

## **Irish Traveller Movement Traveller Legal Resource Pack**

### **1 - Introduction**

## **Introduction**

### **Irish Traveller Movement (ITM)**

ITM was established in 1990 and now has over ninety Traveller organisations from all parts of Ireland in its membership. The ITM consists of a partnership between Travellers and settled people committed to seeking full equality for Travellers in Irish society. This partnership is reflected in all of the structures of ITM.

The ITM was formed to be a national platform, through which Travellers and their organisations are enabled to:

- Debate ideas and formulate and promote culturally appropriate initiatives
- Highlight the issues faced by Travellers and to press for real solutions
- Provide those active at a local level with support and solidarity
- Develop alliances at national level. Challenge the many forms of individual structural and institutional racism with which Travellers have to deal.

The Irish Traveller Movement has in its membership over 90 Traveller organisations from all parts of the island of Ireland, and has established contact with Irish Traveller groups in Britain. Membership is open to all those who support the aims and objectives of the movement.

### **The Irish Traveller Movement Legal Unit (ITMLU)**

The Irish Traveller Movement Legal Unit was set up on a pilot basis for three years in 2003. The overall aim of the unit is to promote Travellers' human and legal rights as a minority ethnic group within Irish Society. The Legal Unit provides information to individuals and Traveller organisations on Travellers legal issues.

Support to access legal services is provided to all Travellers who contact the Unit. Where the applicant raises an issue of strategic importance to the Traveller community assistance may be provided to obtain legal representation on a reduced fee basis.

The Legal Unit develops policy in the area of Travellers and their legal rights, and campaigns for change in laws that impact negatively on the Traveller Community. ITMLU also engages in research and has developed strategic links with policy makers, service providers, and centres of expertise in relation to issues of equality.

### **The Legal Pack**

This Legal Pack contains information about legal rights relevant to the Traveller community. The pack is a reference point for Traveller groups as it provides the 'know how' to respond to legal issues as they emerge within groups. The pack is part of the Legal Units' project to increase Travellers' access to legal representation and access to their rights. In each section there is website addresses to obtain further information.

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### **Section 1: The Irish Legal System**

#### **How laws are made**

The Oireachtas is the only institution in Ireland with power to make laws. The Oireachtas consists of the President, and the two Houses of the Oireachtas: Dáil Eireann and Seanad Eireann.

The start of the law making process is with a Bill. A Bill, is a proposal for legislation which may be commenced in either the Dáil or the Seanad but it must be passed by both Houses to become law. There are a number of stages before the Bill becomes law as follows:

- Before it is introduced to the Dáil, the contents of the Bill are approved by the Government The Bill is put before the Dáil for a general debate on the principles of the Bill and suggestions for amendments and additions to the Bill
- The Bill is sent to government committees to be examined and more amendments may be made to the Bill

- The Bill is debated in the Dáil and the members of the Dáil vote on whether to pass the Bill
- The Bill is then sent to the Seanad for debate and committee examination again. The Seanad has 90 days (or any longer period agreed by both Houses) to consider to pass the Bill without any amendment or reject the Bill completely or return the Bill to the Dáil with amendments
- If the Seanad rejects the Bill or returns it to the Dáil with amendments that the Dáil does not accept, the Bill will lapse after 180 days. The Dáil may, within those 180 days, pass a resolution declaring that the Bill is deemed to have been passed by both Houses. This means that the Seanad can only delay the introduction of legislation but cannot prevent it
- The President must then sign the Bill in to law. The President may request that the Supreme Court examine the bill if there is a question concerning the constitutionality of pending legislation (a procedure called an Article 26 reference). If the Supreme Court holds that a bill referred by the President is constitutional, that bill may not be challenged again at any time. The President will then refer the Bill back to the government

For further details and access to the text of Irish laws click [here](#) , which is The Government website that contains text of Irish laws or [here](#), which is the Government website that contains information about the Irish government

## **Sources of Law**

Apart from the legislators there are a number of other important sources of law:

### 1. The Constitution

The Constitution is an important document as it sets out the rules and principles as to how the Irish state should be run. The Constitution also describes the fundamental rights that every Irish citizen is entitled to often referred to as Article 40 rights.

No law can be enacted by the Irish legislator that conflicts with the Irish Constitution. It is a living document which is constantly developing over time as it is regularly being interpreted by the courts on the basis of cases before it and has been amended many times by referendum where the electorate are asked to vote on changes to it.

The Constitution recognises certain fundamental personal rights such as:

- The right to equality before the law such as the right to a fair hearing,
- The right to life
- Freedom of travel
- The right to a trial by jury
- Personal Liberty
- Freedom of expression
- Freedom of Assembly
- The rights of the family
- Religious Liberty
- The right to bodily integrity and health

- Property rights
- The right to earn a livelihood
- Inviolability of dwellings
- The right to fair procedures
- The right to privacy

It is important to note that all rights are subject to limits, qualifications and restrictions so none are absolute. For example the right to freedom of speech, assembly, association may be subject to the interests of public order and morality. Such rights are pleaded in cases before the court.

For further information visit the [Irish Government](#) website or [OASIS](#) which provides information on government and public services in Ireland

## **2. European Union Law**

The Irish Constitution requires that any EU treaty<sup>1</sup> before it is brought in to Irish law must be approved by the people by way of referendum<sup>2</sup>. The reason that a referendum is needed to ratify treaties is because Ireland is bound by EU treaties which rank higher than Irish law.

Apart from treaties there are other sources of EU law such as Regulations and Directives. Regulations apply to everyone and they become part of national law immediately once they are introduced by the EU.

Directives are orders to implement national legislation to comply with an EU demand. The EU brought in the Race Directive which sets out that persons should be discriminated against on grounds of their ethnic identity. The Irish Government brought in the Equality Act in 2004 to bring this Directive in to effect. However, it is advisable always to refer back to the Directive itself.

## **3. Conventions**

Conventions are documents agreed at EU or international level and are the source of many human rights. For example the United Nations Convention on the Rights of the Child contains many rights for children. These Conventions are not legally binding even if the Irish government has signed up to them.

The European Convention on Human Rights was signed by Ireland in 1949 and it was not until over 50 years later that the European Convention on Human Rights Act was enacted in 2003 to give effect to the Convention. The rights covered by the ECHR are primarily civil and political such as:

- Right to Life
- Freedom from torture
- Right to a Fair trial
- Right to Liberty
- Right to respect for private and family Life
- Freedom of Thought, conscience and religion
- Freedom of expression

- Non-discrimination

Individuals or groups can bring cases to the European Court of Human Rights (Ect.HR) regarding breaches of the Convention provided:

- all national remedies have been exhausted
- it must be brought within 6 months of the date on which the final domestic decision was made.

The Ect.HR is limited in terms of the orders it can make. It cannot strike down a piece of legislation but it can:

- Declare that the violation of the applicant's ECHR rights has occurred
- Award compensation
- Award costs

For further information visit the [European Union](#) website or the [European Anti-Poverty Network](#)

## **Irish Courts System**

The Constitution outlines the structure of the court system. The courts hear both civil and criminal cases before it. Civil cases are disputes between private persons such as breach of contract or personal injury actions. These cases are taken by individuals against other individuals or organisations. Criminal cases are taken by the Director of Public Prosecutions on behalf of the state against an individual who has committed an offence such as theft, robbery or assault. The Courts Service is responsible for the administration and management of the courts in Ireland and can be contacted for information regarding the courts.

### **1. The District Court**

The District Court operates locally throughout the country. This court can hear both civil and criminal cases. The District Court has power to award up to €6,348.69 in damages in civil actions. It hears cases regarding family matters and criminal cases such as drunk driving or assault. One judge sits in the court and deals with the cases before him/her.

### **2. Small Claims**

The Small Claims Procedure allows a person to deal with claims in civil cases (cases between private individuals or between individuals and organizations) where there are small claims without involving a solicitor. The procedure can be used when a person is a consumer having bought the goods or service for private use from someone selling them in the course of their business.

The District Court Clerk, called the Small Claims Registrar will process the claim. S/he will try to reach a settlement if this is not possible it will be brought before the District Court. To

bring a claim contact you local District Court Office where the Small Claims Registrar will provide you with a form which can also be downloaded from the Courts Service Website. The cost of taking such a claim is €9.

### **3. The Circuit Court**

This court operates on a regional basis. It can hear both criminal and civil cases and can award up to €38,092 in damages in civil cases. In criminal cases the judge sits with a jury. This court can also hear appeals from the District Court.

### **4. The High Court**

The High Court is situated in Dublin and can hear all criminal cases and civil cases, but will not hear civil claims seeking less than €38,000 in damages. The High Court may hear appeals from the lower Circuit and District Courts on points of law. The High Court has authority to determine the constitutionality of a law, although such questions may then be appealed to the Supreme Court. There is no limit on the amount of damages that the High Court can award.

### **5. The Special Criminal Court**

This Court deals with criminal charges relating to terrorist organizations and organized drug activities. It consists of three judges sitting without a jury.

### **6. The Court of Criminal Appeal**

This Court deals with appeals arising from criminal cases from the lower courts.

### **7. The Supreme Court**

The Supreme Court can hear appeals from the High Court as well as from the other, lower courts. A question concerning the constitutionality of pending legislation may be heard by the Supreme Court if the President directly requests such action and the Court grants the request (a procedure called an Article 26 reference. If the Supreme Court holds that a bill referred by the President is constitutional, that bill may not be challenged again at any time.

For further information contact [The Court Service Information Office](#)

## **The Legal Profession**

The legal profession is divided into two groups who carry out different functions, these groups are Solicitors and Barristers

### **Solicitors**

A member of the public who has a legal query goes to a solicitor for advice. Solicitors deal with the day to day running of cases, correspondence between the parties, assembling

evidence etc. Most

Solicitors work in private practice alone or in firms with several solicitors, but commercial and industrial organisations also employ solicitors, as do the Civil Service and the public sector generally.

Solicitors train in the Law School of the Incorporated Law Society of Ireland, which is also the governing body for the profession and handles complaints about solicitors from members of the public.

If you are not happy with any aspect of the service you are receiving from your solicitor, you should first tell your solicitor about your concerns. If you are unable to resolve your issue with your solicitor and you wish to make a complaint, you should write to the Complaints Section of the Law Society of Ireland. You should outline in reasonable detail the nature and extent of the complaint that you wish to make. You should include copies of any relevant documents such as letters to and from your solicitor.

The Society may investigate complaints against solicitors made by or on behalf of clients alleging:

- Misconduct (defined as the commission of a crime or conduct tending to bring the solicitors' profession into disrepute)
- Inadequate professional services (must be within the last 5 years)
- Excessive fees (must be within the last 5 years).

For further details contact [Law Society of Ireland](#)

## **Barristers**

Often, if a case is legally complex and will involve going to court, the solicitor will decide to get a barrister involved. The barrister will research the legal issues involved and give an opinion on the case based on his/her knowledge of the law and what has happened in similar cases. Many barristers specialise in particular areas of law such as family, criminal or commercial.

It is also usually barristers who speak in higher court. It is possible for solicitors to appear in court themselves but it is still more usual for barristers to appear, particularly in the Circuit, High and Supreme Courts

Barristers are not permitted to deal directly with the public. Where it is necessary for the client to meet the barrister, the solicitor will arrange the meeting and will also be present.

The Bar Council is the governing body for barristers in practice at the Bar. The Bar Council is an independent body which regulates the activities, and represents the interests, of its members. Practising barristers in Ireland are subject to the Bar Council's strict Code of Conduct. The purpose of the Code of Conduct is to ensure that barristers uphold the highest professional and ethical standards in the conduct of their relations with clients, the court and the public.

If you have concerns about the service you are receiving from a barrister you should first discuss the issue with your solicitor.

Complaints of misconduct from the public, solicitors and other clients are considered by the Barristers' Professional Conduct Tribunal. The Tribunal can impose penalties if it finds that a barrister has been guilty of breaching the Code of Conduct or of breaching proper professional standards.

For more information contact: [The Bar Council](#)

## **Legal Aid System**

There are two types of legal aid available these are Civil Legal Aid and Criminal Legal Aid

### **Civil legal aid**

This aid is available for non-criminal cases and has been available since 1979. Legal Aid in non-criminal matters is provided by the Legal Aid Board (LAB). The LAB has centres operating throughout the country. LAB provides legal advice (any oral or written advice given by a solicitor or barrister, including writing letters and negotiations) and legal aid (representation by a solicitor or barrister in court proceedings).

In order to avail of civil legal aid, you must contact one of the Legal Aid Centres. LAB tends to provide civil legal aid and legal advice in the following areas mainly;

- judicial separation
- divorce
- maintenance
- domestic violence
- custody of and access to children
- problems relating to hire-purchase agreements
- landlord and tenant disputes (except where the dispute concerns ownership of land)
- contract disputes

The important thing to remember about civil legal aid is that it is not free legal aid. If you qualify for civil legal aid, you will have to make some contributions to the overall costs of the proceedings.

To qualify for the service your means must be below a certain limit. The means test will be carried out by staff at the Law Centre when you attend to apply for Legal Aid. You must also pay a contribution. The amount depends on your means. The current minimum contribution is €6 for advice and €35 for aid.

Law Centres operate throughout the country a list of the law centres is included in the pack.

### **Criminal legal aid**

Criminal Legal Aid is free and is administered by the courts. Almost all criminal cases

commence in the District Court and usually an application will be made at that stage to the District Judge for legal aid.

In Criminal cases the District Judge will grant you free legal aid if:

- your means are not enough to enable you to obtain legal aid from your own resources
- the serious nature of the offence or exceptional circumstances make it essential in the interests of justice that you should have legal aid in the preparation and conduct of your defence and any appeal against conviction.
- In practice, the District Judge will enquire as to the following:
- if you are employed and how much you are earning.
- whether you are single or married
- whether you have any dependants
- if the case is a serious one such as previous convictions for similar offence; if there is a possibility you may face a prison sentence or a substantial fine.

If the District Judge considers that it is appropriate that legal aid is granted, he/she will issue a Legal Aid Certificate. Once a Legal Aid Certificate has been granted a solicitor from a panel of practitioners will be assigned to your case. You may however request a particular solicitor from the panel. If it is a very serious case the certificate will include the services of a barrister(s) as well.

## **Building up a correspondence file**

### **Correspondence file**

It is important to keep records of all correspondence regarding a case. Telephone calls, fax messages, emails, conversation, letters and any other information should be recorded. It is important to develop a practice of writing to the other party regarding matters to do with the case. This will make it easier for a solicitor to advise on the case once it is referred and will provide the vital evidence needed in taking a case to court.

### **Accessing records**

Making a freedom of information request can be an important part of building up a file. Persons are entitled to request information about themselves and/or the reasons for the making a decision regarding their case and/or have inaccurate information about them on file corrected from public bodies such as Health Boards and Local Authorities under the Freedom of Information Act, 1997 (FOI).<sup>3</sup>

A person can ask for the following records:

- any records relating to you personally, whenever they were created <sup>4</sup>
- all other records created after 21 April, 1998

## **How to make a request for information**

There are a number of steps to requesting personal information from public bodies as follows:

- The request should be made by application form or letter in writing to the FOI Unit of the public body. A sample application form for an FOI request is included in this pack.
- The application form/letter should refer to the Freedom of Information Act.
- If information is required in a particular form (e.g. photocopy, computer disk, etc.) this should be specified in the application.
- Be specific regarding the information that needed and the time period referred to in the request.
- If you are not satisfied with the response of the public body to any aspect of your request for information, (i.e., refusal of information, form of access, charges) or if a reply is not received within 4 weeks of the initial letter, this is deemed a refusal of your request

### **Right to internal review and appeal:**

You can seek to have the decision re-examined by more senior members of staff within the public body. The internal review of an FOI decision must be made within 3 weeks. Applications for review of a decision should be addressed to the FOI Unit of the public body involved.

If you are still unhappy with the decision, you have the right to appeal the decision to the Information Commissioner. The Information Commissioner investigates complaints of non-compliance with Irish FOI legislation and generally promotes a freedom of information culture in the Irish public service.

### **Charges:**

Personal information is free otherwise there is a charge of €15 (reduced fee if you are a medical card holder) for other information. They may charge €20 per hour for a search or for copying of information.

### **Information for the solicitor:**

If a case is being referred to a solicitor the facts surrounding the incident being complained of will be needed in addition to the correspondence file. For example, if it was an incident regarding discrimination the following would be required:

- When it occurred
- Where it occurred
- Who was involved
- What exactly happened
- Did the Gardaí arrive
- Did you report the incident
- If the incident involved an eviction the following information would be needed:
- Name of family members
- Local authority area

- Family circumstances such as education, health issues
- Accommodation history i.e. how long in the area, applied for accommodation, has accommodation been offered within the local authority area, if so what type, what is the first preference i.e. a halting site, house, groups housing scheme
- When was the notice served
- Was alternative accommodation offered

### **Costs:**

As soon as possible after you have given instructions to your solicitor, he/she must advise you in writing of the fees you will be charged for his/her services. If it is not possible to give you a definite sum, he/she must estimate a sum or at the very least describe the basis upon which charges or fees will be calculated.

Usually solicitors will wait until a case is concluded before requiring payment of their fees. However, sometimes fees will be requested in advance, especially in a case where there is a high risk of losing.

Usually if the applicant wins his/her case, most or all of the costs (including legal fees) will be paid for by the other party.

However, if the applicants lose, it is likely he/she will be obliged to pay all the costs and fees of their own legal team and that of the other party.

## **Section 2: Traveller Culture**

### **Definitions**

#### **Who are Irish Travellers?**

Travellers are an indigenous minority who, historical sources confirm, have been part of Irish society for centuries. Travellers long shared history, cultural values, language, customs and traditions make them a self-defined group, and one which is recognisable and distinct. Their culture and way of life, of which nomadism is an important factor, distinguish them from the sedentary (settled) population.

The Traveller identity is made up of a number of common features such as:

- a common history and experience
- an oral tradition,
- their own language called Cant/Gammon/Shelta
- value system
- a nomadic way of life
- customs and traditions

Irish Travellers are native to Ireland, they have much in common with European Roma, Sinti and Gypsies such as their nomadic tradition, a tendency to live in extended families, and a history of having to protect their identity from attempts to assimilate them into the majority population.

### **What is an ethnic group?**

An ethnic group shares a common ancestry, culture, history, tradition and sense of belonging and is a political and economic interest group. Ethnicity is a term used to describe on the basis of self-identity and ascription by others. Travellers by definition are an ethnic group.

### **What do we mean by racism?**

Any theory involving the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others who would be inferior; or which places a value judgment on racial differentiation, has no scientific foundation and is contrary to the moral and ethical principles of humanity (UNESCO Declaration, 1978). Travellers experience racism on a daily basis.

### **Travellers as an ethnic group**

The Government of Ireland do not recognize Travellers as an ethnic group which limits the protection available to Travellers under National, European and International law.

The Government of Ireland define Travellers merely as a 'social group' which means that Travellers are simply defined as a group who experience discrimination and poverty, thereby denying that the treatment of Travellers is racism. As Travellers are not recognised as an ethnic group with a distinct culture, traditions, and nomadic history they are denied access to protection for their cultural rights and services which would facilitate their culture. Many examples of this exist in Ireland today such as the boulder policy which has blocked off traditional camping areas to Travellers and the lack of provision of transient accommodation to facilitate nomadism.

It is vital that the distinctiveness of Traveller culture and identified is recognised and respected and that this obligation is reflected in policy decisions by Government and public bodies.

The Report of the Task Force on the Traveller Community (1995) recommended that "the distinct culture and identity of the Traveller community [should] be recognised and taken into account" and added that Travellers' culture included "nomadism, the importance of the extended family, the Traveller language, and the organisation of the Traveller economy". Yet the Irish Government have never fully implemented this recommendation.

## **Relevant Laws**

### **1. Irish law**

As stated above the Government of Ireland do not recognize Travellers as an ethnic group

which limits the protection available to Travellers under national, European and international law. However, the Traveller Movement continue to struggle for Travellers to be recognised in order to gain such protection. In an Irish context, membership of the Traveller community is named in the Equality legislation as a group in need of protection from discrimination. This is in addition to the ethnic ground.

## **2. Equality Legislation**

Travellers are defined as a separate category in under the Equal Status Act, 2000 so they do not come under the ethnic ground. They are defined as "...the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland." This is a first step on the road to cultural recognition but again falls short of full recognition of Travellers as an ethnic group.

When Travellers are taking cases under the Equality legislation inform them that it is advisable to tick the ethnic status ground in addition to the Traveller ground which will enable them to broaden their arguments at the hearing of the case.

ITMLU believe that the provisions of the Race Directive do apply to Travellers and that this should be tested in the Irish Courts

## **3. European law**

### **Race Directive**

The Race Directive (Council Directive 2000/43/EC) aims to ensure equal treatment between persons no matter what their racial or ethnic origin. As stated due to the fact that the present Minister for Justice, Equality and Law Reform, is of the opinion that Travellers do not constitute a separate ethnic group within Irish Society, it is uncertain whether Travellers fall within the protection of the Directive. However it is clear that the provision of the Race Directive do apply to Travellers, but as of yet it has not been tested in an Irish Court as yet.

### **European Convention of Human Rights**

The European Court of Human Rights judges disputes in relation to the European Convention of Human Rights. The Convention is now part of Irish Law since the 1st January 2004, and it is now possible to take a case to court in Ireland if your rights under the Convention have been breached. It contains the following provisions:

- Article 8 of the ECHR is the right to respect for private and family life, the home, and correspondence. It has been acknowledged by the European Court of Human Rights that the choice to live a Traveller or Gypsy way of life is a matter protected by the guarantee of respect for private life
- Article 6 (1): Is a guarantee of fair procedures in the determination of a persons civil rights and obligations. The fact that the Gardaí, and local authorities can carry out forced evictions without any court order or rights of appeal, make these sections open to challenge under
- Article 3: Where an organ of the state is involved in the mistreatment of a person/s or fail to protect them from mistreatment this breaches Article 3. If there is a failure to

protect Travellers, or there is a failure by the State to protect Travellers from such mistreatment, this might amount to a breach of Article 3. The conditions on some local authority halting sites, where the minimum requirement of hard surfacing, water, toilets and electricity are not provided, might be considered degrading or inhuman

- Article 14: The rights and freedoms contained in the Convention shall be secured without discrimination on any ground, including association with a national minority

## **Framework Convention on the Rights of Minorities**

This Convention was ratified by Ireland on 7th May 1999, and came in to force on 1st February 1998. It is legally binding on each party state. The Irish government has discretion whether or not to apply the Convention. This is a useful tool that can be used in campaigning for recognition of Travellers culture. It contains the following:

- Article 3(1): Every person belonging to a national minority shall have the right to be treated or not treated as such, with no disadvantage resulting from this choice
- Article 4: The right to equality before the law, and also equality in all areas of economic, social, political and cultural life, of persons belonging to national minorities
- Article 5(1): States should promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage
- Article 5(2): parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation
- Article 15: Parties shall create the necessary conditions for participation by national minorities in cultural, social and economic life and public affairs, in particular those affecting them

This Convention is monitored by the Committee of Ministers at an EU level and governments are required to submit a report on how they protect and preserve the Culture of national minorities every five years. For this process the Committee consider State reports and come up with recommendations and set time limits for submission of information on the implementation of the recommendation. Also, the Committee make state visits to find out what is happening on the ground in each state.

## **International Law**

### **1. International Convention for the Elimination of all forms of Racial Discrimination [1965] (ICERD)**

This Convention was ratified on 29th December 2000. Although there is some debate about whether Travellers are, or are not, an ethnic minority, there is no doubt that Travellers suffer from severe discrimination and therefore are included in the Convention. It includes the following:

- Article 1 defines racial discrimination as a distinction, exclusion, restriction or preference based on race, colour descent, or national or ethnic origin.
- Article 2: state parties agree to pursue a policy of eliminating racial discrimination.
- Article 5: guarantees individual rights which are divided into civil and political, and Economic social and cultural rights, which include the right to housing, public health, education, right to equal participation in cultural events and the right of access to any place or service intended for use by the general public.
- Article 6: state parties shall provide effective protection and remedies against acts of racial discrimination

The Convention is monitored by the Committee for the Elimination of Racial Discrimination, made up of 18 experts, nominated by state parties, but who serve in their individual capacity. The committee consider State reports which have to be submitted to them every 2 years and make recommendations to governments. ITM submitted a document to the Committee regarding ICERD which is available from the offices of the ITM.

## **Accessing Rights**

### **Step one:**

- Traveller groups should create a debate locally on issues of culture, ethnicity and racism with their members and with other sectors
- Traveller groups should inform themselves about EU and International Instruments with a view to using them to lobby for cultural recognition
- Traveller groups should ensure policies reflect Travellers ethnicity
- All submissions and campaigning should reflect the aim of working towards recognition of Travellers as an ethnic group

### **Step two:**

- Traveller groups should proof all local service plans for recognition of Travellers ethnicity. For example, regarding Traveller accommodation a key question to ask the local authority is how many units of transient accommodation are they going to provide to meet nomadic needs or why does a boulder policy block off traditional camping areas
- All Traveller groups at a local and national level should continue to campaign through the submission of Dail Questions, meeting politicians, arranging media events, making submission to the above committees to ensure the pressure for recognition of Traveller ethnicity is ongoing
- National and local Traveller groups should use the EU and UN instruments to campaign.

### **Step three:**

- Test cases need to be brought to the High Court to establish Traveller as an ethnic group with corresponding rights. Traveller groups at a local and national level should support families taking such cases.

For further information visit:

[United Nations High Commission for Human Rights](#)

[European Committee on Racism and Intolerance](#)

[European Roma Rights Centre](#)

[European Network Against Racism](#)

[Commission for Racial Equality](#)

[Department of Justice, Equality and Law Reform for ICERD document](#)

[Irish Traveller Movement](#)

**For response to ICERD**

[Pavee Point Cultural Centre](#)

[National Traveller Womens Forum](#)

**Section 3. Traveller Accommodation**

## **SECTION THREE: TRAVELLER ACCOMMODATION**

### **Definition**

Traveller specific accommodation includes, serviced halting sites, group housing schemes and transient sites. Local authority standard housing is available to Travellers as is housing in the private rented sector.

### **Responsibility for provision of accommodation**

At a national level the Department of the Environment, Heritage and Local Government are

responsible for housing and Traveller accommodation. This responsibility is delegated to the local authorities at a local level. The local authority provides a range of infrastructural and other services to the public. The main services and functions provided of relevance to Traveller groups are housing & Traveller accommodation and planning. Travellers also access accommodation through private landlords in the private rented sector. In some cases Travellers provide accommodation from their own resources.

### **Relevant law relating to local authority accommodation**

The Housing Acts place statutory obligations on the local authority to assess the needs for housing for all those who cannot provide housing for themselves and adopt periodic building programmes to meet that need. All of the Housing Acts apply equally to Travellers as they do to the rest of the population. However, the local authority has an additional obligation under the Housing (Traveller Accommodation) Act 1998 to draw up periodic Traveller Accommodation Programmes (TAPs) to meet the accommodation needs of Travellers. The relationship between Travellers in accommodation and the local authority is governed by landlord and tenant law. However, many Travellers living on halting sites often have licence agreements which may be a mechanism to avoid the protections of landlord and tenant law.

#### **1. The Housing Act 1988**

This Act was the first mention of Travellers specifically. Section 13 of this law give the local authority the power to provide, improve, manage and control sites for caravans for Travellers, and also to provide services on such sites.

#### **2. Housing (Traveller Accommodation) Act 1998**

This law put a further responsibility on local authorities to do the following:

- make an assessment of need for Traveller accommodation adopt a Traveller Accommodation Programme (TAP), within a specified time, that meets the accommodation needs of Travellers in their area
- "take any reasonable steps as are necessary for the purpose of...implementation" of an accommodation programme
- review their TAP, at least once every three years, or at any time during the life of a programme, and on foot of such a review may amend or replace a TAP
- power to provide loans to Travellers for the purchase or repair of caravans, or for the purchase and development of land as a halting site
- establish a Local Traveller Accommodation Consultative Committee (LTACC) made up of Travellers, Traveller representatives, County Councillors and Council officials  
The LTACC provides advice to the local authority on Traveller accommodation issues.

Travellers in need of permanent accommodation are assessed for accommodation by the local authority and, if eligible, are placed on the local authority's housing list and thereafter included in the Traveller Accommodation Programme whenever adopted.

Factors used to assess eligibility:

- household size

- overcrowding
- income
- present accommodation (if any)
- the condition of that accommodation
- any special circumstances, including age, disability, medical circumstances, etc.

### **Local authority waiting lists**

Once accepted as in need of accommodation the applicants' name is placed in the local authority housing waiting list. Each local authority draws up its own rules for deciding the order of priority on the waiting list, called a "scheme of letting priorities". Some local authorities operate a points system. Each household on the waiting list is given a number of points depending on their circumstances.

The Length of time an applicant spends on the housing list will depend on:

- the demand for housing in the local authority area
- In the case of Traveller specific accommodation the supply of accommodation
- the individual circumstances of applicants waiting for housing

Where a points system is not in operation it is usually impossible to determine where a person is on a list. Traveller groups should encourage their local authorities to adopt a points system.

### **3. Landlord and Tenant Law**

The rights and obligations of tenants and local authorities are governed by tenancy agreements and by general landlord and tenant law. Prior to becoming a tenant, a person is entitled to refuse an offer of accommodation. It is important to let the local authority know the reason for so doing because if they determine that there is not a good reason they may reduce the priority a person has on the list.

#### **Tenants' rights and obligations include the following:**

##### **Rights:**

- Right to peaceful enjoyment of the property
- Right to a rent book which is a document that records details about the tenancy and notes all payments of rent that you have made to the landlord
- Right to accommodation that meets certain minimum standards. These standards relate to structural conditions, provision of sinks, toilets, fixed baths or showers, cooking and storage facilities, safety of electrical and gas installations, availability of adequate heating, lighting and ventilation and maintenance of common areas Protection from anti-social behaviour. If a local authority tenant is affected by another tenant's anti-social behaviour the local authority has powers to deal with such behaviour ( Housing Act 1997)
- Right to a period of notice if your tenancy is being terminated. A minimum of 28 days notice must be provided followed by a written demand for possession.

**Obligations:**

- To pay rent
- To keep the premises in good repair
- To comply with tenancy agreement
- Not to engage in anti-social behaviour. A person may be evicted from a local authority housing on the grounds of anti-social behaviour

**Local authority rights and obligations include the following:****Rights:**

- Right to evict tenants from accommodation without any reason as long as the correct procedure is followed. This power is usually invoked for reasons of anti-social behaviour and non-payment of rent. This means first issuing a "notice to quit" accompanied by, or followed by, a demand for possession and then applying to court for an order
- Right to refuse to let a dwelling on the grounds of previous anti-social behaviour.
- Right to evict anyone who is engaging in anti-social behaviour such as drug dealing or any behaviour that might cause danger, injury, damage or fear to people living in the area. This might include violence, threats, intimidation or harassment.
- The local authority can apply to the District Court for an exclusion order against any member of a household who is engaging in anti-social behaviour. The order may exclude that person from a specific house or from an entire estate and it may forbid intimidation or other interference with a tenant or anyone else

If a person is served with a notice to quit they should seek legal advice immediately as once the 28 days expires and an order is sought in the District Court there is very little that can be done legally. A person can seek a judicial review of the local authority decision within the 28 day period.

**Obligations:**

- To provide a tenancy agreement
- To provide a rent book
- To ensure premises meet certain minimum standards

**Licence Agreements**

As stated above many Travellers living in halting sites have been issued with licence agreements by the local authority. A licence agreement is a mere permission by the local authority to live on the site and usually provides for seven days notice to leave the said site. It does not confer rights on the occupier. It is preferable to have a tenancy agreement as in contrast to a licencing agreement it confers rights and sets out the obligations of the tenant.

Private Rented Accommodation

Housing in the private rented sector is governed by the Landlord and Tenants Act 1967-1994 and the Residential Tenancies Act 2004 and any written or verbal tenancy agreement between the tenant and landlord. This includes tenants being assisted by the Health Board with rent supplement. Leases or other tenancy agreements cannot take away from tenant's rights under the Residential Tenancies Act 2004. The 2004 Act is overseen by the Private Residential Tenancies Board (PRTB). It was set up to resolve disputes between landlords and tenants, operate a system of tenancy registration, and provide information and policy advice. Landlords and tenants may refer disputes to the PRTB for resolution by mediation, adjudication or tribunal hearing.

### **Rights and obligations of tenants in private rented accommodation:**

#### **Rights:**

- Right to a Part 4 tenancy. A Part 4 tenancy arises where a person has been in occupation of the premises for six months. After this time the landlord can only terminate the tenancy on specified grounds over the following three and a half years. After four years of your tenancy has passed, a new tenancy commences.
- Right to a rent book
- Right to quiet and exclusive enjoyment of your home
- Right to certain minimum standards of accommodation
- The landlord is only allowed to enter with permission
- Reimbursement for any repairs carried out that are the landlords' responsibility.
- Right to notice of the termination of your tenancy. The Notice must specify a reason for termination as defined in the Act.
- Right to refer any disputes to the Private Residential Tenancies Board (PRTB) without being penalised for doing so
- Right to proper notice of termination of a tenancy

#### **Obligations:**

- To pay rent
- To keep the property in good order
- To inform the landlord if repairs are needed and give the landlord access to the property to carry out such repairs
- To avoid causing damage or nuisance
- To comply with any special terms in tenancy agreement, verbal or written

### **Rights and Obligations of LandLords**

#### **Rights:**

- To set the rent (although the rent cannot be more than the current market rate)
- To receive the correct rent on the date it is due
- To review the rent annually
- To terminate a tenancy without giving a reason during the first six months of the tenancy
- To be given reasonable access to the property to carry out repairs

- To refer disputes to the Private Residential Tenancies Board (PRTB) if the tenancy is registered with them

### **Obligations of a landlord:**

- To register the tenancy with the PRTB
- To provide a rent book
- To make sure that the property meets certain minimum standards
- To repair and maintain the interior of the property to the standard it was in at the start of the tenancy
- To repair and maintain the structure of the property
- To reimburse tenants for any repairs they carry out which are your responsibility
- To provide tenants with a valid notice of termination (in writing) if terminating the tenancy
- To return deposits to the tenant (unless the tenant has not paid the rent or has damaged the dwelling)

### **Accessing rights**

#### **a. Traveller groups**

Every number of years as determined by the Minister the local authority is required to draw up its Traveller Accommodation Programme (TAP) and during the life time of the TAP required to review it. Traveller groups should be prepared by taking the following steps:

#### **Step one:**

- Carry out an assessment of Travellers accommodation needs in your area to feed in to the development of the TAP. Make a detailed submission to the local authority based on the assessment carried out which includes a range of accommodation and possible locations
- Ensure that the range of accommodation is reflected in the plan such as halting sites, group housing schemes, standard housing, transient accommodation and emergency provision
- Make sure you have strong representation on the LTACC to ensure that you have a strong input to the TAP. Traveller groups are entitled to make their nominations when new LTACCs are being established
- The role of chair of the LTACC is reviewed every second year. If the LTACC is not working effectively it can be useful to nominate an independent chair
- LTACCs should meet at least 4 times a year
- Remember if the TAP is not developed the manager of the local authority can go ahead and adopt a Traveller Accommodation Programme

#### **Step two:**

- Monitor progress on the implementation of the TAP. Included in the Pack is a monitoring form to assist you in this process
- The Review of the Housing (Traveller Accommodation) Act, 1998 now requires the local authority to produce an annual report regarding the work of the LTACC and report the findings to the Minister. This will form overall submission to Minister by NTACC on overall implementation of Programmes. It is vital that Traveller representatives on the LTACC feed in to this report. In addition, this is a mechanism to document and monitor progress each year
- Each LTACC should formally report bi-annually to County Manager and the manager should formally meet with the LTACC once a year. Traveller groups represented on the LTACC should ensure this occurs
- Document issues on an ongoing basis
- Table questions at local council meetings regarding the lack of speed in providing new accommodation
- Highlight progress or lack of it through the media
- Meet local politicians regularly and arrange site visits. This will raise awareness on an ongoing basis of the difficulties
- Meet council officials regularly to ensure issues are being pursued
- Produce research/publications each year on provision of Traveller accommodation in your area

### **Step three:**

If the local authority are not performing undertake the following actions:

- Put lack of progress issues to the LTACC and the local authority and request a response. This will involve lobbying politicians at a local level.
- Meet with the County Manager and request a response to the issues
- Inform the Irish Traveller Movement and request assistance in raising awareness from the National Accommodation Officer employed for that purpose
- Inform the National Traveller Accommodation Consultative Committee which advises the Minister on Traveller accommodation policy
- Seek a meeting with the Minister of the Environment
- Organise a high profile event to draw attention to the issues
- Individuals are always entitled to consult a solicitor for further advice

### **b. Traveller families**

Families should undertake the following actions:

- Put their name on the housing list and provide supporting documentation such a doctor's letters to make the case for accommodation. A person should ensure that they are specific about the type and location of accommodation they require. It is advisable to write a letter specifying such requirements
- Keep a regular check on where they are on the list
- get involved in their local Traveller group to lobby for accommodation in their area

- Update their representative on the Local Traveller Accommodation Consultative Committee regarding their situation as this can be feed in to push for accommodation provision for all Travellers in the area
- Seek meetings with the Council and local politicians to ensure their case is progressing
- Once accommodated check tenancy agreement to ensure it is satisfactory
- If not accommodated and the TAP is due to expire, seek legal advice

### **Note on Private Rented Accommodation**

In the case of private rented accommodation if you have a dispute with the landlord over notice you can contact the PRTB. The PRTB registers tenancies and mediates disputes between landlords and tenants.

If you are experiencing problems accessing private rented accommodation due to discrimination you can take a case under the Equal Status Act. For further information visit:

[Department of the Environment, Heritage and Local Government](#)

[Threshold](#) voluntary organization giving advice & information on accommodation issues

[Centre for Housing Rights and Eviction](#)

## **Section 4. Discrimination**

### **Laws Relating to Discrimination**

The Employment Equality Act, 1998 prohibits discrimination in employment and, in particular, access to, conditions in, and training in relation to, employment on nine separate grounds<sup>1</sup>

The Equal Status Act, 2000 prohibits discrimination in the supply of goods and services including social welfare, housing and other forms of social provision on nine separate grounds<sup>2</sup>.

## Nine grounds

- gender
- marital status
- family status
- sexual orientation
- religion
- age
- disability
- race/colour/nationality/ethnic or national origin
- membership of the Traveller community.

## **Travellers and the legislation**

Travellers are defined under the Acts as “...the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.”

## **Definition of discrimination**

The definitions of the forms of discrimination are set out in the Acts.

### **Direct Discrimination**

Direct discrimination occurs where a person is treated less favourably than another person is, has been or would be treated in a similar situation on any of the grounds, such as membership of the Traveller community.

### **Indirect Discrimination**

Indirect discrimination occurs where a rule or provision which applies to everyone, puts a person covered under one of the nine grounds at a particular disadvantage. The provision may appear on the face of it not to be discriminatory but its effect is discrimination.

## **Harassment and Sexual Harassment**

Harassment and sexual harassment are also prohibited by the legislation. Harassment is defined as any form of unwanted conduct related to any of the nine grounds. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. Harassment occurs where the conduct in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

## **Discrimination by Association**

This occurs where a person associated with another person who comes within one of the nine

grounds is treated less favourably because of that association.  
Defences/ Exclusions under the Acts

There are a number of defences to complaints of discrimination available under the legislation. The most common defence to discrimination relied on by pub owners is under Section 15 of the Equal Status Act, which provides that it is not discrimination to refuse to supply goods and services, where to do so would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property. Pub owners frequently claim they will not serve Travellers because they apprehended a risk of trouble even though the Traveller/s are not known to the pub owner.

While it is reasonable for service providers to refuse service to people who engage in disorderly behaviour on their premises it is discrimination to refuse Travellers service where there is no evidence to indicate that they would behave in an unreasonable manner.  
Equality Infrastructure

There are three bodies that deal with the legislation; the Equality Authority, the Equality Tribunal and the District Court.

### **1. The Equality Authority**

This is an independent body set up in October 1999 under the Employment Equality Act, 1998. The Equality Authority provides information to the public on the equality legislation.

Its aims to bring about positive change in the situation of those experiencing inequality by:

- promoting and defending the rights established in the equality legislation
- providing leadership in building a commitment to addressing equality issues in practice creating a wider awareness of equality issues celebrating the diversity in Irish society
- mainstreaming equality considerations across all sectors.

In some cases it can, at its discretion, provide legal assistance to people who wish to bring claims to the Equality Tribunal. These cases are assessed on their merits.

For further information visit [The Equality Authority](#)

### **2. The Equality Tribunal**

This is an impartial body set up by law to investigate or mediate complaints under Equality legislation. This office was previously known as the Office of the Director of Equality Investigations

Investigating Complaints

The process involves the following:

- A person claiming discrimination under the Employment Equality Act or the Equal Status Act may lodge a complaint with the Equality Tribunal within 6 months of the occurrence of the act of discrimination
- Cases can either be referred on the consent of both parties for mediation, or heard by an Equality Officer

If the claim goes to hearing the Equality Officer investigates the claim before the hearing through written submissions and at the hearing where each party will be given an opportunity to:

- To present their case
- To call witnesses
- To respond to points raised by the other party
- To answer questions from the Equality Officer
- Equality Officer issues a written Decision
- Compensation up to a maximum of €6,349 can be awarded and/or the losing party can be required to take a particular course of action.
- Decisions may be appealed to the Circuit Court within 42 days from the date of the Decision.

## **Mediation**

Mediation seeks to arrive at a solution through an agreement between the parties, rather than through an investigation. If the Tribunal offers mediation in a case, it will ask each party to respond in writing as to whether they have any objection to trying mediation.

### **Advantages:**

- Mediation is conducted in private
- Either party may withdraw from the mediation at any time
- Tries to reach an agreement
- Less conflict between parties

### **Disadvantages:**

- Mediated settlements are not published so the benefit of a good decision cannot be shared

If an agreement is reached the Mediator will draw up a written record of the terms of the settlement. Once signed, this agreement is legally binding on both parties. A mediation settlement, which has not been complied with, may be enforced through the Circuit Court.

If a party withdraws from the mediation they may then re-lodge the complaint by requesting the Director in writing to begin (or resume) investigation provided that the request is received within 28 calendar days after the date when the Mediator issued the notice. A copy of the Mediator's notice should be enclosed with the request.

For further information visit the [Equality Tribunal](#)

### **3. District Court**

In relation to the Equal Status Act, 2000 all cases of discrimination that occur after 29th September 2003 on, at, or on the point of entry to, licensed premises must now be brought to the District Court (Intoxicating Liquor Act, 2003, section 19). You must be refused when you enter the premises or when you ask for the service to come within this section.

Accessing Rights

### **Taking a case to the Equality Tribunal**

The Equality Tribunal hears cases all around the country and there are no costs involved in taking a case<sup>3</sup>. If an act of discrimination occurs the following steps should be taken:

#### **Step one:**

To start a case the ODEI 5 form (included in the Pack) must be sent to the owner (respondent) of the premises where the discrimination occurred or the employer or potential employer within 2 months of the date of the incident of discrimination occurred. Where more than one person was involved in the incident of discrimination each individual should complete a form.

The form will require you to:

- set out what happened
- ask them for a reason as to why they carried out the act
- ask them what they are prepared to do to address the problem
- ask them for any record they have regarding the incident of discrimination such as a log book of incidents and for a copy of their equality policy
- inform them if you do not receive a response you will be taking the case to the Equality Tribunal

When sending the form to the respondent get a certificate of postage so you have a record of postage

#### **Step two:**

If you do not receive a response within one month, or you are not satisfied with the response from the respondent you must remember that there are strict time limits for the referral of cases to the Equality Tribunal under the legislation. A person has 6 months from the date of discrimination to take a case. Extensions will only be given in exceptional circumstances.

You must send your complaint in to the Equality Tribunal on the ODEI 2 form as attached. The form will require you to :

- Present the facts of the case

- Set out the nature of the complaint

### **Step three:**

The Equality officer assigned to the case will write out to both parties maybe offering mediation and seeking further information. If mediation is not pursued, a hearing date will be set

### **Step four:**

The hearings are informal and a person can represent themselves but can also have a legal representative or other person with them to assist. At the hearing the responsibility is on the person taking the case (claimant) to establish a strong case of discrimination (prima facie case).

Three elements must be present in order for this to be successfully determined. These are:

- The discriminatory ground applies to your case. For example, if a Traveller takes a case of discrimination they must first establish that they are a Traveller and they suffered the discrimination because of that fact. Many service providers will claim they were not aware of the fact that the person is a Traveller so often Travellers must prove that the service provider did know
- You must show that the discrimination you experienced was carried out by the service provider (respondent)
- You must show that the treatment you received was less favorable than the treatment someone, not covered by the ground, would have received in similar circumstances. For example, a settled person was allowed to eat in the restaurant at the time but you, as a member of the Traveller community, were denied service

If you can prove the above points the responsibility shifts to the service provider (respondent) to show they did not discriminate. You are entitled to call witness to support your case. The other side will present their evidence and the Equality officer will ask questions. A written decision will be given on the case. There can be a significant waiting time in the Equality Tribunal for cases to be heard.

### **Other options - Using the courts**

It is possible to consider taking a case directly to the Courts. The Equality Tribunal is not the only remedy open to those who are experiencing discrimination. If the matter is urgent and requires an immediate remedy, seek legal advice which will enable the person to determine whether to submit their claim to the Equality Tribunal or the courts.

#### **1. Taking a case to the District Court:**

All cases regarding licensed premises such as pubs and hotels will now be heard in the District Court. It is advisable to adhere to the same time limits in the District Court as the Equality Tribunal. The following steps should be taken to bring a case of discrimination to the District Court.

### **Step one:**

To start your case first send a letter to the person who caused the discrimination (defendant) setting out what happened, asking them for a reason as to why they carried out the act and ask them what they are prepared to do to address the problem. Also, in the letter ask them for any record they have regarding the incident of discrimination such as a log book of incidents and for a copy of their equality policy.

### **Step two:**

- If you do not receive a satisfactory response you can instruct a solicitor to act on your behalf. This will involve costs. Apart from yourself only a solicitor or barrister can appear on your behalf in the District Court. An advocate without a formal legal qualification cannot act for you.
- If you choose to represent yourself the option is to go to the District Clerks Office and prepare a civil summons which is an official notice sent to the defendant inviting them to attend a certain court on a certain date at a certain time to answer the claim of discrimination. This civil summons must be stamped in the Courts office which costs €18. A copy civil summons is attached.
- The civil summons must be served on the defendant. A copy can be handed to the defendant at least 14 days before the date of the hearing or sent by registered prepaid post to the Defendant's last known residence or place of business at least 21 days before the date for hearing.
- It is important to check the name of the licensee in the District Court licencing Office as if you get the name wrong the case will fail.

### **Step three:**

- At the hearing of the case you can put your case forward and the defendant will defend their case.
- The judge will give their decision once all the evidence is heard.
- Either party can ask for a written decision.

### **Step four:**

If you are unsuccessful in your case at the District Court, or successful but nothing has changed, you can challenge the licence of the pub owner. Every September there is a licencing court which issues pub licences. You can prepare a case in August and make the argument as to why their licence should not be renewed. In order to do this there is a standard form which you can get and lodge in the District Court Office which will then allow you to attend the court and put your case forward. There is no cost involved.

### **Incitement to Hatred Act 1989**

This Act gives powers to the Gardaí to prosecute a person for incitement to hatred against a number of defined groups including members of the Traveller community. It is an offence for anyone to 'produce, possess, distribute, publish, broadcast or display material or use words or

behaviour' if such acts are threatening, abusive or insulting and are intended, or are likely to stir up hatred.

This legislation is presently under review by the Department of Justice, Equality and Law Reform.

### Remember Time Limits

Time limits are a crucial part of any case. From the date of discrimination you must:

- Send the OEDI 2 form to respondent within 2 months
- Wait one month for a response
- Send the OEDI 5 form to Equality Tribunal within 6 months

A case may be appealed to the Circuit Court within 42 days from the date of the decision

Adhere to the same time limits in District Court cases, except remember to send the civil summons on time to the defendant:

- if by hand 14 days before the date of hearing
- if by registered post 21 days before the hearing

If a party withdraws from mediation you must re-lodge the complaint within 28 calendar days after the date when the Mediator issued the notice

## Section 5. Evictions

### Definition of Evictions

Legal responses to the eviction of Travellers should be considered in the context of International law and in the context of the issue of Traveller accommodation. This section is relevant to evictions of Travellers from unauthorised encampments (roadside camps) (Refer to [section three](#) of the legal pack for evictions from Traveller accommodation/standard housing.)

At an international level evictions are defined as:

‘the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to appropriate forms of legal or other protection’(United Nations Committee on Economic, Social and Cultural Rights.)

This provides a useful basis from which to monitor evictions in an Irish context. Evictions

can only be justified in the most exceptional circumstances, and only if in accordance with the relevant principles of international law as set out below.

- They are carried out for the purpose of promoting the general welfare in a democratic society
- They are carried out in accordance with general principles of reasonableness
- No form of discrimination is involved

At a local and national level Traveller accommodation issues are linked to the issues of evictions. Travellers find themselves camped on public land and served with an eviction notice to move by the local authority yet they are awaiting the provision of properly serviced accommodation by the same local authority. There is a conflict between a local authority as an accommodation provider, while at the same time using their powers to deprive Traveller families of a place to live.

## **Relevant Laws**

### **1. The Housing Acts**

The Housing Acts are the most common laws used to evict Travellers from unauthorised encampments. Section 10 of the Housing (Miscellaneous Provisions) Act 1992<sup>1</sup> is widely used and provides the local authorities with the following powers:

- Where a caravan is parked within a five mile radius of an official halting site the local authority has the power to serve notice on the owner requesting them to move their caravan to the said halting site
- If the caravan is within a five mile radius of a halting site and the local authority is of the view the caravan is a hazard the local authority has the power to serve notice on the owner to move the caravan to any halting site in its area
- If a caravan is parked within a one mile radius of any Traveller accommodation the local authority can serve a notice requiring the owner to remove the caravan a distance of one mile from the specified Traveller accommodation

In all of the above cases

- the owner may be given only 24 hours notice to move their caravan (in some circumstances more time may be allowed)
- If the Notice expires or is not legally challenged the local authority can:
  - remove the caravan to the halting site named on the Notice, or
  - in the case of the one mile radius situation remove the caravan to a distance in excess of one mile from the specified site, or
  - take the caravan and put it in to storage. If the caravan is not claimed for over one month, the housing authority can dispose of it.
- If the owner of the caravan fails to move they are guilty of an offence and can be prosecuted. If convicted a person can be subject to a fine of €1,270 and/or a term of imprisonment of up to one month.

## **2. The Trespass Law**

Section 24 of the Housing (Miscellaneous Provisions) Act 2002<sup>2</sup> makes trespass on land with an 'object' such as a caravan, a criminal offence. Trespass under the act involves:

- entering and occupying any land,
- or, bringing an object (defined to include a temporary dwelling (caravan) or animals) onto any land, public or private
- without the consent of the owner of those lands<sup>3</sup>

This section was brought in at a time when over a 1,000 Traveller families were camped on public land (known to the local authorities but not with their consent) awaiting accommodation. In effect it means that families camped on public land, often through no fault of their own, are committing the offence of trespass.

### **Procedure used:**

- no written notice is served
- the Gardaí can ask the person if they have a 'reasonable belief' that they are trespassing to leave such lands
- If the person does not leave the Gardaí can confiscate and impound caravans and can arrest a person without warrant<sup>4</sup>
- The caravan can be recovered, and a fee imposed by the Gardaí for the storage
- If the caravan is not claimed within one month it may be disposed of
- If it is sold then the owner is entitled to an appropriate payment, less the cost of removal and storage
- If convicted a person is liable to a maximum fine of €3,000 and/or a term of imprisonment of not more than one month

This legislation does not apply to any public road within the meaning of the Roads Act 1993. However, the Roads Acts may be used to move Travellers on. (section. 69).

## **3. Roads Act, 1993**

Section 69 of the Roads Act, 1993 provides that any person who parks a caravan on a national road, busway, motorway, or protected road shall be guilty of an offence.

An authorised person such as a Garda or local authority official can:

- remove the caravan
- store it until it is claimed by the owner
- if not claimed after a certain period of time it can be disposed of

## **4. Local Government (Sanitary Services) Act, 1948**

Section 30 of the Local Government (Sanitary Services) Act, 1948 allows local authorities to

make bye-laws to regulate the use of caravans in its functional area.

Section 31 allows for prohibition orders to be made in areas, which have the effect of prohibiting caravans from being retained in those areas. These sections have been used on occasion throughout the country where the local authority has made bye laws and prohibition orders to remove caravans in the area specified.

The Irish Traveller Movement Legal Unit believe that the validity of the 24 hours notice should be tested in the High Court as Travellers are entitled to a fair hearing and an appeals procedure against an unfair decision regarding their rights. At present Travellers have no option but to move if they cannot get legal advice and challenge the notice within 24 hours.

The Trespass legislation is currently being tested in the High Court.

### **Steps to take in cases of evictions**

Step One: Information needed; it is important to document the following information in cases of evictions:

- Time and place of incident
- Circumstances of the family, including health and education
- Accommodation history of the family
- Identify the law being used to carry out the eviction
- Purpose of the eviction as stated by local authority or Gardai
- Was there an alternative solution sought and if so was it unreasonable in the circumstances
- The manner in which the evictions was carried out e.g high presence of Gardai, use of bulldozers to block of entrances, etc
- What steps, if any, did the local authority/Gardai take in advance to calm the situation/or avoid the eviction

### **Step Two: Check Eviction Notices**

If the eviction is being carried out on foot of a section 10 notice check the eviction notice itself as it should contain minimum requirements as set out below:

- Check the heading as sometimes the legislation referred to is incomplete. It should include section 10 of the Housing (Miscellaneous Provisions) Act, 1992 and all the subsequent amendments to the legislation, i.e. Section 32 of the Housing (Traveller accommodation) Act 1998 & Section 21 of the Housing (Miscellaneous Provisions) Act 2002
- Ensure that the description of the location of the caravan is correct
- Check the location to which the caravan is to be removed. If the notice refers to the five mile radius provision it is required that alternative accommodation is offered. If the one mile radius provision is being used the requirement is to move the caravan to at least a distance of one mile from the specified site, or other Traveller accommodation
- Ensure that the date on the Notice is correct

- The period within which the notice is to be complied should not be less than 24 hours. Check the time of day the notice was served. This is relevant to ensure that a minimum 24 hour notice is provided
- The notice should include the specific penalties for not complying with it
- The notice should be signed by an authorised officer from the local authority

If it does not contain all of the information above it is not a valid notice and therefore the eviction is illegal.

If the eviction is carried out on foot of the Trespass law:

- no notice will be served
- The Gardai will ask the person their name and can ask them to move their caravan immediately. It is important to give your name and details to the Gardaí on request.
- In such circumstances the only defence is to prove that there is consent from the land owner to be there
- In some cases the local authority have given consent to families who are awaiting accommodation in their areas, but in many cases no consent has been issued
- If a person does not leave on the request of the Gardaí they can be arrested, and subsequently prosecuted in the District Court

### **Step Three: Negotiation**

In all cases it is vital to negotiate for a proper solution to the situation. The following actions can be undertaken:

- Contact the local authority immediately to find an alternative solution to the eviction. Any correspondence with the local authority should be recorded. The minimum request should be for more time for the families and alternative accommodation. In cases of trespass request consent for the families to occupy the land, and/or alternative accommodation
- In trespass cases contact the gardaí and ask for more time explaining the lack of accommodation provision. In addition contact the Health Board and other services and ask for their assistance
- Contact local politicians and the media to highlight the issues involved to raise awareness of the problem and lobby for a solution to be found
- Contact other community groups in the area to support the cases/s by contacting the Gardaí and the local authority to seek an alternative

### **Step Four: Legal protection**

Contact a solicitor immediately to get legal advice. The main basis on which Travellers can challenge evictions under the Housing Acts and the Trespass law is that the local authority have a duty under the Housing (Traveller Accommodation) Act, 1998 to provide Traveller accommodation. One of the reasons that families are parked in public places or on roadsides or near existing Traveller accommodation is that there is that thee is a lack of provision of suitable accommodation. Therefore, Travellers should not suffer for the failures of a local

authority to fulfil its obligations. In order to do this, Travellers must secure legal representation and get an application in to the courts within the 24 hour period before the notice expires or in the case of other legislation as quickly as possible to prevent the eviction, until the case can be heard in court.

For further information visit [European Roma Rights Centre](#)

[Centre for Housing Rights and Evictions](#)

## **Section 6. Planning**

### **Background**

Local authorities are the bodies that regulate development in their functional area.

Since the introduction of stronger eviction laws and lack of provision of transient accommodation some Travellers are seeking to develop their own halting sites, houses or transient sites.

### **Relevant Legislation**

The Planning and Development Act, 2000 is the main law that governs planning issues in Ireland. Some important sections are discussed in turn:

#### **1. Development Plan**

Every Local Authority/Planning Authority must make a Development Plan every six years. The Plan is a blue print for the area which sets out what geographical areas will be developed for, such as industrial, residential or agricultural use. The definition of development is very wide and all developments require planning permission unless they fall in an excluded category such as minor developments such as building an extension of a certain width on to your house or a garden shed.

The Planning Authority must include in the Plan objectives for the provision of accommodation for Travellers and the use of particular areas for that purpose. A local authority cannot carry out any development or grant planning permission for any development in its area which does not come within the objectives of the Plan unless it adopts a special procedure known as a material contravention procedure. This procedure involves publishing a notice and inviting submissions regarding the intention to grant planning permission for a development that does not come within the Plan. The councillors must then vote for, or against, and not less than three quarters of the total number of councillors must vote in favour.

Every four years the Planning Authority must give notice that it is intending to review its Plan. The Development Plan must reflect the provisions of the Traveller Accommodation Programme.

## **2. Developing private accommodation**

In some cases Travellers seek to develop halting sites on private land. Often Travellers find themselves having purchased agricultural land and when they attempt to put in an application for planning permission, it is rejected.

In some cases Travellers move on to the land and then apply for planning. Under the Planning and Development Act, 2000, a planning authority has a period of eight weeks to make a decision regarding planning permission; however this time may be extended if the planning authority makes a request for further information in relation to the development. If a planning decision is appealed to An Bord Pleanála, the Bord has up to 18 weeks to issue a decision.

## **3. Enforcement procedures**

The Planning Authority has powers under the Act to take action against a person who is constructing a development with no planning permission or is in breach of their planning permission or a condition of it.

The following outlines the procedure:

- A warning letter under section 152 of the 2000 Act may be first issued but not in all cases. The local authority can serve an enforcement notice without the need for a warning letter if they are of the opinion that the situation is urgent.
- Once the warning letter is served the local authority must investigate the situation and make a decision whether or not to serve an enforcement notice.
- The enforcement notice may be served on any one whom the local authority believes the notice relates and not specifically the owner. The notice takes effect from the date it is served and stays in operation for 10 years from that date. The local authority can prosecute a person in the District Court to enforce the notice if the person does not comply.
- If a development has been in existence for more than 7 years without planning permission no enforcement proceedings can be brought against the owner by the local authority, but the development will still be considered unauthorized.
- If enforcement proceedings are issued against Travellers on unauthorized encampments this can be defended if the person/s are seeking either permanent or transient accommodation.

## **4. Making a planning application**

### **Time Limits:**

- Before an application for planning is made a notice of intention to make the application must be made through a local newspaper and the erection of a site notice which should remain in place for 5 weeks after the planning application is lodged
- The application for planning should be lodged to the local authority within 2 weeks of the notices being placed in the newspaper. A decision on the application should be made within 8 weeks of receiving the application

### **Submitting an application:**

- An application for planning can be made by filling in a planning application form and submitting it together with required documents to the local authority
- The local authority should give advice about how to apply, and what documents are needed
- It is possible to employ an architect, who can make the application
- Planning permission normally lasts for five years within which the development must be commenced.

### **Dealing with refusals:**

- If the local authority refuses an application an appeal must be lodged within 4 weeks from the date of this decision to An Bord Pleanála
- An Bord Pleanála aims to make a decision within 18 weeks. If this is not possible, it will inform all the parties of this
- An Bord Pleanála's decision is final and can only be challenged by judicial review in the High Court. A judicial review is not a review of the decision itself but of the way in which the decision was made. An application for judicial review must be made within 8 weeks from the date the decision is given

## **4. Steps to take to deal with planning issues**

- The Planning Authority should have regard to Traveller accommodation and include objectives for same within their Development Plan. Traveller groups should monitor this when new Development Plans are being drawn up every six years
- If Travellers buy land to develop their own accommodation check the Development Plan to see if the land is zoned residential
- Travellers should avoid land where residential development is totally excluded or severely restricted. The best way is to enter a contract for the purchase of the land 'Subject to Planning Permission' and seek advice from a solicitor.
- If Travellers find themselves on land without planning they should be advised to apply for planning immediately as it is an offence to carry out any work such as putting in emergency facilities without such permission
- If enforcement proceedings are issued against Travellers on unauthorized encampments this can be defended if the person/s are seeking either permanent or transient accommodation. Consult a solicitor immediately in such cases.
- If some works have been carried out it is possible to apply for planning permission to retain an unauthorised development which is called retention permission
- If 7 years have elapsed since the development was built and no enforcement proceedings were issued the local authority can not serve any such notices. This does not mean that the development is authorised it merely means that no action can be taken. If a person is in this situation it may be difficult to sell the property on or make adjustment to it in the future
- Travellers should consult an architect in drawing up plans
- If planning permission is refused an appeal can be lodged to An Bord Pleanála

- If An Bord Pleanála does not grant permission and it appears that the decision was not reasoned fairly, consult a solicitor about the possibility of a judicial review. There will be costs involved so ensure that comprehensive advice is sought

For further information visit [An Board Pleanála](#) or [www.oasis.gov.ie](http://www.oasis.gov.ie) and the Local authority planning department in your area.

## **Section 7. The Gardaí**

### **Role of the Gardaí**

The Gardaí carry out all police functions in Ireland, such as criminal investigations, enforcement of road traffic law and the maintenance of public order. The Gardaí have extensive powers in exercising their functions.

Garda Powers

#### **To Stop and make inquiries**

The Gardaí can approach any member of the public and make reasonable inquiries. For example, they can ask for the production of identification or your address or where you are going. In addition, the Gardaí have the power to stop motorists even where there is no reasonable suspicion that an offence has been committed.

The power to make inquiries must be done in a reasonable manner. There is no general power to arrest and take a person in to custody for questioning without a charge. However, certain laws provide that you can be arrested and brought to the Garda station for questioning but in such cases you must be suspected of having committed a serious crime (a crime which is punishable by 5 years imprisonment or more).

#### **Search of the person**

In general, the Gardaí need a warrant to search you in cases where there is a reasonable belief that a serious offence has been committed<sup>1</sup>. There are certain laws that give the Gardaí the power to search you and/or your vehicle without a warrant such as the Misuse of Drugs Act and the Criminal Law Act 1997.

In most cases the name of the person must be on the warrant. However, there are some laws that give the Gardaí powers to enter premises and search persons thereon. If a person is stopped and searched under any statutory power they must be given the following information:

- Reason for the action
- The legal power the Gardaí are using to carry out the action

All searches must be carried out in a fair and in a non-oppressive manner

### **Property searches**

In most cases any property searches must be on foot of a properly issued warrant. Regard should be had to Article 40.5 of the Constitution which states: 'The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law'. The Gardaí may only enter without a warrant to 'safeguard life and limb'.

The Gardaí have the power to search premises without a warrant where someone has been arrested for the purpose of taking any dangerous weapons in to custody or any other item found on that person.

### **Arrest**

The most commonly used power of arrest is under section 4 of the Criminal Law Act 1997. Where a member of the Gardaí has a reasonable suspicion that an arrestable offence has been committed, the Gardaí may arrest without warrant anyone suspected to be guilty of the offence.

If you are arrested and charged with a crime you must be told what crime you are being charged with and you must be cautioned (informed of your right to remain silent and if you do say anything it may be taken down and given as evidence). Once arrested a person must be brought to the Garda station without undue delay.

As stated above there is no general power of arrest to merely question the person but certain laws now provide that you can be arrested without a warrant and brought to the Garda Station for questioning if you are suspected of having committed a serious crime.

### **Detention**

There are different rules for dealing with a person who is detained for questioning than for dealing with a person who is detained and charged.

#### **Detention without charge**

Section 4 of the Criminal Justice Act, 1984 is the most commonly used section for detention without charge. Once arrested you are brought to a Garda station and detained for questioning if the member in charge has reasonable grounds to believe it is necessary for the investigation of the offence. A person can be detained for up to six hours, and this may be extended to a further six hours by a Garda not below the rank of Superintendent. You are entitled to a rest period between the hours of twelve midnight and eight in the morning which brings the total number of hours of detention to twenty.

#### **Detention with Charge**

If you are detained after charge, the charge should be explained to you and you should be given a charge sheet (a document outlining the charges against you). You will be formally charged and cautioned.

It is possible that you could be released on station bail which allows for the member in charge to release you pending the court hearing or brought before the District Court as soon as practicable and then released on bail if granted.<sup>2</sup>

### **Rules governing detention**

There are regulations contained in the Criminal Justice Act, 1984 that set out a person's rights in detention which include:

- Right to be given information setting out your rights while in detention
- Right to remain silent but there are exceptions to this right
- If charged the right to be given details of the charges against you
- An extensive record must be kept about the detention
- Right to access to a solicitor

### **Accessing rights:**

#### **In all cases you should:**

- Give your name and address if asked by the Gardaí
- Ask the Gardaí to identify themselves
- If applicable ask what powers the Gardaí are using in the particular circumstance
- Ask for a warrant and a copy of it. If the Gardaí do not have a warrant check that the powers they are using are correct. Every warrant should contain your name and address, the Gardaí name, signed and dated by an authorised officer
- If you have any concerns about how the Gardaí have exercised their powers seek legal advice immediately
- You are entitled to make a complaint against the Gardaí if they have abused your rights in any way

In cases of evictions with notices the role of the Gardaí is to keep the peace. They should have no active involvement in the eviction. In such circumstances Traveller groups should:

- Identify yourself to the Gardaí and explain your role
- Ask the Gardaí to identify themselves
- Ask to speak to the superintendent or member in charge and explain that the families are awaiting accommodation and have nowhere to go
- It is important to remember when an eviction is taking place the role of the Traveller group is to monitor the situation to ensure no violation of Travellers' rights and to provide a calming influence on what can be a tense situation
- Take detailed notes
- Seek legal advice

In cases of evictions under the Trespass Law the Gardaí have an active role in that they can ask Travellers to move immediately. In such cases the Traveller group should:

- Seek a meeting with the superintendent to explain the circumstances of the family and inform them of the actions being carried out to seek an alternative
- Seek more time for the family so an alternative solution can be found
- Seek legal advice

For further information contact:

The Garda Commissioner established the Garda Racial and Intercultural Office in April 2000. This office is responsible for co-ordinating, monitoring and advising on all aspects of policing in the area of ethnic and cultural diversity.

Community Relations Section:

Harcourt Square,

Dublin 2.

Tel: 01 6663150

Email: [agecard@iol.ie](mailto:agecard@iol.ie)

In addition, the Gardaí have a Human Rights Office which has a consultation brief with NGOs and community group's nation wide and raises awareness of human rights issues within the Garda organisation.

Human Rights Office:

Garda Training College,

Templemore,

Co Tipperary.

Tel: 0504 35498

Email: [ghrights@eircom.net](mailto:ghrights@eircom.net)

## **Section 8. Sample Forms**

The following forms and information are included in this Section:

- FLAC Centres and Legal Advice Centres
- Legal Aid Application form
- Freedom of Information Request form
- ODEI 2
- ODEI 5
- List of Garda Ethnic Liason Officers
- District Court Civil Summons
- Accommodation Assessment Form

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[www.oasis.gov.ie](http://www.oasis.gov.ie)

[www.equality.ie](http://www.equality.ie)

[www.iccl.ie](http://www.iccl.ie)

[www.equalitytribunal.ie](http://www.equalitytribunal.ie)

[www.ncri.ie](http://www.ncri.ie)

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