



**Low Pay Commission:
Examination of retaining or removing the sub-minimum rates of the
National Minimum Wage**

**Submission by the Ombudsman for Children's Office
July 2023**

1. Introduction

The National Minimum Wage Act 2000, as amended (2000 Act), governs the setting of national minimum hourly rates of pay, otherwise known as the National Minimum Wage. Children and young people under 20 are currently not entitled to the National Minimum Wage and instead are entitled to a sub-minimum rate expressed as a percentage of the National Minimum Wage.¹ In February 2022, the Minister for Enterprise, Trade and Employment requested that the Low Pay Commission (Commission) examine the retention or removal of sub-minimum rates of the National Minimum Wage and make recommendations in this regard.²

The Ombudsman for Children's Office (OCO) is an independent statutory body established in 2004 under the Ombudsman for Children Act 2002, as amended (2002 Act). Under the 2002 Act, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to the age of 18 years
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO welcomes the examination by the Commission of retaining or removing the sub-minimum rates of the National Minimum Wage. We also welcome the Commission's plans as part of this examination to undertake a targeted stakeholder consultation, including with organisations that represent young workers.

In July 2023, the Ombudsman for Children wrote a letter to the Chair of the Commission, in which the Ombudsman for Children expressed an interest in making a written submission to the Commission's examination. We welcome the positive response received from the Commission in this regard and the opportunity to provide a submission to the Commission's examination. The OCO notes that submissions received by the Commission will assist it in its deliberations and recommendations to the Minister for Enterprise, Trade and Employment on the matter.

The OCO has prepared this brief submission pursuant to section 7(1)(g) of the 2002 Act, which provides for the Ombudsman for Children to monitor and review generally the operation of legislation concerning matters that relate to the rights and welfare of children, and section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise on any matter relating to the rights and welfare of children.

The purpose of this submission is to set out the issues we believe merit consideration in the interests of ensuring that the recommendations made by the Commission have appropriate regard to the rights of children in Ireland.

We are cognisant that the sub-minimum rates of the National Minimum Wage apply to children and young people under 20 years of age. In light of the OCO's statutory functions, this submission focuses on children under 18 years of age.

¹ National Minimum Wage Act 2000, as amended, s 15.

² Houses of the Oireachtas, Dáil Éireann debate, [Low Pay Commission](#) [50019/22], 11 October 2022.

2. International human rights standards

Having ratified the UN Convention on the Rights of the Child (CRC) in 1992, Ireland has an obligation under international law to respect, protect and fulfil the rights and principles set out in the CRC for all children in the State. The CRC defines as a child every person below the age of 18 years. The CRC sets out four general principles, which are integral to the realisation of children's rights under the CRC:

- Article 2 provides that all children must be able to enjoy their rights without discrimination of any kind.
- Article 3 requires children's best interests be treated as a primary consideration in all actions concerning them. This principle requires every legislative, administrative and judicial body or institution to systematically consider how children's rights and interests are or will be affected by their decisions and actions and to give priority to those interests in all circumstances.³
- Article 6 recognises children's right to life, survival and development. In this regard, States are expected to interpret 'development' as a holistic concept encompassing all aspects of children's development and are obliged to adopt measures that are aimed at achieving optimal development for all children.⁴
- Article 12 provides for children's right to express their views freely in all matters affecting them and for due weight to be given to children's views, in accordance with their age and maturity. Working children and representatives of working children's associations should be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated.⁵

Article 32 of the CRC requires the State to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The UN Committee on the Rights of the Child (Committee), which is the body of independent experts that monitors implementation of the CRC, has stated that the introduction to age-appropriate forms of work plays an important developmental role in the lives of adolescents, equipping them with skills and enabling them to learn responsibilities, contribute to their families' economic well-being and support their access to education.⁶ The Committee states that schooling and the introduction to decent work should be coordinated to facilitate both in the lives of adolescents; States parties should adopt a transitional approach towards achieving a balance between the positive role of work in adolescents' lives while ensuring their right to compulsory education, without discrimination.⁷ The

³ UN Committee on the Rights of the Child (2003), [General comment No. 5 \(2003\) General measures of implementation of the Convention on the Rights of the Child \(arts. 4, 42 and 44, para. 6\)](#), CRC/GC/2003/5, para. 12; UN Committee on the Rights of the Child (2013), [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), CRC/C/GC/14, para. 6 and paras. 36-40.

⁴ UN Committee on the Rights of the Child (2003), [General comment No. 5 \(2003\) General measures of implementation of the Convention on the Rights of the Child \(arts. 4, 42 and 44, para. 6\)](#), CRC/GC/2003/5, para. 12.

⁵ UN Committee on the Rights of the Child (2009), [General comment No. 12 \(2009\) The right of the child to be heard](#), CRC/C/GC/12, para. 117

⁶ UN Committee on the Rights of the Child (2016), [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20, para. 85.

⁷ Ibid.

Committee has urged States to regulate the working environment and conditions for adolescents who are working so as to ensure that they are fully protected.⁸

Children who are employed also hold rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Ireland ratified in 1989. Article 7 of ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work. Included among the fundamental elements that guarantee just and favourable conditions is remuneration that provides all workers with, as a minimum, fair wages, equal remuneration for work of equal value without distinction of any kind, and a decent living.⁹

The UN Committee on Economic Social and Cultural Rights (ICESCR Committee), which is responsible for monitoring implementation of ICESCR, clarifies that the right to just and favourable conditions of work is a right held by everyone, including young workers, without distinction based on age.¹⁰ The ICESCR Committee states that workers should receive equal remuneration when they perform the same or similar jobs.¹¹ It also states that the minimum wage should apply systematically, protecting as much as possible the fullest range of workers, including workers in vulnerable situations.¹² It states that young workers should not suffer wage discrimination.¹³

Following its examination of Ireland's implementation of ICESCR in 2015, the ICESCR Committee recommended that Ireland review all relevant legislation to ensure just and favourable conditions of work for all workers, including the minimum wage, and take the steps necessary to ensure that the minimum wage applies to all employees.¹⁴ The ICSECR Committee has also recommended that other countries, including the UK, extend the protection of the national minimum wage to young people.¹⁵

Similar to ICESCR, the European Social Charter (Charter), which Ireland ratified in 1964, recognises that young workers have a right to a fair wage and remuneration that ensures a decent standard of living. Under Articles 4(1) and 7(5), State Parties undertake to recognise the right of workers to remuneration that will give them and their families a decent standard of living and the right of young workers to a fair wage respectively.

The European Committee of Social Rights (ECSR), which is responsible for ruling on the conformity of the situation in States parties with the Charter, has stated that to be considered fair within the meaning of Article 4(1), a net wage must be above the poverty line and must not fall below 60% of the national average net wage.¹⁶ As regards Article 7(5) of the Charter, the ECSR has stated that

⁸ UN Committee on the Rights of the Child (2003), [General Comment No. 4 \(2003\) Adolescent health and development in the context of the Convention on the Rights of the Child](#), CRC/GC/2003/4, para. 18.

⁹ International Covenant on Economic, Social and Cultural Rights, Article 7(a); UN Committee on Economic, Social and Cultural Rights (2016), [General comment No. 23 \(2016\) on the right to just and favourable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#), E/C.12/GC/23, paras. 6-24.

¹⁰ UN Committee on Economic, Social and Cultural Rights (2016), [General comment No. 23 \(2016\) on the right to just and favourable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#), E/C.12/GC/23, para. 5 and para. 11.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 23.

¹³ *Ibid.*, para. 47(b).

¹⁴ UN Committee on Economic, Social and Cultural Rights (2015), [Concluding observations on the third periodic report of Ireland](#), E/C.12/IRL/CO/3, para. 17.

¹⁵ UN Committee on Economic, Social and Cultural Rights (2016), [Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), E/C.12/GBR/CO/6, para. 37.

¹⁶ European Committee of Social Rights, [Conclusions XIV-2 - Statement of interpretation - Article 4-1; European Committee of Social Rights, General Federation of employees of the national electric power corporation \(GENOP-DEI\) and Confederation of Greek Civil Servants' Trade Unions \(ADEDY\) v. Greece](#), Complaint No. 66/2011, Decision on the merits, 23 May 2012, para. 57.

there is not really any basic reason for not paying the same wage for the same output.¹⁷ In its reviews of other countries, the ESCR has found that providing a lower minimum wage to younger workers involves a difference of treatment based on age.¹⁸ The ESCR has stated that it is open to a State to demonstrate objective justification for the payment of a lower minimum wage to younger workers, if it can be shown to further a legitimate aim of employment policy and is proportionate to achieve that aim.¹⁹ Any reduction must be reasonable, not too substantial and ought to be for a limited time.²⁰ The ESCR has stated that while a wage of 30% lower than the adult starting wage is acceptable in the case of 15 to 16 year olds, the difference may not exceed 20% for 16 to 18 year olds.²¹

On four occasions since the 2000 Act came into force, the ESCR has found that the sub-minimum rate of 70% for workers aged under 18 in Ireland is in breach of Article 7(5) of the Charter when applied to children aged 16 and 17.²² The ESCR states that this is due to the wage paid to children aged between 16 and 18 being too low and the 30% difference between the rate payable to adults and the rate payable to children aged 16 to 18 being too great.

3. Consideration of the rights of children in examining the sub-minimum rates

The OCO notes that the Commission is an independent statutory body established under the 2000 Act to make recommendations regarding the National Minimum Wage. We also note that, in making recommendations, the Commission is required to have regard to a range of factors. Though the 2000 Act does not include the rights of children among the factors to be considered by the Commission in the exercise of its statutory functions, Ireland's obligations under the CRC require that decisions made by every legislative, administrative or judicial body or institution systematically consider how children's rights will be affected by their decisions or actions. As such, it is important that recommendations and decisions made about the sub-minimum rates of the National Minimum Wage give due regard to relevant human rights standards applicable to children under the age of 18.

The ICESCR Committee is due to review and issue recommendations on Ireland's implementation of ICESCR again in 2024. Ahead of the review, the ICESCR Committee has asked the State to provide information on measures taken to ensure that all workers are provided with fair wages and to clarify the basis for different rates for workers below 20 years of age.²³ Similarly, the ECSR is due to report on Ireland's compliance with several Charter rights, including Article 7(5), again in 2023. It is likely that the ESCR will examine progress made in relation to its previous findings of non-compliance as regards sub-minimum youth rates in its report on Ireland. In this regard, the examination by the Commission provides it with an appropriate and timely opportunity to consider the sub-minimum

¹⁷ European Committee of Social Rights, [Conclusions II - Statement of interpretation - Article 7-5](#).

¹⁸ European Committee of Social Rights, [General Federation of employees of the national electric power corporation \(GENOP-DEI\) and Confederation of Greek Civil Servants' Trade Unions \(ADEDY\) v. Greece](#), Complaint No. 66/2011, Decision on the merits, 23 May 2012, para. 68.

¹⁹ Ibid.

²⁰ European Committee of Social Rights, [Conclusions II - Statement of interpretation - Article 7-5](#); European Committee of Social Rights, [Conclusions 2019 - Azerbaijan - Article 7-5](#), 5 December 2019.

²¹ European Committee of Social Rights, [Conclusions 2019 - Azerbaijan - Article 7-5](#), 5 December 2019.

²² European Committee of Social Rights, [Conclusions 2004 - Irlande - article 7-5](#), 31 May 2004; European Committee of Social Rights, [Conclusions 2006 - Irlande - article 7-5](#), 30 June 2006; European Committee of Social Rights, [Conclusions 2011 - Ireland - article 7-5](#), 9 December 2011; European Committee of Social Rights (2019), [Conclusions 2019: Ireland](#), pp. 9-10.

²³ UN Committee on Economic, Social and Cultural Rights (2022), [List of issues in relation to the fourth periodic report of Ireland](#), E/C.12/IRL/Q/4, para. 11.

rates of the National Minimum Wage from the perspective of Ireland's obligations towards children up to the age of 18 years under ICESCR and the Charter, and having regard to the conclusions of the ICESCR Committee and the ECSR.

The OCO encourages the Low Pay Commission to have regard to the rights of children up to the age of 18 years in its examination of retaining or removing the sub-minimum rates of the National Minimum Wage to ensure that its recommendations are in line with Ireland's international and European rights obligations and corresponding guidance.