not present public health advice as if it were criminally enforceable."<sup>36</sup>*

We also supported the recommendation made in October 2020 by the Oireachtas Special Committee on Covid-19 Response that:

*"All sectoral committees should review the relevant Covid-19 legislation which is regulating activity in their sectors and every proposal to extend regulations after 9 November 2020 should require approval by the Houses of the Oireachtas or the relevant joint committee."<sup>37</sup>*

**Penal Provisions:** The Emergency Legislation created the power for the Minister to make regulations restricting the rights to freedom of movement, assembly and association. The legislation gave the Minister the power to classify particular restrictions as "penal provisions". Any

---

<sup>34</sup> ICCL Submission to Oireachtas Special Committee on the Covid-19, September 2020 <https://www.iccl.ie/wp-content/uploads/2020/09/ICCL-Submission-to-Covid-Committee-7-Sept-2020-.pdf>

<sup>35</sup> IHREC, *Ireland's Emergency Powers during the Covid-19 pandemic* February 2021. P.104 <https://www.ihrec.ie/documents/irelands-emergency-powers-during-the-covid-19-pandemic/>

<sup>36</sup> IHREC, *Ireland's Emergency Powers during the Covid-19 pandemic* February 2021. P.104 <https://www.ihrec.ie/documents/irelands-emergency-powers-during-the-covid-19-pandemic/>

<sup>37</sup> Houses of the Oireachtas, Special Committee on Covid-19 Response, Final Report, October 2020. [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special\\_committee\\_on\\_covid\\_19\\_response/reports/2020/2020-10-09\\_final-report-of-the-special-committee-on-covid-19-response-sccr004\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/special_committee_on_covid_19_response/reports/2020/2020-10-09_final-report-of-the-special-committee-on-covid-19-response-sccr004_en.pdf)

penal provision could attract up to six months in prison or a €2,500 fine following prosecution.<sup>38</sup> Subsequent regulations and primary legislation created the power for gardaí to impose on-the-spot fines for breach of Covid-19 regulations.<sup>39</sup>

ICCL voiced concerns from the outset that enforcement of public health guidance should be primarily education- and advice- based. We understand that at the very beginning of the crisis ensuring the population's behaviour through enforceable rules appeared necessary. However, ICCL considered that six months in prison and a €2,500 fine were disproportionate criminal sanctions for breaching rules requiring people to i) stay at home and ii) not to move further than 2km from their home. In our May 2021 submission to members of the Oireachtas on the renewal of emergency powers,<sup>40</sup> we highlighted the following principles that should always apply to the creation of criminal sanctions:

1. Criminal sanctions should always be a measure of last resort.
2. New criminal offences must be drafted clearly and narrowly to ensure they are easily understood and not subject to overbroad discretionary police powers.
3. Where alternative enforcement measures can be appropriately implemented, they should be considered before criminal sanctions.

It is significant that An Garda Síochána reported widespread compliance with the restrictions before criminal penalties were introduced.<sup>41</sup> ICCL considers that this suggests criminal sanctions are not necessary to ensure the general population follows public health guidelines when their content and rationale are clearly communicated.

During 2020, we noted behavioural science research that strongly suggested the best way of ensuring compliance with public health guidelines was through positive reinforcement of messaging, targeted communication and the provision of key supports or "capability, opportunity and motivation".<sup>42</sup> In light of this research, ICCL consistently called on the government to use

---

<sup>38</sup> Health Act 1947, s.31A(12). <https://www.irishstatutebook.ie/eli/1947/act/28/enacted/en/html>

<sup>39</sup> Health Act 1947, s. 31A(6C). <https://www.irishstatutebook.ie/eli/1947/act/28/enacted/en/html>

<sup>40</sup> ICCL analysis of the renewal of Emergency Covid-19 powers Submission to all Members of the Oireachtas May 2021 <https://www.iccl.ie/wp-content/uploads/2021/05/ICCL-analysis-of-renewal-of-emergency-powers-.pdf>

<sup>41</sup> COVID-19 – An Garda Síochána Begins Major Policing Operation in support of public compliance of public health measures, Garda Síochána, March 2020

<https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/march/covid-19-%E2%80%93-an-garda-siochana-begins-major-policing-operation-in-support-of-public-compliance-of-public-health-measures.html>

<sup>42</sup> NUI Galway global Covid-19 study finds strong link between health messaging and behaviour, NUIG News and Events Page, 5 October 2020. <https://www.universityofgalway.ie/about-us/news-and-events/news-archive/2020/october/nui-galway-global-covid-19-study-finds-strong-link-between-health-messaging-and-behaviour.html>

Claire O'Connell, Encouraging health behaviours to tackle the pandemic, The Irish Times, May 2020; <https://www.irishtimes.com/news/science/encouraging-health-behaviours-to-tackle-the-pandemic-1.4260137>

Pete Lunn, Much of what we think about Covid-19 is wrong. We need to change the conversation, The Irish Times, 10 October 2020;

criminal law in a sparing manner and only where clear public health advice grounded in scientific medical evidence is communicated effectively and efforts to ensure compliance through consent have demonstrably failed. We see this as a key area of improvement for the future.

**Affected areas and end dates:** The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 gave the Minister the power to designate a particular geographic area as an “affected area” where there was “sustained transmission” of the virus.<sup>43</sup> Regulations under the Act could not impose restrictions in an area unless it was designated as an affected area. The Minister chose to designate the whole country as an “affected area” so each set of regulations applied to the entire country. Except for a brief period during summer 2020, this remained the case even as it became clear that the numbers affected by the virus were very different in different regions of the country. ICCL considers the potential to designate a distinct part of the country as an “affected area” a tool that can be used to respond in a more targeted manner to future emergencies. This may assist with ensuring restrictions are proportionate.

The fact that each set of regulations had a specific timeframe was positive. However, communication about the end date of some regulations was lacking and certain regulations were extended without proper advance notice. There was consistent confusion among the public about what regulations were in force and when.<sup>44</sup>

## Evidence-Based and Transparent Decision-Making

Laws and policies should be developed on the basis of demonstrable need rooted in high-quality evidence. Research and data collection are vital to provide the evidence that must inform decision-making. This is a key human rights principle. The public must have confidence that decisions are being made in a considered manner and are grounded in strong and clear processes.

ICCL repeatedly called on the government to conduct a human rights impact assessment of all restrictions on rights to ensure laws and policies responded to real needs, discrimination was avoided, and differential impacts were minimised and mitigated by key supports.<sup>45</sup>

ICCL expressed concern on several occasions that there was a lack of transparency in relation to the processes and grounds for the decisions that led to the different levels of restrictions on

---

<https://www.irishtimes.com/life-and-style/health-family/much-of-what-we-think-about-covid-19-is-wrong-we-need-to-change-the-conversation-1.4375838>

Molly Byrne, Behaviour is best Covid-19 vaccine available, The Irish Times, October 2020.

<https://www.irishtimes.com/opinion/behaviour-is-best-covid-19-vaccine-available-1.4390925>

<sup>43</sup> Section 31B, Health Act 1947 as amended by s.10 of the Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020. <https://www.irishstatutebook.ie/eli/2020/act/1/section/10/enacted/en/html>

<sup>44</sup> Aine Kenny, Confusion over whether Covid-19 restrictions were guidelines or legal requirements, The Irish Examiner, September 2020 <https://www.irishexaminer.com/news/arid-40045955.html>

<sup>45</sup> ICCL, Monitoring Rights During the Pandemic, Update 21 1-7 August 2020. <https://www.iccl.ie/wp-content/uploads/2020/09/Update-21-Your-rights-in-the-pandemic.pdf>

rights.<sup>46</sup> ICCL supported the essential work of the National Public Health Emergency Team (NPHE) and we believe it was vital to ensure that its actual and perceived independence and integrity as an expert advisory body was protected. We also believe that the composition and procedures of any expert body advising the government must ensure a full range of public health and social perspectives, including human rights expertise, and must be adequately resourced to carry out its agreed function.

In our submission to the Oireachtas Special Committee on Covid-19 Response in September 2020, we highlighted the need for more transparency as well as the approach in other jurisdictions where a range of experts sat on government health advisory boards during the pandemic.<sup>47</sup> We believe that the composition of NPHE could have been improved by adding a broader range of experts such as mental health experts, sociologists and a human rights expert who could give a broader view on the impact of restrictions on public health and on rights. Looking ahead, it is essential for NPHE and/or any future, similar advisory bodies to include human rights expertise from the outset.

Critically, we believe that clear lines of separation should have existed between NPHE's formal advice to government, the medical science upon which the advice was based, the government's interpretation of that advice (including where it accepted or rejected advice); and guidelines or legal requirements which the government chose to introduce on foot of advice, which are required to be in line with the State's human rights obligations.

We note that IHREC highlighted that the Public Sector Equality and Human Rights Duty applies to all public sector actors, including the HSE, the Department of Health, the Chief Medical Officer and NPHE.<sup>48</sup> This means there is a clear duty on all these actors to promote equality, combat discrimination and protect the human rights of all those who use their services.<sup>49</sup> In the context of Covid-19, IHREC has stated that in order to fulfil this duty, public bodies must:

*"carry out an assessment of the equality and human rights issues relevant to their function and purpose; develop policies, plans and actions to address these issues; and report annually on progress and achievements. As public bodies move towards recovery and longer-term planning, this provides an important framework to systematically consider and*

---

<sup>46</sup> See for example ICCL, Submission to Oireachtas Covid-19 Committee, September 2020. <https://www.iccl.ie/wp-content/uploads/2020/09/ICCL-Submission-to-Covid-Committee-7-Sept-2020-.pdf>

<sup>47</sup> ICCL, Submission to Oireachtas Covid-19 Committee, September 2020. <https://www.iccl.ie/wp-content/uploads/2020/09/ICCL-Submission-to-Covid-Committee-7-Sept-2020-.pdf>

<sup>48</sup> IHREC, Covid-19 and the Exercise of Emergency Powers, p.18. <https://www.ihrec.ie/documents/irelands-emergency-powers-during-the-covid-19-pandemic/>

<sup>49</sup> See IHREC, *Implementing the Public Sector Equality and Human Rights Duty*, March 2019. [https://www.ihrec.ie/app/uploads/2022/08/IHREC\\_Public\\_Sector\\_Duty\\_Final\\_Eng\\_WEB.pdf](https://www.ihrec.ie/app/uploads/2022/08/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf)

*reflect the particular needs of staff and service users at risk of inequality, discrimination or disproportionate impact, and helps to mitigate and avoid unintended consequences.”<sup>50</sup>*

ICCL would welcome a public commitment to fulfilling this duty from all relevant public bodies in the context of decision-making that leads to restrictions on rights in any future emergency scenario.

## **Electoral Events During National Emergencies**

Ensuring the functionality of the democratic process insofar as is possible in the context of a national emergency is essential to ensure that policy choices are subject to the will of the electorate. According to a February 2022 report<sup>51</sup> by the International Institute for Democracy and Electoral Assistance (IDEA), elections were postponed in 80 countries or territories as a result of Covid-19 or with Covid-19 cited as a reason. In March 2022, the government published the long-awaited Electoral Reform Bill 2022. Part 5 of the Bill in its original form included provisions on the exercise of democratic and electoral rights in the context of Covid-19 or similar restrictions.<sup>52</sup> The explanatory memorandum states<sup>53</sup>

*“This Part sets out legislative amendments to electoral law to assist with the holding of polls where public health restrictions are in place during a pandemic.”*

In reality, however, what was proposed in the Bill was simply to provide for advance polling in the context of a pandemic. No other provisions were subsequently included before the Bill was enacted. In ICCL’s view the Electoral Reform Act 2022 was a missed opportunity. Instead of simply allowing for advance polling in the context of a pandemic, the Bill should have addressed national emergencies more broadly to ensure they do not present an insurmountable obstacle to the vindication of democratic rights.<sup>54</sup>

It is ICCL’s view that the relevant section of the Electoral Reform Act 2022 should be amended and expanded to encompass any national emergency and the development of “whole-of government” strategies with respect to the holding of electoral events. This would go some way to ensuring that we learn from the pandemic experience and that there is a solid legal framework in place to protect democratic rights in the future. The development of these strategies would be in line with

---

<sup>50</sup> IHREC, Guidance Note on Covid-19 and the Public Sector Equality and Human Rights Duty.

<https://www.ihrec.ie/documents/guidance-note-covid-19-and-the-public-sector-equality-and-human-rights-duty/>

<sup>51</sup> IDEA Global Overview of COVID-19: Impact on Election, December 2022 <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

<sup>52</sup> An Bille um Athchóiriú Toghcháin, 2022/ Electoral Reform Bill 2022 Mar a tionscnaíodh/ As initiated <https://data.oireachtas.ie/ie/oireachtas/bill/2022/37/eng/initiated/b3722d.pdf>

<sup>53</sup> An Bille um Athchóiriú Toghcháin, 2022/Electoral Reform Bill 2022 Meabhrán Míniúcháin/Explanatory Memorandum <https://data.oireachtas.ie/ie/oireachtas/bill/2022/37/eng/memo/b37b22d-memo.pdf>

<sup>54</sup> Electoral Reform Act 2022 <https://assets.gov.ie/static/documents/national-risk-assessment-2024-overview-of-strategic-risks.pdf>

and build on the government's *National Risk Assessment 2024 – Overview of Strategic Risks*,<sup>55</sup> published by the Department of the Taoiseach. This approach should also prompt a wider review of the government's *Strategic Emergency Management National Structures and Framework*<sup>56</sup> document and the incorporation of electoral events into its planning matrix.

## Recommendations

For government and Oireachtas:

1. Where emergency situations require a response that restricts the exercise of rights, the following six principles should be taken into account:

Principle 1: Rights can be limited but not suspended without a derogation.

Principle 2: Legislation should be subject to scrutiny, consultation and oversight by the Oireachtas.

Principle 3: Legislation should be demonstrably compatible with human rights law.

Principle 4: Law must be clear, precise and accessible, and must be communicated clearly to the public.

Principle 5: Evolving responses to the emergency must be demonstrably connected to evidence of effectiveness and need.

Principle 6: Access to justice and accountability must be maintained.

2. When legislating for emergency measures in the future, or renewing emergency legislation:
  - a. Ensure all emergency legislation has a sunset clause and, when legislation is being debated or is due to be renewed, ensure sufficient time for meaningful Oireachtas discussion and a human rights review.
  - b. Establish a statutory requirement that the government must carry out a meaningful proportionality test when restricting rights, including by making best efforts to ensure all limits on rights are the least restrictive possible to achieve their objectives.

---

<sup>55</sup> Department of An Taoiseach, *National Risk Assessment 2024 – Overview of Strategic Risks*, September 2024 <https://www.gov.ie/en/department-of-the-taoiseach/policy-information/national-risk-assessment-2024-overview-of-strategic-risks/>

<sup>56</sup> Department of Defence; Office of Emergency Planning, *Strategic Emergency Management (SEM) National Structures and Framework*, April 2024 <https://www.gov.ie/en/department-of-defence/publications/strategic-emergency-management-sem-national-structures-and-framework/>

- c. Establish a statutory requirement for consultation with IHREC whenever regulations are made that severely impact rights.
  - d. Establish a statutory requirement that the Oireachtas has pre-legislative scrutiny over each set of regulations unless the exigency of the emergency situation requires an urgent response.
  - e. Require the Oireachtas to approve regulations within a set period of time.
  - f. Include a broad non-discrimination clause in all emergency legislation to ensure the government avoids potential discriminatory impacts of the law.
  - g. Ensure emergency legislation does not create overly broad or blanket powers for any State actor.
  - h. Establish a statutory requirement for a substantive regular review of the exercise of emergency powers.
  - i. Establish a requirement to carry out a human rights impact assessment of the legislation.
3. When drafting regulations under emergency legislation that restrict rights:
- a. Publish emergency regulations before they enter into force.
  - b. Consult with IHREC where laws infringe rights.
  - c. Demonstrate that every restriction on rights has been subject to a proportionality assessment.
  - d. Enable pre-legislative scrutiny and oversight by the Oireachtas.
  - e. Ensure targeted, timely communication of restrictions on rights ensuring there is no blurring of lines between law and guidance.
  - f. Focus on ensuring compliance with public health/emergency advice through positive reinforcement of messaging, targeted communication and the provision of key supports.
  - g. Use criminal law as a means of enforcement in a sparing manner and only where clear public health/emergency advice grounded in scientific medical evidence is communicated effectively and efforts to ensure compliance through consent have demonstrably failed.
  - h. Use the “affected areas” provision in emergency legislation to ensure a targeted approach to rights restrictions.
4. For all decision-making in an emergency that results in restrictions on rights:

- a. Gather data, including by conducting a human rights impact assessment, on all restrictions on rights to inform decision-making and to ensure laws and policies respond to real needs, discrimination is avoided, and differential impacts are minimised and mitigated by key supports.
  - b. Ensure transparency and effective communication of decision-making processes so the public understands the grounds for decisions that lead to different levels of restrictions on rights.
  - c. Improve the composition of expert advisory teams, including NPHET, by adding a broad range of experts beyond public health specialists, including a human rights expert.
  - d. Ensure public sector actors understand and fulfil the public sector human rights and equality duty required under Section 42 of the Irish Human Rights and Equality Commission Act 2014.
5. For the holding of electoral events during national emergencies:
- a. Amend Part 6 of the Electoral Reform Act 2022 to include provision for the development of “whole-of-government” strategies for the holding of electoral events in the context of any national emergency, in collaboration with the Electoral Commission.
  - b. Commit to carrying out a periodic review and update of relevant strategies.
  - c. Commit to a review of the *Strategic Emergency Management National Structures and Framework* document and the incorporation of electoral events into its planning matrix.

## The Irish Covid-19 Response II: Impact on Rights

This section describes the impact of the Irish Covid-19 response on different human rights. It focuses on some of the key rights and issues that ICCL worked on throughout the Covid-19 response. For an understanding of the differentiated impact of Covid-19 on different groups, see the *Human Rights in a Pandemic* report.

### Impact of Covid-19 Response on the Right to Protest

#### Legal Framework - Right to Protest

In a democracy people have the right to express their views, peacefully protest decisions and gather together in public to do so. Numerous human rights bodies have confirmed that States have a duty to facilitate protest, as well as the importance of this right in a functioning, democratic society.<sup>57</sup>

The right to protest is protected by the Irish Constitution, the ECHR, the EU's Charter of Fundamental Rights and the International Covenant on Civil and Political Rights (ICCPR) through the rights to freedom of assembly, freedom of expression and freedom of association.<sup>58</sup> Other rights that are relevant to protest include the right to non-discrimination, the right to freedom of thought, conscience and belief, and, when force is used to suppress protest, the right to life and the right not to be subjected to ill-treatment. Where protesters are subject to police surveillance, the right to privacy also takes on particular importance.

#### Impact of the Restrictions on the Right to Protest

The above rights can be limited in a proportionate manner to protect public health. ICCL recognises that large gatherings of people during the pandemic placed public health at risk and restrictions on large protests were necessary. However, given the fundamental importance of the

---

<sup>57</sup> See European Court of Human Rights, Guide to Article 11, Freedom of Assembly and Association, updated December 2020. <https://www.refworld.org/jurisprudence/caselawcomp/echr/2020/en/123531> For the scope of the right to protest, see also UN Human Rights Committee, General Comment 37 on article 21 Right of Peaceful Assembly, July 2020, CCPR/C/GC/37 <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

<sup>58</sup> The European Court of Human Rights has stressed the close symbiotic link between the Article 10 and 11 ECHR freedom of expression and freedom of assembly protections. Peaceful political protests are constitutionally protected pursuant to the Article 40.6.1 The Irish Constitution guarantees to freedom of expression and assembly "It is quite clear that persons who assemble peacefully on the public highway [to protest] are prima facie entitled to the benefit of the constitutional guarantee" – Francis Hyland v. Dundalk Racing [2014] IEHC 60 at para. 76, per Hogan J. <https://ie.vlex.com/vid/frances-hyland-v-dundalk-792655469> See also: *The People (DPP) v. Kehoe* [1983] I.R. 136, 139 per McCarthy J. <https://ie.vlex.com/vid/people-v-kehoe-792860633>

right to protest, ICCL consistently called on the government to include small, safe protest as a “reasonable excuse” as set out in the emergency health regulations,<sup>59</sup> with clear guidelines on how people could exercise their right to protest in a safe manner.<sup>60</sup> Despite some support for this proposal expressed by senior government ministers in meetings with ICCL, protest was not included as an exception to the general restrictions on events at any level.

It is ICCL’s view that the blanket ban on protest at the beginning of the pandemic was a disproportionate interference with the right to protest. Constitutional courts in other jurisdictions subject to the ECHR, such as Germany,<sup>61</sup> found that a blanket ban on protest during the pandemic was unconstitutional and directed that guidelines on small, safe protests should be issued by relevant public bodies.<sup>62</sup> ICCL believes that protests should not have been considered on the same footing as other restricted or banned events during the pandemic given that protest is a fundamental right protected by law. Prosecutions for exercising a fundamental right should never take place.

## Recommendations:

*For government:*

1. Make more effective efforts to facilitate safe protest during any future national emergencies.
2. Issue guidelines to protest organisers and participants on how to organise and participate in small, safe protests in times of national emergencies.

*For An Garda Síochána:*

3. Develop and publish guidelines on how protests should be policed during emergencies to ensure transparency, consistency and a human rights compliant approach.

---

<sup>59</sup> S.I. No. 121 of 2020 Health Act 1947 (Section 31a - Temporary Restrictions) (Covid-19) Regulations 2020 <https://assets.gov.ie/static/documents/si-no-121-of-2020-health-act-1947-section-31a-temporary-restrictions-covid-19-regulati.pdf>

<sup>60</sup> ICCL calls on Government to respect rights to protest, worship and family life, March 2021 <https://www.iccl.ie/news/iccl-calls-on-government-to-respect-rights-to-protest-worship-family-life/>

<sup>61</sup> Joseph Nasr, Reuters, *Germans have right to protest during coronavirus pandemic: court*, April 2020. <https://www.reuters.com/article/us-health-coronavirus-germany-protests-idUSKCN21Y220/>

<sup>62</sup> For more on the right to protest in a pandemic see for example, ECNL, *Protest in a time of pandemic*, 2020; <https://ecnl.org/sites/default/files/2020-08/Protest-in-a-Time-of-Pandemic.pdf>  
INCLC, *Protesting during a pandemic: State responses during Covid-19*, April 2021. <https://inclo.net/wp-content/uploads/2024/02/Protest-and-State-Response-V7.pdf>

## Impact of Covid-19 Response on Events and Gatherings

Covid-19 restrictions on events and gatherings had a significant impact on a range of other human rights, in addition to the right to protest, including rights to freedom of assembly and association, the right to manifest religion or beliefs, and the right to respect for private and family life.

### Legal Framework - Right to Religious Freedom and Right to Respect for Private and Family Life

The right to freedom of thought, conscience and religion is protected by the Irish Constitution,<sup>63</sup> Article 9 of the ECHR and other international human rights treaties.<sup>64</sup> Article 9(2) of the ECHR<sup>65</sup> protects the freedom to manifest one's religion or belief. While the right to hold religious or other beliefs can never be infringed upon, the right to manifest those beliefs can be restricted for a range of reasons. These reasons include public health, but those restrictions must be prescribed by law and must be necessary and proportionate.

The right to respect for private and family life, home and correspondence is protected by Article 8 of the ECHR and other international human rights treaties.<sup>66</sup> State interference with private life must be kept to an absolute minimum. However, similar to the right to manifest belief, this right can be restricted where those restrictions are necessary and proportionate. The Irish Constitution contains protections for the family<sup>67</sup> and states that "the dwelling of every citizen is inviolable."<sup>68</sup> The right to privacy has been recognised as an unenumerated constitutional right.<sup>69</sup>

### Impact of Restrictions on Religious Events and Gatherings

It is ICCL's view that restrictions on large gatherings could be considered proportionate interferences with relevant rights given the transmissibility of Covid-19. However, restrictions must be demonstrably connected to evidence that they are necessary and that they are the most minimal interference to achieve an aim.

---

<sup>63</sup> Constitution of Ireland, Article 44.2.1°. <https://www.irishstatutebook.ie/eli/cons/en/html>

<sup>64</sup> ICCPR, Article 18; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

CRC, Article 14; <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

CRPD, Article 21. <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-articles>

<sup>65</sup> ECHR, Article 9 <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-9>

<sup>66</sup> ICCPR, Article 17; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

CRC, Article 16. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>67</sup> Constitution of Ireland, Article 41. <https://www.irishstatutebook.ie/eli/cons/en/html>

<sup>68</sup> Constitution of Ireland, Article 40.5. <https://www.irishstatutebook.ie/eli/cons/en/html>

<sup>69</sup> Kennedy v. Ireland [1987] I.R. 587. <https://ie.vlex.com/vid/kennedy-v-ireland-804355141>

ICCL notes in particular that the Covid-19 restrictions had a significant impact on the freedom to manifest religion or belief, despite exceptions for funerals and weddings. Initially, in April 2020, a person could only attend the funeral of a close family member or if they had lived in the same residence as the deceased person at the time of their death. However, this was recognised as too restrictive and was later expanded, presumably as part of a recognition that the initial restrictions were disproportionate. Despite the change allowed for funerals, there were no other specific exceptions to the ban or severe limitations on numbers for events in relation to other religious events or gatherings.

Events that were prohibited were defined as events held, or to be held, “for social, recreational, exercise, cultural, entertainment or community reasons.”<sup>70</sup> They did not include events for religious reasons. This led to debate in the Oireachtas and in the media in November 2020 about whether a priest holding a religious service would be breaching restrictions and could face criminal sanction.<sup>71</sup> The Department of Health stated that:

*“There is no penalty attached to religious events because they are not included in the definition of “relevant event”.”<sup>72</sup>*

Despite this clarification, there were media reports that An Garda Síochána threatened priests with prosecution if they celebrated Mass with people in church.<sup>73</sup> IHREC also highlighted the confusion over whether religious services were prohibited by the regulations and that this confusion “creates a real risk of the uneven application of enforcement powers by the Gardai.”<sup>74</sup>

As with protest, it is ICCL’s view that any blanket bans on religious services, even if they exclude weddings and funerals, are a disproportionate measure. The government should have taken steps to clarify its position on religious services to allow for small, safe religious gatherings when the public health situation permitted, given the clear protections in human rights law for the right to manifest belief. This should have been communicated clearly to the public and to An Garda Síochána.

---

<sup>70</sup> SI No. 448 of 2020, reg. 4. [https://www.irishstatutebook.ie/eli/2020/si/448/made/en/print#:~:text=No.-,448%2F2020%20%2D%20Health%20Act%201947%20\(Section%2031A%20%2D%20Temporary,8\)%20Regulations%202020&text=%E2%80%9C%20if%20%20of%2023rd%20October%2C%202020.](https://www.irishstatutebook.ie/eli/2020/si/448/made/en/print#:~:text=No.-,448%2F2020%20%2D%20Health%20Act%201947%20(Section%2031A%20%2D%20Temporary,8)%20Regulations%202020&text=%E2%80%9C%20if%20%20of%2023rd%20October%2C%202020.)

<sup>71</sup> SI No. 448 of 2020. [https://www.irishstatutebook.ie/eli/2020/si/448/made/en/print#:~:text=No.-,448%2F2020%20%2D%20Health%20Act%201947%20\(Section%2031A%20%2D%20Temporary,8\)%20Regulations%202020&text=%E2%80%9C%20if%20%20of%2023rd%20October%2C%202020.](https://www.irishstatutebook.ie/eli/2020/si/448/made/en/print#:~:text=No.-,448%2F2020%20%2D%20Health%20Act%201947%20(Section%2031A%20%2D%20Temporary,8)%20Regulations%202020&text=%E2%80%9C%20if%20%20of%2023rd%20October%2C%202020.)

<sup>72</sup> Ceimin Burke, *Department of Health says priests can’t be jailed for holding mass during coronavirus restrictions*, The Journal, November 2020. <https://www.thejournal.ie/priests-cant-be-arrested-mass-ireland-coronavirus-5254820-Nov2020/>

<sup>73</sup> Marese McDonagh, *Gardai give ‘last warning’ to parish priest over ‘open-door’ Mass*, The Irish Times, November 2020. <https://www.irishtimes.com/news/social-affairs/gardai-give-last-warning-to-parish-priest-over-open-door-mass-1.4414096>

<sup>74</sup> IHREC, *Ireland’s Emergency Powers during the Covid-19 pandemic*, February 2021, p. 68. <https://www.ihrec.ie/documents/irelands-emergency-powers-during-the-covid-19-pandemic/>

## Restrictions on Other Events

Blanket bans on gatherings in households State's *Resilience and Recovery 2020-2021: Plan for Living with COVID-19*,<sup>75</sup> may have constituted a disproportionate interference with the right to private and family life. In October 2020, the regulations introduced the possibility of a support bubble<sup>76</sup> or "paired households".<sup>77</sup> This was an important measure which Ireland was slow to introduce in comparison to other countries.<sup>78</sup>

Childcare pairing arrangements were provided for in regulations introduced in April 2021.<sup>79</sup> This was a positive development but given the significant challenges around childcare while parents were working from home, this measure should have been introduced sooner. The disproportionate and gendered impact that the pandemic and related restrictions had on caregivers, especially single parents, was highlighted throughout the pandemic.<sup>80</sup>

## Recommendations

*For the government:*

1. Refrain from blanket bans on household gatherings in future national emergencies.
2. Ensure that restrictions on private and family life are proportionate and grounded in evidence.

---

<sup>75</sup> Resilience and Recovery, 2020-2021 Plan for Living with COVID-19 <https://assets.gov.ie/static/documents/resilience-and-recovery-2020-2021-plan-for-living-with-covid-19.pdf>

<sup>76</sup> Department of the Taoiseach, Support bubbles, October 2020. <https://www.gov.ie/en/department-of-the-taoiseach/publications/support-bubbles/>

<sup>77</sup> SI No. 448 of 2020 <https://www.irishstatutebook.ie/eli/2020/si/448/made/en/print>

<sup>78</sup> Jennifer O'Connell, Covid-19 Level 5 support bubbles: Everything you need to know, The Irish Times, October 2020. <https://www.irishtimes.com/life-and-style/health-family/covid-19-level-5-support-bubbles-everything-you-need-to-know-1.4386022>

<sup>79</sup> SI No. 168 of 2021 <https://www.irishstatutebook.ie/eli/2021/si/168/made/en/print>

<sup>80</sup> See for example, Suzanne Cahill, Burned-out families: Restore care services for vulnerable elderly people now, The Irish Times, November 2020. <https://www.irishtimes.com/opinion/burned-out-families-restore-care-services-for-vulnerable-elderly-people-now-1.4410823>

# Impact of Covid-19 Response on the Right to Free Movement

## Legal Framework- Right to Free Movement

The right to free movement is a fundamental right that is connected to the right to liberty. Free movement is protected by the ECHR<sup>81</sup> and international human rights treaties.<sup>82</sup> Both the right to travel within the country and the right to travel abroad have been recognised as constitutional rights.<sup>83</sup> EU treaty law also protects the right to free movement across the bloc.<sup>84</sup> Covid-19 restrictions requiring the population to stay in one place infringed the right to liberty and freedom of movement but, as with many other rights, human rights law permits limitations where they are prescribed by law and are necessary and proportionate.

## Impact of the Restrictions on the Right to Free Movement

The extent to which Covid-19 regulations restricted movement and travel varied. In the first set of Covid-19 regulations, a person was not allowed to leave their place of residence without a reasonable excuse and a 2km geographical perimeter was imposed for exercise. This was a penal provision.<sup>85</sup> ICCL campaigned to remove criminal sanctions for breaches of provisions restricting movement. We welcomed the decriminalisation of the restrictions on movement in June 2020.<sup>86</sup> However, restrictions on movement introduced in October 2020 were redesignated as penal provisions, which ICCL noted “marked a concerning departure from the [previous] change in approach to enforcing regulations.”<sup>87</sup>

It is ICCL’s view that the prolonged interference with the right to liberty imposed from 30 December 2020 to April 2021 may have been disproportionate given the blanket application of this limit to all areas of the country, which was not linked to numbers of cases of Covid-19. As noted

---

<sup>81</sup> Protocol 4 to the ECHR, Article 2. <https://rm.coe.int/168006b65c>

<sup>82</sup> ICCPR, Article 12 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>83</sup> State (Ryan) v. Attorney General [1965] I.R. 294; State (M) v. Attorney General [1979] I.R. 73. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

<sup>84</sup> The right to free movement across the EU is protected by the Treaty on the Functioning of the European Community, article 45; the Maastricht Treaty 1992 <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/maastricht-treaty>

and EU Directive 2004/38/EC <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

<sup>85</sup> SI No. 121 of 2020. <https://www.irishstatutebook.ie/eli/2020/si/121/made/en/print>

<sup>86</sup> ICCL, ICCL welcomes decriminalisation of restriction on movement and return to policing by consent, 8 June 2020.

<https://www.iccl.ie/news/iccl-welcomes-decriminalisation-of-restriction-on-movement/>

<sup>87</sup> ICCL, Monitoring rights during the pandemic, 2020. <https://www.iccl.ie/iccl-monitoring-rights-during-the-pandemic/>

previously, the Emergency Legislation gave the Minister for Health the power to make “affected area” orders where restrictions would apply to some areas of the country and not to others.

The inclusion of a non-exhaustive list of “reasonable excuses” within the regulations to allow for movement beyond the geographical limitation (or at times requirement to stay at home) included access to goods and services, access to healthcare, essential work and vital family matters. ICCL considers that what constituted a “reasonable excuse” was not well communicated and there remained confusion among the population as to when they could or could not leave home or leave the geographical perimeter imposed by the regulations. Allowing for some degree of discretion in such a list is positive, particularly where restrictions are defined as penal provisions. However, ICCL considers that the combination of a lack of clear communication as to what constituted a reasonable excuse along with an unclear basis for exercising this discretion led to confusion.

## **Recommendations**

*For the government:*

1. Ensure that restrictions on human rights, especially penal provisions, are defined with sufficient clarity.
2. Ensure that where restrictions impinge on free movement, the government takes particular care to communicate their precise scope.
3. Ensure that where there are geographical restrictions to the right to free movement, a targeted approach linked with numbers of cases should be applied to ensure that the interference is the most minimal possible and is demonstrably necessary and proportionate to the aim of protecting public health.
4. Ensure that any penalties for breaches of restrictions that constitute an interference with freedom of movement, especially fixed penalty provisions, are proportionate to the aim of protecting public health and to the harm caused by a particular breach.

# Impact of Covid-19 Response on the Right to Privacy and Data Protection

## Legal Framework - Right to Privacy and Data Protection

Privacy is a fundamental human right protected by the Irish Constitution<sup>88</sup> and the ECHR.<sup>89</sup> It is central to democratic societies and it reinforces other rights, such as freedom of expression,<sup>90</sup> the right to send and receive information,<sup>91</sup> data protection rights,<sup>92</sup> the right to freedom of association<sup>93</sup> and the right to freedom of thought, conscience and belief.<sup>94</sup>

Tracking technologies raise significant human rights concerns, in particular, regarding the right to privacy and data protection. Where the government seeks to use technology in response to an emergency, it must ensure that any interference with the right to privacy is necessary and proportionate to the aims it seeks to achieve, be that the protection or health or otherwise. Crucially, the government must also show such tools are effective to pass the tests of necessity and proportionality.

## Impact of Tracking Technologies on the Right to Privacy and Data Protection

At the beginning of the pandemic, new tracking technologies with sweeping surveillance capabilities were rolled out in different jurisdictions across the world, including Ireland. These include contact-tracing apps,<sup>95</sup> quarantine apps with facial recognition technology,<sup>96</sup> drones<sup>97</sup> and electronic bracelets.<sup>98</sup>

---

<sup>88</sup> Constitution of Ireland, Article 40.3.1. <https://www.irishstatutebook.ie/eli/cons/en/html>

<sup>89</sup> ECHR, Article 8 <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-8-0#>

<sup>90</sup> Constitution of Ireland, article 40.6.1.i <https://www.irishstatutebook.ie/eli/cons/en/html>

<sup>91</sup> ECHR, Article 10 <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-10>

<sup>92</sup> European Charter of Fundamental Rights of the European Union, Article 8.

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>93</sup> European Charter of Fundamental Rights of the European Union, Article 12.

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>94</sup> European Charter of Fundamental Rights of the European Union, Article 10.

[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>95</sup> MIT Technology Review, Why some countries suspended, replaced, or relaunched their covid apps, December, 2020.

<https://www.technologyreview.com/2020/12/23/1015557/covid-apps-contact-tracing-suspended-replaced-or-relaunched/>

<sup>96</sup> Asura Technologies, Hungarian Home Quarantine System <https://asuratechnologies.com/solutions/home-quarantine-system/>

<sup>97</sup> NBC CT, Westport Police to test 'pandemic drone' that can sense fevers, coughing, NBC Connecticut, April 2020.

<https://www.nbcconnecticut.com/news/local/westport-police-to-test-pandemic-drone-that-can-sense-fevers-coughing/2258746/>

<sup>98</sup> Lonely Planet, Travelers arriving in Abu Dhabi must now wear quarantine tracking bracelets, September 2020.

<https://www.lonelyplanet.com/news/etihad-tracking-bracelets-quarantine>

## Covid-19 Tracker App

In late March 2020, it emerged that the HSE was planning to introduce a Covid-19 “tracking and tracing” app to assist contact-tracing in Ireland.<sup>99</sup> While questioning whether such an app would ever be efficacious,<sup>100</sup> ICCL warned that any technological tool would need to respect the rule of law and human rights norms. Together with experts, we also created a principled framework for the government and legislators intent on deploying any tech solution as part of a public policy.<sup>101</sup>

We insisted that the deployment of ineffective technologies erodes public trust and undermines efforts to implement solutions.<sup>102</sup>

ICCL and other privacy campaigners called on the Irish health authorities to publish the app’s Data Protection Impact Assessment,<sup>103</sup> the app’s design specifications and its source code ahead of its launch to allow for independent scrutiny. We applauded the HSE and Department of Health for doing so<sup>104</sup> and the Department of Health later told the Oireachtas Special Committee on Covid-19 Response that it was confident our principles had been observed.<sup>105</sup> Prior to the app’s launch, ICCL gave the app an overall “C+” but a grade of “D” in respect of its purported effectiveness and the principles of necessity and proportionality. We pointed out that there was no public data to support the HSE’s claims that the app could detect 72% of close contacts. We also highlighted the lack of data around false positives.<sup>106</sup> In contrast, Dr Stephen Farrell and Professor Doug Leith at Trinity College Dublin raised serious concerns, based on empirical evidence, about the app’s lack of effectiveness.<sup>107</sup>

This is a significant point for the government if it is to face any similar situations in the future.

Whenever a State considers deploying a surveillance tool, it must first consider its efficaciousness.

---

<sup>99</sup> The Journal, Covid-19: HSE says contact tracing app could be rolled out 'in the next 10 days', March 2020

<https://www.thejournal.ie/coronavirus-contact-tracing-app-5061145-Mar2020/>

<sup>100</sup> ICCL and DRI, Submission to the Special Committee on COVID-19 Response on the HSE/ Department of Health’s COVID-19 contact-tracing/symptom-tracking app and contact tracing, 16 June 2020 <https://www.iccl.ie/wp-content/uploads/2020/06/DRI-ICCL-COVID-19-app-Oireachtas-submission.pdf>

<sup>101</sup> Irish Council for Civil Liberties, Principles for legislators on the implementation of new technologies, June 2020.

<https://www.iccl.ie/wp-content/uploads/2020/06/Principles-for-legislators-on-the-implementation-of-new-technologies.pdf>

<sup>102</sup> ICCL and DRI, Submission to the Special Committee on COVID-19 Response on the HSE/ Department of Health’s COVID-19 contact-tracing/symptom-tracking app and contact tracing, June 2020, <https://www.iccl.ie/wp-content/uploads/2020/06/DRI-ICCL-COVID-19-app-Oireachtas-submission.pdf>

<sup>103</sup> ICCL HSE app: experts and public need to see details, April 2020. <https://www.iccl.ie/news/hse-app-experts-and-public-need-to-see-details/>

<sup>104</sup> Olga Cronin, ‘Tracker app is a giant leap for transparency, but beware its privacy implications’ The Irish Examiner (10 July 2020) <https://www.irishexaminer.com/opinion/columnists/arid-40013597.html>

<sup>105</sup> Special Committee on Covid-19 Response debate, Covid-19 Testing and Tracing, June 2020.

[https://www.oireachtas.ie/en/debates/debate/special\\_committee\\_on\\_covid\\_19\\_response/2020-06-25/2/](https://www.oireachtas.ie/en/debates/debate/special_committee_on_covid_19_response/2020-06-25/2/)

See also, Irish Council for Civil Liberties and Digital Rights Ireland, Submission to the Special Committee on COVID-19 Response on the HSE/ Department of Health’s COVID-19 contact-tracing/symptom-tracking app and contact tracing, June 2020.

<https://www.iccl.ie/wp-content/uploads/2020/06/DRI-ICCL-COVID-19-app-Oireachtas-submission.pdf>

<sup>106</sup> <https://www.iccl.ie/wp-content/uploads/2020/07/ICCL-DRI-HSE-App-Pre-Release-Report-Card.pdf>

<sup>107</sup> Dr Stephen Farrell and Professor Doug Leith, Submission to the Special Committee on Covid-19 Response on the topic of Covid-19 Testing and Contact Tracing, June 2020. <https://down.dsg.cs.tcd.ie/tact/oireachtas-submission.pdf>

This is because if it is not efficacious, there is very little, if any, debate to be had about whether or not the tool should be used. The necessity and proportionality of a tool is contingent on its efficacy.

Another important point is the corporate surveillance aspect of the app. ICCL, based on research by Dr Farrell and Prof. Leith, also later raised serious concerns for Android users of the app as it necessitated Google Play Services being turned on for the app to work. Google Play Services sent highly sensitive personal data to Google for the app to function.<sup>108</sup> As Prof. Leith said:<sup>109</sup>

*"...given that governments and public health authorities are strongly encouraging their entire populations to use these apps and hence are (wittingly or not) pressurising their entire populations to take part in this corporate surveillance, we think they should be telling Google to immediately fix this problem."*

It is not known how many people who received a close contact alert on the app subsequently tested positive for Covid-19. Neither is it known if the people who later tested positive could have been traced by any other means and/or if they were traced more quickly by the app than by human contact-tracing. The app's false positive figure was also never made public. ICCL repeatedly sought statistics and figures about the efficacy of the app, but these figures were never revealed.<sup>110</sup>

However, ICCL has some anecdotal evidence as to its lack of efficacy. Within 48 hours of its launch in July 2020, the app was downloaded more than one million times<sup>111</sup> but it was deleted almost 500,000 times over the following six weeks post-launch.<sup>112</sup> In September 2020, it was reported in Irish media that a school in Louth had to close to more than half its 1,200 students after more than 30 of its teachers received a close contact alert via the app.<sup>113</sup> Confusion ensued with some teachers getting tested and others being told that, in fact, they did not need to isolate after all, or get tested, and were free to teach. It was reported that, following an assessment of the situation, public health officials found that teachers contacted by the app were not close contacts after all. The situation led to the president of the Association of Secondary Teachers in Ireland calling for

---

<sup>108</sup> Science X, *New study raises fresh privacy concerns about Apple and Google mobile phones* <https://sciencex.com/wire-news/378641432/new-study-raises-fresh-privacy-concerns-about-apple-and-google-m.html> and ICCL, *Serious privacy and data harvesting concerns about technology underlying HSE app*, July 2020 <https://www.iccl.ie/news/serious-privacy-and-data-harvesting-concerns-about-technology-underlying-hse-app/>

<sup>109</sup> ICCL, *Serious privacy and data harvesting concerns about technology underlying HSE app*, July 2020

<https://www.iccl.ie/news/serious-privacy-and-data-harvesting-concerns-about-technology-underlying-hse-app/>

<sup>110</sup> ICCL *HSE app: experts and public need to see details*, April 2020. <https://www.iccl.ie/news/hse-app-experts-and-public-need-to-see-details/>

<sup>111</sup> Irish Examiner, *HSE's Covid-19 tracing app passes 1m downloads*, July 2020. <https://www.irishexaminer.com/news/arid-31010089.html>

<sup>112</sup> Irish Examiner, *Covid tracker app deleted 500,000 times*, August 2020 <https://www.irishexaminer.com/news/arid-40037825.html>

<sup>113</sup> RTÉ, *Concern over confusion surrounding close contacts at Drogheda school*, September 2020. <https://www.rte.ie/news/2020/09/17/1165854-drogheda-school-covid-19/>

clarity around the app. Some weeks later a “pause” function was added to the app which some healthcare workers<sup>114</sup> and teachers<sup>115</sup> were encouraged to use.

Throughout 2020, 2021 and 2022, ICCL continued to raise concerns about the efficacy of the app. We repeatedly called on the authorities to publish data on the app’s efficacy, or otherwise, and for the minutes of the App Advisory Committee to be made public. Tasked with overseeing the app, the Committee only met twice and had no privacy, data protection, or civil liberties experts or advocates as members, ICCL never received answers to our questions. As of May 2021, the app had cost €1.36 million to develop and maintain.<sup>116</sup> It was eventually wound down in June 2023.<sup>117</sup>

## Covid-19 Vaccination Passes

No form of vaccination is mandatory in Ireland with a key pillar of our approach based on freely given and informed consent. This is an approach that has not only served us well but is deeply intertwined with the importance of the constitutional rights to bodily integrity and privacy. The success of that voluntary approach is also based on trust between the public and our public health system. ICCL believes that coercive measures which fail to meet the required thresholds of necessity and proportionality seriously risk jeopardising the social contract and any future vaccination programmes.

As such, in March 2021, ICCL wrote to the Minister for Foreign Affairs and Minister for Health to raise concerns about any potential proposals to introduce a vaccine passport system in Ireland and called on the government to commit to not using such a system in respect of accessing goods and services within Ireland.<sup>118</sup> At the time, the Irish government was working on implementing the European Commission’s proposed “Digital Green Certificate”, renamed the EU Covid-19 Certificate, to facilitate free movement in the European Union. The certificates were planned to indicate whether a person had been (i) vaccinated, (ii) tested negative, and/or (iii) recovered from Covid-19. The Commission proposed that the certificate would not be a precondition for travel and

---

<sup>114</sup> HSE COVID-19 Testing & Contact Tracing Update 5th Of November 2020

<https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/covid-19-testing-and-tracing-update-6-november-2020.pdf>

<sup>115</sup> The Irish Sun, Teachers in schools with positive Covid-19 cases asked by HSE to turn off contact tracing app while in work, October 2020. <https://www.thesun.ie/news/6059216/coronavirus-in-ireland-teachers-schools-contact-tracing-app-hse/>

<sup>116</sup> The Sunday Times, Data scientists’ question €1.36m Covid tracker app, May 2021.

<https://www.thetimes.com/uk/healthcare/article/data-scientists-question-1-36m-covid-tracker-app-0g2vzmn1q>

<sup>117</sup> Department of Health; Health Service Executive, COVID Tracker app

<https://www.gov.ie/en/department-of-health/services/covid-tracker-app/#:~:text=From%20Friday%2C%2030%20June%202023,to%20carry%20your%20COVID%20certificate.>

<sup>118</sup> ICCL Letter to Minister for Foreign Affairs, Simon Coveney TD on Vaccine Passports/Certificates, March 2021

<https://www.iccl.ie/wp-content/uploads/2021/03/ICCL-letter-to-Foreign-Affairs-re-vaccine-passports.pdf>

free movement, a fundamental right in the EU.<sup>119</sup> In May 2021, ICCL welcomed the government's clarification, both in correspondence with ICCL and in public, that Ireland's version of the EU Covid-19 Certificate would only be issued to those who wanted it and that there were no plans for any domestic vaccination certificate system.<sup>120</sup> However, this was short-lived.

Just before the Oireachtas adjourned for the summer recess, this was reversed with the passing of the Health (Amendment) (No. 2) Act 2021 at the end of July 2021. ICCL called for the legislation to be scrapped based on its discriminatory effects.<sup>121</sup> The legislation provided that indoor hospitality could only be accessed by people who could show proof of Covid-19 vaccination and /or recovery. A negative Covid-19 PCR (polymerase chain reaction) or antigen test would not suffice. The Act did provide for the making of a regulation that could expand the definition of a "permitted person" to include someone who tested negative for Covid-19, but this provision was never utilised. On 17 August 2021, ICCL wrote to the Minister for Health and asked if and when such a regulation would be made, however we never received a reply. The legislation passed without any pre-legislative scrutiny, without inclusion of amendments and without any meaningful, democratic debate. By omitting testing, the legislation did not provide any exemption or accommodation for a person who could not get a vaccine for medical or other reasons including allergies; and/or people who had yet to be convinced of the benefits of the vaccine and did not wish to receive it.

Although limited by time, until 9 October 2021, at which point the government could extend the system for another three months, ICCL believed this was a significant legal change in a country that does not have mandatory vaccination. ICCL believes this legal change necessitated open, robust, transparent, democratic debate about legitimate purpose, proportionality, principles, laws and ethics but such a debate did not take place. In light of the extraordinarily high vaccine uptake rate in Ireland; the exclusion of negative tests from the system; the absence of an exemption for people who could not take the vaccine for medical reasons (which was previously recommended by NPHET); and the fact that transmission occurred between vaccinated people and unvaccinated people; ICCL believed the certificate system failed the tests of proportionality and necessity.

It was ICCL's view that this legal change necessitated open, robust, transparent, democratic debate about legitimate purpose, proportionality, principles, laws and ethics but such a debate did not take place. The main method for people to show their proof of vaccination was via the Irish version

---

<sup>119</sup> Treaty on European Union (TEU), Article 3(2); <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008M003> Treaty on the Functioning of the European Union (TFEU), Article 21; <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E021:EN:HTML> Charter of Fundamental Rights of the European Union, Article 45. <https://fra.europa.eu/en/eu-charter/article/45-freedom-movement-and-residence>

<sup>120</sup> Twitter, Minister of State with responsibility for Public Procurement eGovernment Ossian Smyth TD, May 2021. <https://x.com/smytho/status/1391331060651335681>

<sup>121</sup> ICCL calls for vaccine pass law to be scrapped, July 2021 <https://www.iccl.ie/news/iccl-calls-for-vaccine-pass-law-to-be-scrapped/>

of the EU Digital Covid-19 Certificate. However, people were also able to use the paper record that people received following vaccination. They were also required to show photographic proof of identification to prove that the proof of vaccination related to them. The certificates were later able to be integrated into the Covid-19 Tracker app.

In October 2021, the government extended its use of the system and ICCL wrote to the Minister for Health to, again, outline our opposition and concerns. We asked three specific questions concerning the purpose of the system; why the option of testing was not being added to the system; and what evidence the government had that demonstrated the system had helped to curb the transmission of Covid-19.<sup>122</sup> We explained our position that the system was discriminatory and developed without any meaningful consideration of human rights. We noted that there was no known human rights impact assessment carried out before its implementation, since it came into effect in July 2021, and no such assessment was carried out ahead of its proposed extension until February 2022. We also continued to raise our concerns through the media.<sup>123</sup>

In January 2022, ICCL continued its campaign against the vaccine passes and wrote to NPHET, the Tánaiste and the Taoiseach, calling for the passport system to end. We pointed out that the continuance of the system presented a glaring discrepancy in government policy. On the one hand, the Department of Enterprise, Trade and Employment was correctly warning employers not to create “a false sense of security or undermining of other public health measures” by focusing on an employee’s vaccination status. Instead, the Department’s Work Safely Protocol said an emphasis must remain on other public health infection prevention and control measures such as wearing masks/face coverings, ventilation, physical distancing, hand hygiene, respiratory etiquette and proper use of personal protective equipment. It outlined that while vaccination is a “useful supplement” to these measures, it “should not replace them” because “a vaccinated person can also still transmit the virus”.<sup>124</sup> On the other hand, the Department of Health had expanded and embedded a system since July 2021 based on the very premise that the Department of Enterprise, Trade and Employment was warning against, at a cost to the rights of those who were unvaccinated. On 20 January 2022, NPHET met and on 21 January 2022, the Taoiseach announced that the vaccine passport system would be scrapped the following day.<sup>125</sup>

---

<sup>122</sup> ICCL Letter to Stephen Donnelly, Minister for Health, on domestic vaccine passes, October 2021, <https://www.iccl.ie/wp-content/uploads/2021/10/Covid-certificates.pdf>

<sup>123</sup> Olga Cronin, Negative tests should be included in the Covid pass, The Irish Times, November 2021, <https://www.irishtimes.com/opinion/negative-tests-should-be-included-in-covid-pass-1.4732575>

<sup>124</sup> Department of Trade, Enterprise and Employment: *Work Safely Protocol*, p.36, updated January, 2021. <https://www.gov.ie/en/publication/22829a-return-to-work-safely-protocol/>

<sup>125</sup> Department of An Taoiseach, Address to the nation by Taoiseach Micheál Martin, January 2022 <https://www.gov.ie/en/department-of-the-taoiseach/speeches/address-to-the-nation-by-taoiseach-miche%c3%a1l-martin-21-january-2022/>

During his press conference, Mr Martin made mention of ICCL's letter, saying;<sup>126</sup>

*"We will evaluate this from a human rights perspective...as part of the wider evaluation of how we conducted ourselves during the pandemic. I did receive a letter prior to this from the ICCL in relation to this very issue in anticipation of meeting and the decision of Cabinet. And, in fairness, they made the point that they're always in favour of public health measures, but that once the rationale no longer exists, you know, government shouldn't be imposing them. And that's the decision we've taken."*

While this was welcomed by ICCL it was regrettable that the questions we asked and the issues we raised about the vaccine passport system were not addressed much earlier. This did not help public trust in the measure for some.

## Recommendations

*For the HSE and the Department of Health:*

1. Any digital or artificial intelligence solution deployed as part of a response to a pandemic or emergency must adhere to the following principles:<sup>127</sup>
  - a. Have a clear and limited purpose
  - b. Be necessary and proportionate to the problem
  - c. Be effective
  - d. Embrace transparency and promote trust
  - e. Be subject to statutory oversight
  - f. Be subject to timely deletion of personal data
  - g. Adhere to the requirements of privacy and data protection by design
  - h. Be subject to a sunset clause
  - i. Broaden the range of actors involved and foster engagement.

---

<sup>126</sup> The Times, Covid in Ireland: Ministers urged to avoid blame game in pandemic inquiry, January 2022  
<https://www.thetimes.com/world/ireland-world/article/covid-in-ireland-ministers-urged-to-avoid-blame-game-in-pandemic-inquiry-l5j3bq6xw>

<sup>127</sup> Irish Council for Civil Liberties, *Principles for legislators on the implementation of new technologies*, June 2020.  
<https://www.iccl.ie/wp-content/uploads/2020/06/Principles-for-legislators-on-the-implementation-of-new-technologies.pdf>

*For the government:*

2. Avoid creating systems that marginalise and ostracise a small cohort of people who are exercising their right to choose not to be vaccinated and/or people who cannot be vaccinated for medical reasons.
3. As with the Covid-19 Tracker app, comply with the principles as created by ICCL and others in respect of State use of technologies.<sup>128</sup>
4. Ensure there are mechanisms in place to assess the impact of any public health measures on the human rights of the public, including giving a consultative role to IHREC to advise on rights concerns.

---

<sup>128</sup> Irish Council for Civil Liberties, *Principles for legislators on the implementation of new technologies*, June 2020.  
<https://www.iccl.ie/wp-content/uploads/2020/06/Principles-for-legislators-on-the-implementation-of-new-technologies.pdf>

## **About ICCL**

The **Irish Council for Civil Liberties** (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped decriminalise homosexuality, divorce and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality, data protection and reproductive rights.

Visit [iccl.ie](http://iccl.ie) for more information.