

# Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland

Emma Quinn, Egle Gusciute, Alan Barrett, Corona Joyce

*July 2014*

**EMN**

European Migration Network



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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN has been established via Council Decision 2008/381/EC.

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The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

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## About this Report

This European Migration Network Study, compiled according to commonly agreed specifications, provides an overview of policies and administrative practices that shape Third-Country Nationals' access to social security, including healthcare in Ireland.

The report consists of information gathered primarily for an overview, EU-level Synthesis Report on Migrant access to social security, including healthcare: policies and practice. All reports are available at [www.emn.europa.eu](http://www.emn.europa.eu).

The opinions presented in this report are those of the authors and do not represent the position of the Economic and Social Research Institute, the Irish Department of Justice and Equality, the Irish Department of Social Protection or the European Commission, Directorate-General Home Affairs.

# Table of Contents

<b>Executive Summary</b>	<b>vii</b>
<b>Section 1 Introduction</b>	<b>1</b>
1.1 Objectives	1
1.2 Methodology	3
1.2.1 Scope of Study	4
1.2.2 Definitions and Terminology	4
1.3 Statistical Data On Welfare Receipt Of Immigrants	5
<b>Section 2 Overview of the Irish Social Security and Healthcare Systems</b>	<b>8</b>
2.1 Overview of the Irish Social Security System	8
2.1.1 Institutional Framework	8
2.1.2 Payment Types	8
2.1.3 Applying for Social Security	9
2.1.4 Appealing a Decision on Social Security	10
2.2 Overview of the Irish Health System	10
2.3 Financing and Spending on the Social Security and Healthcare Systems	11
2.4 Discretionary Conditions	11
<b>Section 3 Residence-Related Rules on Access to Social Security and Healthcare by Migrants in Ireland</b>	<b>13</b>
3.1. The Right To Reside and Non-EEA Nationals	13
3.1.1 Type of Non-EEA Residence Permit	14
3.2 The Right To Reside and EEA Nationals	16
3.3 Other Rules on Access to Social Security and Healthcare by Migrants in Ireland	19
<b>Section 4 Discretionary Criteria Applied to Decisions on Access to Social Security</b>	<b>21</b>
4.1 Discretionary Criteria as Applied to Social Security: the Habitual Residence Condition	21
4.1.1 Legal Basis of Habitual Residence Condition	23
4.1.2 Assessment of the Habitual Residence Condition	23
4.1.3 Guidelines and Training in the Assessment of the Habitual Residence Condition	26
4.2 Discretionary Criteria as Applied to Healthcare: the Ordinarily Resident Condition	28
4.2.1 Assessment of Ordinary Residence	28

4.2.2	Guidelines and Training in the Ordinarily Resident Condition	29
<b>Section 5</b>	<b>Interaction Between Social Security and Immigration Policy and Practice</b>	<b>30</b>
5.1	Linkages/Interactions at Policymaking Level	30
5.2	Coordination in the Operation of the Immigration and Social Security Systems	31
5.2.1	Burden on the State	31
5.2.2	Employment Permit Holders	32
5.2.3	Victims of Domestic Violence	33
5.2.3	Non-Schematised Scenarios	34
5.2.4	Information Sharing	34
5.3	Other Linkages Between The Immigration and Social Security Systems	35
5.3.1	Access to Family Reunification	35
5.3	Interaction Between Integration and Social Security Policy	35
5.3.1	Access to Long-Term Residence and Naturalisation	36
5.3.2	Availability of Translation, Interpretation or Other Forms of Support to Third-Country Nationals wishing to Access Social Security	36
<b>Section 6</b>	<b>External Dimension of Social Security</b>	<b>37</b>
6.1.	Overview of Bilateral Social Security Agreements with Non-EEA Countries	37
6.2	Exportability of State Pension to Other Countries	38
<b>Section 7</b>	<b>Key Findings</b>	<b>39</b>
<b>Annex I</b>	<b>Case-Studies on Access to Social Security</b>	<b>42</b>
<b>Annex II</b>	<b>Overview of the National Social Security System Presented in the MISSOC National Guides as it Applies to Non-EEA Nationals</b>	<b>47</b>
<b>References</b>		<b>53</b>

## List of Tables

Table 1.1	Proportion of Irish and Non-Irish Nationals (Persons Aged 15 Years and Over) in Receipt of Selected Social Security Payments, 2014	6
Table 3.1	Non-EEA Immigration Registration Stamp and Access to Social Security	15
Table 3.2	Right to Reside, Application of the HRC and Access to Key Social Assistance Payments for Selected Migrant Groups	17
Table 3.3	Summary of Scheme-Related Residence Requirements For Healthcare and Social Security Relevant to Legally Resident Migrants	19
Table 4.1	Social Assistance and Universal Payments to Which the HRC Applies	22
Table 6.1	Bilateral Social Security Agreements/Understandings with Third Countries	37
Table 6.2	Sending Country Applicability under Bilateral Social Security Agreements/Understandings with Third Countries	38

## Abbreviations and Irish Terms

ASNCU	Asylum Seekers and New Communities Unit
CIB	Citizens Information Board
CTA	Common Travel Area
DSP	Department of Social Protection
DJEI	Department of Jobs, Enterprise and Innovation
EEA	European Economic Area
EFT	Electronic Fund Transfer
EU	European Union
FIS	Family Income Supplement
FLAC	Free Legal Advice Centre
GNIB	Garda National Immigration Bureau
GP	General Practitioner
HRC	Habitual Residence Condition
HSE	Health Service Executive
INIS	Irish Naturalisation and Immigration Service
JA	Jobseeker's Allowance
JB	Jobseeker's Benefit
MISSOC	Mutual Information System on Social Protection
MRCI	Migrant Rights Centre Ireland
NGO	Non-Governmental Organisation
OPF	One-Parent Family Payment
PPSN	Personal Public Service Number
PRSI	Pay Related Social Insurance
S.I.	Statutory Instrument
SSA	Social Security Agreement
SWA	Supplementary Welfare Allowance
SWAO	Social Welfare Appeals Office
TCN	Third-Country National

## Executive Summary

This study on Migrant Access to Social Security and Healthcare: Policies and Practice in Ireland aims to increase understanding of how the Irish social security system, including healthcare, operates in respect of non-Irish workers and their families. It provides an overview of the welfare system in Ireland, outlining policies and administrative practices that influence migrant access to social security, particularly focusing on ‘discretionary conditions’.<sup>1</sup> The access of non-EEA and EEA nationals is compared, where relevant, to that of Irish nationals. The study explores the nexus between migration and social security policymaking, and discusses practical challenges and policy gaps in that regard. The report is based on the Irish contribution to an EU-wide, European Migration Network study on migrant access to social security. A similar study will be undertaken by each European Migration Network (EMN) National Contact Point (NCP) and a synthesis report will be produced.

### *Background*

In Ireland, the same rules on access to social security generally apply to migrants as to non-migrants. Migrant-specific rules exist, but they are uncommon. However the rules, particularly residence-related rules, impact differently on migrants when compared to non-migrants. There are several levels of residence requirements attached to access to social security in Ireland. The most fundamental is that in order to access certain payments an applicant must have a ‘right to reside’ in the State. A residence-focussed discretionary test may then be one of the qualifying conditions attached to access. In terms of migrant-specific residence rules, various types of residence permits are issued to non-EEA nationals, with differing implications for access to social security. Finally scheme-specific legislative and administrative rules apply, which vary from one social security payment scheme to the next. The practical implementation of the rules also has the potential to impact on access, particularly where discretion is required on the part of an official processing a claim for social security.

### *Statistical Data*

The perception that migrants are dependent on social security to a greater extent than the native population is widespread. However, administrative data from the Department of Social Protection on the proportions of Irish and non-Irish nationals in receipt of key welfare payments, show no evidence of a large or systematic over-representation of non-Irish nationals among welfare recipients in Ireland.

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<sup>1</sup> Discretionary here refers to conditions that permit Deciding Officers to exercise a degree of judgement as to whether eligibility conditions have been met.

### ***Discretionary Conditions***

A Habitual Residence Condition (HRC) applies to claims for most social assistance and universal payments in Ireland. The term ‘habitually resident’ conveys

*a degree of permanence – meaning that a person has been here for some time, from a date in the past, and is intending to stay for a period into foreseeable future*

(Department of Social Protection, 2013a).

Unless an individual has been resident within the Common Travel Area for two years prior to making an application for social welfare, or there are other clear indications that he or she is ‘habitually resident’ in the State, his or her application may be assessed under the HRC.<sup>2</sup> The HRC decision maker is required to exercise discretion, particularly regarding whether or not the available evidence indicates that the applicant’s ‘centre of interest’ is in Ireland. NGOs consulted for the study argue that the assessment of the HRC is too subjective and too complex for consistency in decision-making to be achieved. Dedicated DSP Habitual Residence Condition Deciding Officers may receive in-depth training on the application of the HRC, however not all officers participate in formal training.

Operating alongside and entirely independently of the HRC is the requirement to be ‘Ordinarily Resident’ in order to potentially access healthcare in Ireland without charges. The Ordinarily Resident Condition requires that an applicant has been resident or intends to be resident in the State for at least one year.

### ***The Right To Reside***

An applicant should have an established ‘right to reside’ in order to access payments to which the HRC applies. If the right to reside is not evident the claim cannot be awarded and further assessment becomes irrelevant. Generally the practical assessment of a non-EEA national’s right to reside by Deciding/Determining Officers is straightforward, evidenced by residence permit documentation. In practice, the right of an EEA national to reside in the State is much more difficult to assess in the context of an application for social welfare. Department of Social Protection (DSP) officials indicated that it can be hard to check the date of an applicant’s entry to the State. In addition the employment history of the applicant becomes critical in determining whether or not the applicant can avail of EEA ‘migrant worker status’.

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<sup>2</sup> The recently published draft Social Welfare and Pensions Bill 2014 proposes to remove the two-year presumption for people who have been in the Common Travel Area.

### *Interaction Between Immigration and Social Security Policies*

Irish immigration and social security policies have evolved separately and limited evidence exists of a deliberate nexus between migration and social security policymaking in Ireland. Certain points of ambiguity arising from current immigration and social security policy exist, including the following:

- While some residence stamps require a non-EEA national not to become ‘a burden on the State’, this requirement does not have an express legislative basis and what constitutes ‘a burden on the State’ is not clearly defined.
- There is ambiguity regarding the access of a non-EEA national worker (Stamp 1 holder) to Jobseeker’s Allowance. Such workers hold employment permits which are contingent on employment in a specified job. It is therefore unclear whether the applicant can be deemed to be ‘available for and genuinely seeking work’ if employment in that job ceases; one of the main qualifying conditions for Jobseeker’s Allowance.
- Non-EEA migrant victims of domestic violence, whose immigration status is dependent on the perpetrator, can make a request for an independent immigration status. However permission granted will usually be at the same level as that previously held, i.e. Stamp 3 permission, which does not permit access to the labour market or to social security. Depending on individual circumstances such migrants may be given permission to work at the Minister for Justice and Equality’s discretion.

In the Dublin area, migrants in particularly difficult circumstances and in need of emergency social welfare payments are referred to the Asylum Seekers and New Communities Unit (ASNCU), where individual circumstances are assessed on a case-by-case basis. This service is not available nationwide and provision for such migrants varies between counties.

# Section 1

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## Introduction

Section 1 provides an introduction to the study, its objectives, scope and methodology. Relevant social welfare-related and immigration-related terminology is introduced. In order to provide context to the study, statistical data are supplied, which show the proportion of Irish and non-Irish groups in receipt of certain social security payments.

### 1.1 OBJECTIVES

The access of migrants to social security, including healthcare, varies across the EU as complex administrative rules and practices shape the pattern of take-up. While the EU has certain competencies regarding the coordination of social security systems between Member States, the relevant regulations aim to facilitate the free movement of EU nationals and the intra-EU mobility of non-EEA nationals, and do not replace or modify national social security systems.<sup>3</sup> The issue of migrant access to social security has proved controversial across the EU; the perception that migrants are dependent on social security to a greater extent than the native population is common (Boeri, 2010) and is often reflected in the media in Ireland and abroad.<sup>4</sup> Several states have introduced specific national policies to protect their welfare states from potential abuse.

In Ireland, despite the fact that migrants have been particularly seriously impacted upon by the recession in recent years, research to date does not suggest that migrants receive more social security support than the native population (Barrett and McCarthy, 2008; Zimmermann et al., 2012; Barrett et al., 2013). Barrett et al. (2013) suggest that the discretionary element that exists in the Irish social welfare system (in the form of a Habitual Residence Condition)

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<sup>3</sup> These social security coordination regulations most notably *Regulation 883/2004*, as amended by *Regulation 465/2012* enshrine a set of principles including the principle that EU citizens are only covered by the social security legislation of one country at a time; the principle of equal treatment, where EU citizens enjoy the same rights and obligations as nationals of the country where they are covered; the aggregation principle, which ensures that previous periods of insurance, work or residence in other countries are taken into account; and the principle of exportability, where cash benefits accrued in one country can usually be exported to another. In 2010, *Regulation 1231/2010* extended the EU's social security coordination regulations to Third-Country Nationals legally resident in the territory of the EU, who have moved between one Member State and another, and their family members.

<sup>4</sup> For example see: *The Irish Times* (12 June 2013). 'Department of Social Protection not a 'soft touch' for fraud or abuse, Minister warns'. Available at <http://www.irishtimes.com/>; *The Guardian* (30 May 2013). 'Iain Duncan Smith accuses European commission of benefits 'land grab''. Available <http://www.guardian.co.uk/>; *The Telegraph* (24 April 2013). 'Britain and Germany demand EU cracks down on 'benefits tourism''. Available at <http://www.telegraph.co.uk/> and *The Irish Times* (9 March 2013). 'Tip-offs on suspect welfare fraud increase by 60%'. Available at <http://www.irishtimes.com/>.

may have contributed to a lower proportion of immigrants accessing social welfare, compared to Irish natives.

This study aims to increase understanding of how the Irish social security system, including healthcare, operates in respect of non-Irish workers and their families. The access of non-EEA and EEA nationals will be compared, where relevant, to that of Irish nationals.

Section 1 provides an introduction to the study, its objectives, methodology and scope. Statistical data are supplied which show the proportion of Irish and non-Irish groups in receipt of certain social security payments at the beginning of 2014.

An overview of the social security and healthcare systems in Ireland, with a focus on migrant access, is provided in Section 2.

Section 3 provides a more in-depth analysis of residence-related rules on access to social security and healthcare, and how these apply to migrants.

Section 4 explores an important subset of these rules: residence-related 'discretionary criteria', i.e. conditions that permit Deciding Officers to exercise a degree of judgement as to whether eligibility conditions have been met. In Ireland, access to certain social security payments and to healthcare is restricted to the population 'ordinarily' or 'habitually' resident in the State.<sup>5</sup> This is achieved by way of two specific policy measures introduced for the purpose, which are discretionary to differing extents: the 'Habitual Residence Condition' (HRC), which determines access to certain social security payments, and the requirement to be 'ordinarily resident' in order to access healthcare free of charge. Although there are no nationality conditions attached to social welfare payments<sup>6</sup> in Ireland and discretionary conditions apply to all applicants, they impact differently on the access of migrants to non-migrants.

Section 5 will explore the interaction between migration and social security policymaking in Ireland. The immigration-related implications of access to social security will be investigated, for example the potential for dependence on social assistance to impact on residence and immigration status.

Bilateral agreements between Ireland and non-EEA<sup>7</sup> countries, formed for the purpose of co-ordinating social security, will be discussed in Section 6.

Key findings from the study are summarised in Section 7.

The decision-making procedures and probable outcomes of three hypothetical case-studies (compiled to inform the EU-level synthesis report for this study),

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<sup>5</sup> Imposing nationality conditions on access to social welfare payments would be liable to challenge under EU law in the case of EU and EEA nationals, as constituting unlawful discrimination on the ground of nationality and imposing a barrier to free movement.

<sup>6</sup> Department of Social Protection. See <http://www.welfare.ie/en/Pages/Moving-to-Ireland.aspx>.

<sup>7</sup> The European Economic Area comprises 27 EU Member States plus Iceland, Liechtenstein and Norway. Croatia will become party to the EEA Agreement once it is ratified by all EEA countries.

each concerning an application for social security by a non-EEA national in Ireland, are provided in Annex I. Annex II provides information on non-EEA national access to specific social security payments.

A similar report will be produced in each of the EU Member States participating in the European Migration Network, plus Norway. An EU-wide synthesis report on migrant access to social security is available on the EMN website.<sup>8</sup>

## 1.2 METHODOLOGY

This report was compiled according to commonly agreed European Migration Network specifications. In order to support comparability the European Commission's Mutual Information System on Social Security (MISSOC) is used as a common method of categorising the variety of social security benefits and programmes that exist at Member State level.

In order to compile the Irish report, extensive desk research was undertaken and key sources in this regard included academic research and reports from various Irish NGOs. Detailed information regarding access to social security payments was gathered from the MISSOC Guide (MISSOC, 2012) and the information provided on the website of Department of Social Protection.<sup>9</sup> The Health Service Executive (HSE) website<sup>10</sup> was consulted for information on healthcare entitlements. The Citizens Information website<sup>11</sup> also proved to be a useful source of information.

In order to address outstanding information gaps, interviews were conducted with the following: Decisions Advisory Office, Department of Social Protection; New Communities Unit, Department of Social Protection; Intreo Centre, Dublin, Department of Social Protection; Staff Development Unit, Department of Social Protection; Department of Health; Irish Naturalisation and Immigration Service (INIS); and NGO, the Free Legal Advice Centre (FLAC). The EMN Ireland legal consultant and NGO, the Crosscare Migrant Project (hereafter Crosscare), were also consulted.

Telephone interviews were conducted with the following: European Union (EU) Regulations Office, Health Service Executive (HSE); Waterford Social Welfare Local Office, Department of Social Protection; Social Welfare Services, Sligo, Department of Social Protection.

Information was also gathered by observing during a training day on the Habitual Residence Condition. The training was delivered by a trainer from the Department of Social Protection, Staff Development Unit and consisted of an awareness course for frontline staff including information officers, and a HRC training module for HRC Deciding Officers.

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<sup>8</sup> <http://www.emn.europa.eu>.

<sup>9</sup> <http://www.welfare.ie/en/Pages/home.aspx>.

<sup>10</sup> <http://www.hse.ie/eng/>.

<sup>11</sup> <http://www.citizensinformation.ie/en/>.

### **1.2.1 Scope of Study**

The focus of the EMN study is tightly defined in order to facilitate international comparisons and is confined to long-term residents, migrant workers, self-employed migrants, unemployed migrants and the family members of non-EEA nationals. While the EU-level study is primarily concerned with access to social security by non-EU nationals, in the Irish report we also look at access by EU nationals for comparative purposes.

The following groups of migrants are excluded from the scope on the basis that specific rules often apply and/or the group has recently been the subject of an EMN report: students, asylum applicants, refugees, victims of trafficking of human beings and irregular migrants.<sup>12</sup> The social security and healthcare entitlements of short-term visitors and mobile non-EEA nationals, including cross-border and posted workers, are also excluded from the scope of the study.

### **1.2.2 Definitions and Terminology**

#### **1.2.2.1 Social Welfare-Related Terminology**

The terms 'social security' and 'social protection' refer to mechanisms which are designed to protect people against the risks associated with inadequate incomes caused by: unemployment; ill-health and invalidity; parental responsibilities; old age; or following the loss of a spouse or parent.<sup>13</sup> Social security systems are designed to reduce poverty and inequality and to promote social inclusion. While all EU Member States share a common commitment to ensuring the wellbeing of their populations through social security systems, Member States' rules on who is entitled to social security and healthcare, which benefits are granted, and under what conditions, vary significantly.

In the Irish context 'social security' is often referred to as the 'social welfare system' or 'welfare'. The terms 'social security' and 'social welfare' will be used interchangeably in this study.

In the Irish social welfare policy context, 'benefits' refer to social insurance payments while 'assistance' refers to means-tested, non-contributory payments.

Deciding Officers/Designated Persons are referred to frequently in the current report. Deciding Officers are staff of the Department of Social Protection tasked with accepting or rejecting claims for social welfare payments. Deciding Officers are given the power to make these decisions through the Social Welfare Consolidation Act 2005 and prior social welfare legislation (Department of Social

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<sup>12</sup> In a global context the term irregular migrant refers to a person who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country (EMN Glossary 2.0. Available at <http://www.emn.ie/>).

<sup>13</sup> Eurofound definition. See <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/socialprotection.htm>.

Protection, 2013a). Designated Persons (previously known as Community Welfare Officers) determine applications for Supplementary Welfare Allowance (SWA) also under the 2005 Act. In this report the term EEA worker refers to an EEA or Swiss national working in the State.

### 1.2.2.2 Immigration-Related Terminology

On entry to the Irish State non-EEA nationals generally receive a landing ‘stamp’ in their passport and if the planned stay is longer than 90 days they are instructed to register with An Garda Síochána (police). At registration stage, non-EEA nationals are allocated several documents which together comprise a residence permit:

- One of several Stamps is placed on the passport which denotes the general conditions of the holder’s permission to remain<sup>14</sup> in Ireland. The main categories of Stamps are summarised in Table 3.1;
- Certificate of Registration in the form of a GNIB Registration Card;
- A letter containing more detailed conditions attached to the holder's permission to remain in Ireland may also be issued by INIS.

Non-EEA Nationals aged under 16 years and EEA nationals are not required to register with the GNIB/An Garda Síochána.

Employment permits are issued separately by the Department of Jobs, Enterprise and Innovation. (Employment permits currently comprise Green Cards, work permits, spousal permits and Intra-Company Transfers.)<sup>15</sup>

## 1.3 STATISTICAL DATA ON WELFARE RECEIPT OF IMMIGRANTS

This study is primarily concerned with the rules and regulations which govern migrants’ access to social welfare and healthcare and with the application of these parameters of the social support system. The actual number of migrants who avail of services will partly depend on these rules and regulations but also on the demand for services. In the case of social welfare payments, demand arises when migrants fall into the circumstances where the social welfare system offers support such as unemployment and disability. If migrants are particularly prone, for example, to become unemployed (their employment may be concentrated in sectors that were badly affected by the recession) they could be over-represented on the Live Register relative to Irish natives, even if the system of rules and regulations made it more difficult for them to access payments.

<sup>14</sup> Permission to Remain in Ireland is a statement of the conditions on which a non-EEA national is permitted to remain in the State and the duration of that permission. It is given on behalf of the Minister for Justice and Equality in the form of a stamp (endorsement) in the person’s passport (Department of Justice and Equality).

<sup>15</sup> A new Employment Permits (Amendment) Bill, 2014 has been published that is intended to ‘reform and update’ Ireland’s employment permits system. (Department of Jobs, Enterprise, and Innovation, April, 2014).

For reasons such as this, it can be difficult to interpret figures which show the proportions of migrants and Irish natives in receipt of welfare payments. Nonetheless, it is useful to have this information and so in Table 1.1 we present the proportion of Irish and non-Irish nationals in receipt of a range of payments in January 2014. We also show the proportions of non-Irish and Irish nationals (aged over 15) in the population and in the labour force, based on data from the Quarterly National Household Survey for Q4 2013.

**Table 1.1 Proportion of Irish and Non-Irish Nationals (Persons Aged 15 Years and Over) in Receipt of Selected Social Security Payments, 2014**

	United Kingdom %	EU15 Excl. IE and UK %	EU15 TO EU28 %	Non-EU %	Non-Irish Nationals %	Irish Nationals %
% of total population Q4 2013	2.9	1.1	5.2	4.2	13.4	86.6
% in labour force of total persons in labour force Q4 2013	2.8	1.4	7.0	4.1	15.4	84.6
% of Jobseeker's Allowance recipients	4.0	0.7	9.7	3.1	17.5	82.5
% Jobseeker's Benefit recipients	3.1	1.3	8.7	1.6	14.7	85.3
% of Child Benefit recipients	4.3	1.3	9.3	5.8	20.7	79.3
% of State Pension Contributory recipients	1.4	0.2	0.1	0.2	1.9	98.1
% of One Parent Family Payment recipients	4.1	0.6	6.4	3.8	14.9	85.1
% of Disability Allowance recipients	3.7	0.4	2.0	1.9	7.9	92.1

**Source:** Quarterly National Household Survey Q4, 2013 and Department of Social Protection (January 2014).

**Note:** Percentages have been rounded to the nearest decimal place and may not always amount to 100% when combined.

Persons whose nationality is not stated are included with Irish nationals.

EU15 to EU28 refers to the EU Member States that acceded in 2004, 2007 and 2013.

It can be seen from Table 1.1 that non-Irish nationals make up 13.4 per cent of the population (aged over 15) and 15.4 per cent of the labour force. We can also see from the Table that 17.5 per cent of (means-tested) Jobseeker's Allowance (JA) recipients are non-Irish, with the corresponding figure for Jobseeker's Benefits (JB) being 14.7 per cent. In the case of JA and JB, it makes most sense to compare the percentages with the proportions of non-Irish in the labour force. Based on this, it seems that non-Irish are under-represented among JB recipients and over-represented among JA recipients. Within the non-Irish group, differences can be observed. For example, persons from the EU15-28 are over-represented in both JA and JB relative to their proportion in the labour force. We know from other work such as Barrett and Kelly (2012) that immigrants from the EU15-18 are susceptible to becoming unemployed so this over-representation should be not interpreted simplistically as suggesting that the system 'favours' these migrants.

Looking at other payments, we again see both under-representation and over-representation of non-Irish groups. For child benefit, non-Irish nationals make up 20.7 per cent of recipients as compared to 13.4 per cent of the population aged 15 and over. This could be partly explained by the age structure of the migrant population which would tend to be younger than the population of Irish nationals and so to have a higher proportion of people who are parents of children under the age of 18. This point on the age structure of the migrant population probably explains the figures observed in the table for the contributory old-age pension. Less than two per cent of the recipients are non-Irish nationals, thereby implying a huge under-representation.

Turning to the last two payments in the table, the One-Parent Family Payment (OFP) and disability allowance (DA), the under-and over-representation is seen again. While non-Irish nationals are 13.4 per cent of the population, they make up 14.9 per cent of the recipients of OFP. However, only 7.9 per cent of DA recipients are non-Irish.

As noted at the outset of this Section, it is difficult to draw conclusions based on the data presented in Table 1.1 because the range of factors which give rise to any individual or group of individuals receiving welfare payments are both numerous and complex. However, it does seem reasonable to say that there is no evidence of a large or systematic over-representation of immigrants among welfare recipients in Ireland. Some of the commentary on this issue seems to assume that immigrants are over represented as welfare recipients, but these data suggest that this is not generally the case.

# Section 2

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## Overview of the Irish Social Security and Healthcare Systems

Section 2 provides an overview of the Irish social security and healthcare systems. The main institutions, services, payment types and application procedures are described. Discretionary residence conditions relevant to access to social security and healthcare are introduced.

### 2.1 OVERVIEW OF THE IRISH SOCIAL SECURITY SYSTEM

#### 2.1.1 *Institutional Framework*

The Irish social welfare system is administered by the Department of Social Protection (DSP).<sup>16</sup> The Department of Social Protection's offices are dispersed around the country. The Department administers over 70 separate schemes and services in relation to social protection and social inclusion. Services relevant to the current study are:

- Social security payments and support;
- Provision of social security information;
- Appeals of decisions on social security payments (determined by the Social Welfare Appeals Office, an office within the DSP that operates independently).<sup>17</sup>

In 2012, over 1.4 million people in Ireland were in receipt of a weekly social welfare payment (Department of Social Protection, 2013c).

#### 2.1.2 *Payment Types*

The Irish social welfare system comprises three types of payments: contributory social insurance payments; non-contributory social assistance; and universal payments.

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<sup>16</sup> The Department of Social Protection is mainly responsible for formulating social protection and social inclusion policies and advising the Government on same. Currently Joan Burton T.D. is the Minister for Social Protection. See <http://www.welfare.ie/en/Pages/home.aspx>.

<sup>17</sup> The Social Inclusion Division was integrated into the Department of Social Protection in 2011.

- a. Social insurance payments or benefits are dependent on the claimant's history of social insurance contributions known as Pay-Related Social Insurance (PRSI). Some payments may have conditions attached which are additional to required PRSI contributions. Social insurance benefits are paid from the Social Insurance Fund (employers, employees and the self-employed pay into this fund). Jobseeker's Benefit is an example of this type of payment. The Habitual Residence Condition does not apply to social insurance payments (but residence in the State is often required for the duration of payment, under individual scheme rules).<sup>18</sup>
- b. Non-contributory assistance is means-tested and is intended for those applicants who do not have enough PRSI contributions to qualify for social insurance payments. These payments are financed through general taxation. A means-test consists of examination of all relevant sources of income and wealth. The rules which determine how much income and/or wealth a person may have in order to qualify for social assistance vary with each type of payment. Claimants of social assistance must usually satisfy the Habitual Residence Condition. Jobseeker's Allowance is an example of a social assistance payment.
- c. Universal payments are provided to claimants regardless of social insurance contributions and are not means-tested. The Habitual Residence Condition usually applies. Access to such payments is dependent on satisfying the requirement for specific personal circumstances. Child Benefit is an example of a universal payment.

### 2.1.3 Applying for Social Security

To apply for a social welfare payment, an applicant must fill in an application form and provide relevant supporting documentation. All application forms may be obtained from the Department of Social Protection, a local social welfare office or health centre, or a local Citizens Information Centre. In general a completed application must be sent to the relevant specialised unit, although for some payments an applicant may apply at their local office (e.g. unemployment benefits). Specialised units dealing with the various types of payments (e.g. Sickness Cash Benefits, family benefits<sup>19</sup> etc.) are dispersed throughout the country.

While an application for social security is being processed by the Department, a person may qualify for short-term payments under the Supplementary Welfare Allowance (SWA) scheme, the main 'guaranteed minimum resources' payment scheme in Ireland. In order to apply for Supplementary Welfare Allowance and

<sup>18</sup> Not all contributory schemes require residence in the State, for example the State Pension (Contributory) is paid regardless of where the person is living.

<sup>19</sup> Further subdivided into separate offices for Child Benefit, Family Income Supplement, One-Parent Family Payment.

Rent Supplement,<sup>20</sup> applicants must contact a representative from the Department of Social Protection<sup>21</sup> at their local health centre or Department of Social Protection office. (The Department of Social Protection is currently in the process of rolling out integrated offices, involving the transfer of these services from health centres to DSP offices.)<sup>22</sup>

The information and supporting documentation required from an applicant varies from one payment to another and may depend on individual circumstances. All payments must be claimed within a specific period of time. For some types of payments, the claimant may have to attend an interview in a local social welfare office or may be interviewed at home.

### **2.1.4 *Appealing a Decision on Social Security***

The Social Welfare Appeals Office<sup>23</sup> (SWAO) is an office within the Department of Social Protection that operates independently, processing appeals of decisions made by the Department of Social Protection.<sup>24</sup> An appeal must be made within 21 days of the decision in question. If a person is not satisfied with the decision made by the Social Welfare Appeals Office, he or she may request the Office of the Ombudsman<sup>25</sup> to examine the case. The option of Judicial Review is also available to applicants, whereby an appeal may be made to the High Court on a point of law.

## **2.2 OVERVIEW OF THE IRISH HEALTH SYSTEM**

The public healthcare system is governed by the Health Act, 2004. The Health Service Executive (HSE),<sup>26</sup> established by the Health Act, 2004 is responsible for the provision of healthcare in Ireland. The HSE discharges this responsibility through medical professionals and hospitals and through a network of local health offices, health centres and clinics at community level. The HSE is divided into four administrative regions.

The statutory role of the Department of Health is to support the Minister for Health in the formulation and evaluation of policies for the health services. The Department of Health formally sets out a statement of national priorities for health, which is then addressed by HSE administrative regions in preparing annual service plans.<sup>27</sup>

<sup>20</sup> In some areas new Rent Supplement applications are processed by centralised Rent Units.

<sup>21</sup> Formerly known as the Community Welfare Officer.

<sup>22</sup> Correspondence with the Department of Social Protection for the purpose of this study, February 2014.

<sup>23</sup> <http://www.socialwelfareappeals.ie/index.html>.

<sup>24</sup> The Free Legal Advice Centre has questioned the independence of the Social Welfare Appeals Office as the Appeals Office is not an independent statutory body. See FLAC (2012) for more information.

<sup>25</sup> <https://www.ombudsman.gov.ie/en/>.

<sup>26</sup> <http://www.hse.ie/eng/>.

<sup>27</sup> [http://www.citizensinformation.ie/en/health/health\\_service\\_agencies/health\\_boards.html](http://www.citizensinformation.ie/en/health/health_service_agencies/health_boards.html).

## 2.3 FINANCING AND SPENDING ON THE SOCIAL SECURITY AND HEALTHCARE SYSTEMS

Non-contributory social assistance payments and Child Benefit are financed through general taxation. Contributory social insurance payments are paid from the Social Insurance Fund, which is financed through contributions made by employers and employees, with the shortfall made up by the exchequer. Social welfare expenditure in 2012 was €20,774 million and represented 40.6 per cent of Gross Current Government expenditure (Department of Social Protection, 2013c).

In Ireland in 2012, 42.6 per cent of social welfare payments issued were insurance-based (financed by the Social Insurance Fund). The remaining 57.4 per cent were non-contributory payments (financed through general taxation) (Department of Social Protection, 2013c).

Ireland has universal access to public healthcare, but charges often apply, for example for a visit to the General Practitioner (GP). Nearly half of the Irish population is covered by private health insurance, as this can often mean a greater choice of providers, faster access and better accommodation. The health system in Ireland is primarily tax-funded with additional contributions from private health insurance and out-of pocket payments (Turner, 2013). Medical card holders may access certain public health services free of charge. Entitlement to a medical card is means-tested regardless of nationality.

## 2.4 DISCRETIONARY CONDITIONS

In general non-EEA nationals who are legally resident in the State may apply for and access social security payments in the same way that Irish nationals do, i.e. provided that all qualifying conditions are satisfied. Certain discretionary, qualifying conditions are particularly relevant to migrants' access to social security and healthcare.

The Habitual Residence Condition (HRC) (discussed in detail in Section 4.1) is a qualifying condition for certain social security payments, which seeks to ascertain whether the applicant has established his or her 'centre of interest' in the State by examining relevant factors. The right to reside in the State is tested prior to the application of the HRC test. Although both Irish and non-Irish nationals must satisfy the HRC where applicable, in the case of the latter it may be more problematic to do so.

Prior to the accession of ten new Member States to the EU in May 2004, Ireland introduced the HRC to protect the social welfare system from potentially high numbers of applications for support.<sup>28</sup> At that time, Ireland was the only country

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<sup>28</sup> Introduced by way of the *Social Welfare (Miscellaneous Provisions) Act 2004*.

among the Member States of the pre-enlarged EU<sup>29</sup> to allow non-nationals to claim social assistance payments without having to satisfy a Residence test (Ruhs, 2005).

The term 'habitually resident' is not defined in Irish law, but the Department of Social Protection describes it as a term which

*...generally conveys a degree of permanence – meaning that a person has been here for some time, from a date in the past, and is intending to stay for a period into the foreseeable future. It implies a close association between the applicant and the country from which payment is claimed and relies heavily on fact.*

(Department of Social Protection, 2013a).

Operating alongside and entirely independently of the HRC is the requirement to be 'Ordinarily Resident' in order to potentially access healthcare in Ireland without charges. The Ordinarily Resident Condition requires that an applicant has been resident or intends to be resident in the State for at least one year (discussed further in Section 4.2).<sup>30</sup>

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<sup>29</sup> EU15.

<sup>30</sup> See <http://www.hse.ie/eng/services/list/1/schemes/mc/about/Amieligible/>.

# Section 3

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## Residence-Related Rules on Access to Social Security and Healthcare by Migrants in Ireland

In general the same rules on access to social security apply to migrants as to non-migrants; migrant-specific rules exist, but are uncommon, as discussed below. However, residence-related rules impact differently on migrants to non-migrants, with potential implications for access.

There are several levels of residence requirements attached to social security. The Habitual Residence Condition is a residence-focussed discretionary test that applies to most social assistance and universal payments. An applicant for a payment to which the HRC applies must be legally resident i.e. have a 'right to reside' in the State. Deciding Officers are offered training which stresses the need to check all applicants' right to reside in the State as the first step in their assessment of such a claim. If the right to reside is not in evidence the claim cannot be awarded and further assessment becomes irrelevant. As Table 3.2 shows, the assessment of an EEA national's right to reside is more complex than that of a non-EEA national. In addition certain exemptions apply to the HRC depending on the particular residence circumstances of EEA nationals. Provided the right to reside is present the HRC may then be applied as one of the qualifying conditions attached to the payments in question.

In terms of migrant-specific residence rules, various types of residence permits are issued to non-EEA nationals, with implications for access to social security.

Finally legislative and administrative rules apply, which vary from one social security payment scheme to the next. For example the rules on payments to which the Habitual Residence Condition does not apply (mainly contributory payments) often contain a requirement to reside in the State.

This Section discusses the various types of residence-related rules attached to social security access in Ireland, with the exception of discretionary tests (the Habitual Residence and Ordinary Residence Conditions), which are investigated in detail in Section 4.

### 3.1. THE RIGHT TO RESIDE AND NON-EEA NATIONALS

On entry to the Irish State non-EEA nationals generally receive a landing 'stamp' in their passport and if the planned stay is longer than 90 days they are instructed

to register with the Garda National Immigration Bureau (GNIB) or An Garda Síochána (police).<sup>31</sup> To obtain certain categories of residence permission, non-EEA nationals must apply to the Irish Naturalisation and Immigration Service (INIS) in advance of registering with GNIB/An Garda Síochána. GNIB/An Garda Síochána will grant residence permission for certain straightforward categories without requiring an applicant to apply to INIS. At registration stage, non-EEA nationals are allocated several documents which together comprise a residence permit:

- One of several Stamps is placed on the passport. The Stamp denotes the general conditions of the holder's permission to remain<sup>32</sup> in Ireland. The main categories of Stamps are summarised in Table 3.1.
- A Certificate of Registration in the form of a GNIB Registration Card is issued with an expiry date. The Registration Card contains the holder's name, address, photograph and Stamp type.
- If the residence permission has been granted by INIS, a letter containing more detailed conditions attached to the holder's permission to remain in Ireland, and the date on which the permission commenced, is issued to the applicant prior to their registration with GNIB/An Garda Síochána.

Non-EEA Nationals aged under 16 years and EEA nationals are not required to register with the GNIB/An Garda Síochána.

Generally, in the context of a claim for social security which requires the Deciding Officer to consider the legality of residence, the practical assessment of a non-EEA national's right to reside in the State is straightforward. The applicant must show his or her GNIB card (and accompanying letter if one was issued)<sup>33</sup> which indicates the date up to which the bearer has a legal right to reside in the State. The date is entered into the IT system and the Deciding/Determining Officer is automatically alerted when the right to reside is soon to expire.<sup>34</sup>

### 3.1.1 Type of Non-EEA Residence Permit

The general position of the Department of Social Protection is that entitlement to social welfare payments in Ireland is based on satisfying qualifying conditions (including the HRC), which apply to all applicants and that there are no

<sup>31</sup> If the migrant is located in Dublin registration takes place at the Garda National Immigration Bureau (GNIB) office. Outside of Dublin registration takes place at the Garda District Headquarters.

<sup>32</sup> Permission to Remain in Ireland is a statement of the conditions on which a non-EEA national is permitted to remain in the State and the duration of that permission. It is given on behalf of the Minister for Justice and Equality in the form of a stamp (endorsement) in the person's passport (Department of Justice and Equality).

<sup>33</sup> The case of *Sulaimon v. Minister for Justice, Equality and Law Reform* underlined the importance of the accompanying letter. The Supreme Court held that in calculating the applicant's father's lawful residence in the State, as and from the date of the Minister's letter (rather than the GNIB card), he met the criteria for his son to be issued an Irish passport as an Irish citizen. *Sulaimon (A Minor) v. Minister for Justice, Equality and Law Reform. Supreme Court 21/12/12, [2012] IESC 63.*

<sup>34</sup> Interview with Department of Social Protection Deciding Officers from a local office, Dublin and HRC training, delivered by Department of Social Protection Staff Development Unit, 13 November, 2013.

‘migration-specific conditions’ attached to either social security or healthcare in Ireland. From the perspective of the Department of Justice and Equality, certain residence permissions are issued to non-EEA nationals on the condition that the holder does not access social security and become a ‘burden on the State’ (discussed in Section 5.2.1).

A family member holding a Stamp 3 type residence permit may generally not access social welfare, although certain exceptions exist.<sup>35</sup> For example Child Benefit is payable to the spouses/Civil Partners/Cohabitants of work permit holders, who are not permitted to work in the State, but who are given the benefit of their partner’s status to enable them satisfy the Habitual Residence Condition.<sup>36</sup>

Table 3.1 summarises the position in relation to accessing social security according to the main non-EEA residence permits, grouped according to the stamp type. As noted above more detailed requirements may also be set out in a non-EEA nationals’ registration letter.

**Table 3.1 Non-EEA Immigration Registration Stamp and Access to Social Security**

Main Stamp Types*	Main categories of Persons*	Access to Social Security**
Stamp 0 (Temporary And Limited Permissions)	A service provider sent to Ireland by an overseas company for a limited time; visiting academic; humanitarian worker	None
Stamp 1/1a	Non-EEA national issued with a work permit/Green Card	Access to insurance-based payments until expiry of residence permit Access to assistance/universal payments subject to HRC
Stamp Number 2	Non-EEA student who may work part time*	Student immigration permission states no access other than in emergencies/ exceptional circumstances <sup>37</sup>
Stamp Number 2a	Non-EEA student who may not work	None, other than in emergencies/ exceptional circumstances
Stamp Number 3	Non-EEA spouse/dependant of employment permit holder; Non-EEA visitor	Generally none, other than in emergencies/ exceptional circumstances Partner can satisfy HRC for Child Benefit via his/her partner’s status Victims of domestic violence may access
Stamp Number 4	Non-EEA family member of EEA citizen; Non-EEA spouse of Irish citizen; Refugee; Non-EEA person granted family reunification under the Refugee Act 1996; Programme refugee; Non-EEA parent of Irish citizen child where parent was granted permission to remain in the State; Non-EEA family member of EU citizen where family member qualifies under the <i>European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. 656 of 2006)</i>	Access to insurance-based payments until expiry of residence permit Access to assistance payments subject to HRC

\***Source:** INIS: *Main Immigration Stamps*. See <http://www.inis.gov.ie/en/INIS/Pages/Stamps>.

\*\***Source:** *Interviews with DSP/INIS officials conducted for the study.*

<sup>35</sup> HRC training, delivered by Department of Social Protection Staff Development Unit, 13 November, 2013.

<sup>36</sup> See Department of Social Protection, February 2012 (last modified).

<sup>37</sup> A student cannot be deemed to be available for full-time work or to have had a substantial loss of employment - two the qualifying conditions for Jobseeker’s Benefit. However access to illness benefit/injury benefit is possible if the conditions of the scheme are met (Department of Social Protection).

NGO, Crosscare<sup>38</sup> stated that due to the existence of multiple categories within the main immigration stamps it can be hard for Deciding Officers to know which entitlements are attached to each in the context of a social security claim. FLAC stated that there are no guidelines in relation to what constitutes a ‘burden on the State’.<sup>39</sup> The interaction between social security and immigration policy making in Ireland is discussed in Section 5.

### 3.2 THE RIGHT TO RESIDE AND EEA NATIONALS

Table 3.2 summarises the complexities to be considered by Deciding/Determining Officers when assessing EU nationals’ right to reside, and consequent implications for his or her application of the HRC, focussing on migration for the purpose of employment.

Under EU law the following scenarios apply to EEA nationals who have travelled to Ireland for the purpose of work:

- If the individual has entered the State to job-see that person is entitled to stay as long as he or she continues to look for employment and has a reasonable chance of being employed. There is no obligation on the host State to provide social assistance;
- If the individual has entered the State, has been employed for less than 12 months and becomes involuntarily unemployed, he or she is treated as a “migrant worker”<sup>40</sup> and retains this status for six months;<sup>41</sup>
- If the individual has entered the State and has been employed for more than 12 months he or she retains “migrant worker” status indefinitely.<sup>42</sup>

In certain situations EU law supersedes national legislation on social welfare, for example in the case of EU migrant workers accessing family benefits and Supplementary Welfare Allowance, in which case the HRC is not applied (Department of Social Protection, 2013a). Here, the exact nature of the EEA national’s right to reside becomes crucial. Under EU law, EEA nationals who are regarded as migrant workers may claim Child Benefit for children who are

<sup>38</sup> Crosscare is an NGO providing social support to the greater Dublin area and Wicklow. See <http://www.crosscare.ie/>. Crosscare Migrant Project is one of the programmes run by Crosscare. See <http://www.migrantproject.ie/>.

<sup>39</sup> Correspondence with FLAC and Crosscare for the purposes of this study, February 2014.

<sup>40</sup> The term EEA migrant worker has a definition that is derived from the relevant *EU Regulation 1612/68* and *Directive 2004/38* (effective in Ireland by virtue of *S.I. 656/06*), and associated case law. See Department of Social Protection (2013b). EU migrant worker status applies to employed/formerly employed persons and not to self-employed persons. Requires that the EU national has moved from one EU member state to another and has participated in ‘genuine and effective’ work in the host state.

<sup>41</sup> Comments received from the Department of Social Protection, June 2014. The NGO Crosscare expressed the opinion that the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* diverges from *Directive 2004/38/EC* in this area. Crosscare argues that while the Directive states that an EEA national who becomes involuntarily unemployed after being employed for less than a year, and has registered as a job-seeker with the relevant employment office, retains his or her right to reside for no less than six months, the Regulations limit this to six months.

<sup>42</sup> Comments received from the Department of Social Protection, May 2014.

habitually resident in another EEA State, without satisfying the HRC.<sup>43</sup> EEA migrant workers may also access SWA without satisfying the HRC provided that they have lost employment involuntarily and continue to be genuinely seeking work. EEA migrant worker status may not be availed of by self-employed persons in the case of SWA.

In practice, the right of an EEA national to reside in the State is much more difficult to assess in the context of an application for social welfare than that of a non-EEA national. DSP officials indicated that it can be hard to check or prove the date of an applicant's entry to the State.<sup>44</sup> In addition, as Table 3.2 shows, the employment history of the applicant becomes critical. There is no legal definition of what constitutes 'employment' for the purpose of establishing residence in Ireland although guidelines exist.<sup>45</sup>

**Table 3.2 Right to Reside, Application of the HRC and Access to Key Social Assistance Payments for Selected Migrant Groups**

	Right to Reside in Ireland	Access to Social Assistance		
		Family Benefits (FB) <sup>46</sup>	Supplementary Welfare Allowance (SWA) <sup>47</sup>	Jobseekers Allowance
EU national who has not been employed/self-employed in Ireland.	Up to three months provided not unreasonable burden on the social welfare system. <sup>48</sup> Beyond three months if family member of EU national employed/self-employed or if self-supporting.	Must satisfy HRC if claiming in own right.	Must satisfy HRC if claiming in own right.	Must satisfy HRC if claiming in own right.
EU national exercising right of freedom of movement as jobseeker. <sup>49</sup>	Up to three months provided not unreasonable burden on the social welfare system. <sup>50</sup>	Exercise of freedom of movement does not confer access. Access depends on satisfying HRC/may	Exercise of freedom of movement does not confer access. Access depends on satisfying HRC/may	Exercise of freedom of movement does not confer access. Access depends on satisfying HRC/may

<sup>43</sup> The amount of Child Benefit payable by the Department of Social Protection will depend on whether there is entitlement to family benefits from another EEA State in respect of the same child(ren). The claim should be made in the country of work which contacts the other country to ensure that the full entitlement is received (Department of Social Protection, February 2012).

<sup>44</sup> Observations made at HRC training, delivered by DSP Staff Development Unit, 13 November, 2013.

<sup>45</sup> The Designated Person should determine this question in each case on its own merits taking account of all work done by the claimant and consider among other things the following: the period of employment; the number of hours worked; the level of earnings; whether the work was regular or irregular; whether the person has become voluntarily unemployed; if registered employer is an agency, actual hours and period of employment needed. See Department of Social Protection (2013b).

<sup>46</sup> Child benefit; Domiciliary Care Allowance; Guardian's Payment; One Parent Family Payment.

<sup>47</sup> HRC does not apply to exceptional/urgent needs payments. SWA considered a 'social advantage' in EU law.

<sup>48</sup> Under *EC (Free Movement of Persons)(No. 2) Regulations 2006*, as amended.

<sup>49</sup> *Ibid.*

<sup>50</sup> Recital 9 to the Citizens' Directive provides that the position of EU nationals outlined above is 'without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.' See *C-292/89 Antonissen*: Union citizen jobseekers may be removed after six months, unless they provide evidence that they are continuing to seek employment and have genuine chances of being engaged.

		violate right to reside.	violate right to reside.	violate right to reside.
EU national employed /self-employed in Ireland.	Beyond three months if employed/self-employed. Certain family members have derivative right to reside.	EU national migrant worker is exempt from application of HRC by virtue of 'genuine and effective work' test. FB payable to EU national migrant worker for dependants who are resident either in Ireland or another EEA State. FIS payable only to employed workers meeting FIS working hours and income conditions.	EU national migrant worker exempt from application of HRC by virtue of 'genuine and effective work' test.	Must satisfy HRC.
Unemployed EU national having been employed for under one year.	For further six months after cessation of employment and then must be employed/self-employed/self-supporting/training to remain. Must have involuntarily lost work. Must be registered as jobseeker. Certain family members have derivative right to reside.	FB payable to EU national migrant worker for dependants who are either resident in Ireland or resident in another EEA State when in receipt of jobseekers' benefit.	EU national migrant worker is exempt from application of HRC by virtue of 'genuine and effective work' test.	Must satisfy HRC.
Unemployed EU national having been employed for over one year.	Entitled to remain if involuntarily lost work and registered as jobseeker. Certain family members have derivative right to reside.	FB payable to EU national migrant worker for dependants who are either resident in Ireland or resident in another EEA State when in receipt of jobseekers' benefit.	EU national migrant worker is exempt from application of HRC by virtue of 'genuine and effective work' test.	Must satisfy HRC.
Non-EU National	As per residence permit.	Must satisfy HRC.	Must satisfy HRC.	Must satisfy HRC.

### 3.3 OTHER RULES ON ACCESS TO SOCIAL SECURITY AND HEALTHCARE BY MIGRANTS IN IRELAND

Table 3.3 summarises general residence requirements for healthcare and social security that are relevant to migrants with a right to reside in the State. In order to access several payments the applicant (or dependant) is required to be physically present in the State, aside from short holidays.

In relation to Child Benefit, EEA nationals must certify every six months that they continue to be employed in the State while non-EEA nationals must certify every six months that they and their children continue to reside in the State. Irish nationals are also subject to random checks.<sup>51</sup>

**Table 3.3 Summary of Scheme-Related Residence Requirements For Healthcare and Social Security Relevant to Legally Resident Migrants**

Social Security Categories	Social Security Payments	Residence Requirements to Receive Payment
Healthcare	Medical card GP visit card	Ordinarily Resident
Family Benefits	Child Benefit	Applicant must reside in the State Dependants must ordinarily reside in the State Dependants of EEA Migrant Workers must reside in the State or in another EEA State
	One-Parent Family Payment Family Income Supplement	Must reside in the State At least one qualified child must reside with the claimant or in the case of an EEA applicant, in another EEA State
Unemployment Payments	Jobseeker's benefit	None but the person would be expected to be present in the State other than for short holidays In addition, under EU rules, a jobseeker may travel to another EU country to seek employment, under certain conditions
	Jobseeker's allowance	Must reside in the State
Guaranteed minimum resources <sup>52</sup>	Supplementary Welfare Allowance Scheme <sup>53</sup> Disability Allowance Blind Pension	Must reside in the State
	Free Travel	Must reside in the State permanently
	Farm Assist	Must farm land in the State
Maternity and paternity benefits	Benefits in kind <sup>54</sup>	Ordinarily Resident
	Maternity benefit <sup>55</sup> Adoptive benefit	None, however a person is expected to be present in the State for the duration of the claim

<sup>51</sup> Communication with the Department of Social Protection and DSP guidelines on Child Benefit available at [http://www.welfare.ie/en/Pages/273\\_Child-Benefit.aspx](http://www.welfare.ie/en/Pages/273_Child-Benefit.aspx).

<sup>52</sup> Other payments in the minimum resources branch such as Fuel Allowance, Living Alone Increase and Household Benefits are dependent on other qualifying payments which require a person to satisfy the HRC or are only accessible to people who are maintained by long-term social welfare (for example Fuel Allowance).

<sup>53</sup> Exceptions apply for Exceptional and Urgent Needs Payments.

<sup>54</sup> Prenatal and postnatal care for infants under six weeks of age free of charge.

<sup>55</sup> There is no statutory Paternity benefit in Ireland.

Sickness cash benefits	Illness benefit	None, however a person is expected to be present in the State for the duration of the claim, except if they are travelling abroad for medical treatment
Old-age related pensions and benefits	State Pension (contributory)	None
	State Pension (non-contributory)	Must reside in the State

**Source:** Department of Social Protection and Health Service Executive.

A non-EEA national family member of a Union citizen may in general receive (subject to the terms and conditions applicable to Irish citizens) the same medical care and services as those to which Irish citizens are entitled.<sup>56</sup> *Statutory Instrument 656 of 2006 (European Communities (Free Movement of Persons) (No. 2) Regulations 2006)* indicates that such family members would also be entitled to receive assistance under the Social Welfare Acts.<sup>57</sup>

<sup>56</sup> Regulation 10 of the *Statutory Instrument No. 656 of 2006 European Communities (Free Movement of Persons) (No. 2) Regulations 2006*.

<sup>57</sup> Regulation 18 of the *Statutory Instrument No. 656 of 2006 European Communities (Free Movement of Persons) (No. 2) Regulations 2006*.

# Section 4

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## Discretionary Criteria Applied to Decisions on Access to Social Security

Two discretionary criteria, as applied to the assessment of individual claims for social security in Ireland, are discussed in this Section. Discretionary criteria are defined as those which permit Deciding Officers to exercise a degree of judgement or discretion as to whether eligibility conditions have been met, taking into account all of the individual applicant's circumstances. The Habitual Residence Condition (HRC) is a qualifying condition for certain social security payments, which seeks to ascertain whether the applicant has established his or her 'centre of interest' in the State by examining relevant factors. Operating alongside and entirely independently of the HRC is the requirement to be 'Ordinarily Resident' in order to potentially access healthcare without charges. The legal basis, manner of assessment and resources available to ensure consistent application of these criteria, are discussed below.

### 4.1 DISCRETIONARY CRITERIA AS APPLIED TO SOCIAL SECURITY: THE HABITUAL RESIDENCE CONDITION

Access to means-tested social assistance and universal payments in Ireland is subject to fulfilment of a Habitual Residence Condition (HRC). The HRC applies to all applicants (regardless of nationality) for certain social assistance and universal payments. The HRC is a discretionary assessment of an applicant's residence which

*generally conveys a degree of permanence – meaning that a person has been here for some time, from a date in the past, and is intending to stay for a period into foreseeable future*

(Department of Social Protection, 2013a).

Qualified dependants are not required to satisfy the Habitual Residence Condition in their own right.

The Social Welfare Consolidation Act of 2005 initially required an applicant for social welfare to have been resident within the Common Travel Area (CTA)<sup>58</sup> for two years before making an application for support in order to be deemed

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<sup>58</sup> A common travel area is in existence between Ireland and the UK (including the Channel Islands and the Isle of Man).

‘habitually resident’. By way of amendments introduced in 2007 and 2009, the HRC has evolved from this basic minimum residence requirement into a more discretionary assessment of an applicant’s centre of interest.

Table 4.1 shows the social assistance and universal payments to which the HRC applies. Once-off payments under the SWA scheme (exceptional needs payment and urgent needs payment) are not subject to the HRC. See also Table 3.2.

**Table 4.1 Social Assistance and Universal Payments to Which the HRC Applies**

Branch	Payments	Exceptions
Family Benefits	Child Benefit and One-Parent Family Payment	The HRC is not applied to EEA migrant workers in relation to family benefits: EU rules <sup>59</sup> governing the payment of family benefits to migrant workers from EEA Member States override the Habitual Residence requirements under the Social Welfare Acts. HRC applies to EEA nationals who are not migrant workers and to non-EEA nationals.
Unemployment Payments	Jobseeker’s Allowance	NA
Guaranteed minimum resources	Disability Allowance, Blind Pension, Farm Assist, Supplementary Welfare Allowance (other than once-off exceptional and urgent needs payments), Rent Supplement and Mortgage Interest Supplement. <sup>60</sup>	For the purposes of any claim to SWA an EEA national who is engaged in ‘genuine and effective employment’ in Ireland is regarded as a migrant worker under EC law and does not need to satisfy the HRC. Therefore EEA nationals who have been employed since arriving in Ireland may be entitled to SWA, even if they do not satisfy the HRC for Jobseeker’s Allowance or one of the other payments subject to the condition. This provision applies only to employed workers/former workers, not to self-employed persons.
Old-age pensions and payments	State Pension (non-contributory)	NA
Survivor’s benefits	Widow’s, Widower’s or Surviving Civil Partner’s (non-contributory) Pension and Guardian’s (non-contributory) Payment	NA
Long-term care benefits	Carer’s Allowance and Domiciliary Care Allowance).	NA

**Source:** Department of Social Protection, 2013a

<sup>59</sup> Contained in Articles 11 to 15 of *Regulation 883/04*.

<sup>60</sup> Other payments in this branch (Fuel Allowance, Free Travel, Living Alone Increase and Household Benefits) aren’t directly dependent on satisfying the HRC, but eligibility usually depends on qualifying for other social welfare payments with the HRC attached).

#### 4.1.1 Legal Basis of Habitual Residence Condition

The HRC is referred to within the Social Welfare Consolidation Act 2005 in relation to the conditions of entitlement for each relevant scheme. For example, in relation to Jobseeker's Allowance it is stated that:

*A person shall not be entitled to jobseeker's allowance under this section unless he or she is habitually resident in the State at the date of the making of the application for jobseeker's allowance.*<sup>61</sup>

The legislation states that

*...it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present [in the common travel area]... for a continuous period of two years ending on that date.*<sup>62</sup>

This is a rebuttable presumption and, in making the final HRC decision, a Deciding Officer should take into consideration all the circumstances of the case including in particular, the five factors taken from European Court of Justice case law<sup>63</sup> and introduced by the *Social Welfare and Pensions Act 2007*, discussed in Section 4.1.2 below. The recently published *Social Welfare and Pensions Bill 2014* proposes to remove all reference to the two-year minimum residence period in the Common Travel Area.

Significantly, the *Social Welfare and Pensions (No.2) Act 2009* introduced amendments which specify that an individual must have a 'right to reside' in the State in order to satisfy the HRC. Persons who are regarded as having a right to reside, and those who are not, are identified in the Act. As discussed in Section 3 although the right to reside is defined in law and therefore non-discretionary, in the context of an application for a payment to which the HRC applies, a Deciding Officer must assess an applicant's right to reside before knowing whether and how to apply the HRC.

#### 4.1.2 Assessment of the Habitual Residence Condition

Although in theory the HRC must be fulfilled by all applicants for the relevant payments, in practice not all applicants are formally HRC-assessed. On presentation at a local social welfare office or health centre, a person who does not appear to be habitually resident may be offered a HRC form to complete, along with the application form for the relevant payment(s).<sup>64</sup> The initial decision on whether to issue the form is taken by front line officers and information officers, based on an initial interview which seeks evidence, among other factors,

<sup>61</sup> Section 141 (9) of the *Social Welfare Consolidation Act 2005*.

<sup>62</sup> Section 246 of the *Social Welfare Consolidation Act 2005*.

<sup>63</sup> European Court of Justice Case C 90/97 *Swaddling v. UK*.

<sup>64</sup> For a copy of the HRC form see <http://www.welfare.ie/en/pdf/hrc1.pdf>.

of a minimum two-year period of residence in the Common Travel Area prior to application.<sup>65</sup> (As noted above the *Social Welfare and Pensions Bill, 2014* would remove all reference to the two-year minimum residence period from social welfare legislation if enacted.)

The form contains 58 questions which are designed to provide factual information to inform an assessment of the following five factors:

1. the length and continuity of residence in the State or in any other particular country;
2. the length and purpose of any absence from the State;
3. the nature and pattern of the person's employment;
4. the person's main centre of interest;
5. the future intentions of the person concerned as they appear from all the circumstances.<sup>66</sup>

The completed HRC form is assessed by a dedicated HRC Deciding Officer who takes a decision on whether the applicant is habitually resident based on the answers to the 58 questions.

According to HRC guidelines no single factor is conclusive in determining whether a person is habitually resident in the State but the focus must be on determining the person's main centre of interest, having considered all the relevant circumstances and facts relevant to the individual concerned. Factors 1-3 and 5, as stated above, usually help to determine where a person's 'main centre of interest' is. In determining the 'main centre of interest' the following are usually considered:

- Location of home;
- Location of close family ( automatic disallowance should not apply where a person's close family reside in another country);
- Nature of employment;
- Evidence of integration into society for example membership of a club;
- Location of financial/bank accounts and other assets;
- Certification of ownership/non-ownership of property in country of origin

(Department of Social Protection, November 2013a).

The Guidelines issued to DSP staff state:

*the deciding officer or determining officer should bear in mind that habitual residence is only one condition and be mindful of the need to be*

<sup>65</sup> HRC training, delivered by DSP Staff Development Unit, 13 November, 2013.

<sup>66</sup> See Department of Social Protection (2013a).

*proportionate in its aim, which is to ensure there is a link between the claimant and the State. In this respect it should be remembered that an unduly harsh application of the Habitual Residence condition could be unlawful*

*(Department of Social Protection, 2013a).*

Deciding/Determining Officers take what is known as a ‘once and done’ approach to assessment of the HRC. This means that any decision on the HRC must carry through to subsequent claims, without the need to re-examine all the factors, unless there was a significant change in circumstance since a new application was made or if the initial decision was incorrect (Department of Social Protection, 2013a). If an applicant is not satisfied with a HRC decision he or she can submit additional evidence and ask for a review of the decision. An applicant may also appeal a decision directly to the independent Social Welfare Appeals Office.<sup>67</sup>

The recently published Social Welfare and Pension Bill 2014, includes changes to ensure that people must continue to be habitually resident in the State in order to receive payment. This provision would also impact upon persons who were not required to satisfy the HRC under EU law at the date of application.<sup>68</sup> The manner in which such a review would be operated is not yet known.

Research published by NGOs Crosscare, Doras Luimní and Nasc (2012) attests that the HRC is unlike most other qualifying criteria in that its core component, level of connection to Ireland or ‘centre of interest’, is less amenable to accurate and objective measurement than, for example income, age, family status or illness. The report argues that due to the discretionary nature of the HRC it may be easier for Irish nationals to prove that they are habitually resident than non-Irish nationals. The report states that in 2010, 650 Irish nationals were refused social welfare payments on the basis of not satisfying the HRC while 9,043 non-Irish nationals were refused payments on the same basis. The research cited instances of Deciding Officers placing too much emphasis on temporary absences from the State, misunderstanding immigration status and failing to look at the entire circumstances of the case.<sup>69</sup> The Migrant Rights Centre Ireland (MRCI) also claimed that the discretionary nature of the HRC can disproportionately affect migrant workers and can contribute to a higher risk of poverty (MRCI, 2010). Crosscare stated that the Migrant Consultative Forum<sup>70</sup> has carried out work on a

<sup>67</sup> Department of Social Protection, 2013a.

<sup>68</sup> *Social Welfare and Pensions Bill 2014*, Explanatory and Financial Memorandum.

<sup>69</sup> Crosscare stated that it has advocated for specific guidelines on the use of discretion by Deciding/Determining Officers but these have not been produced. (Correspondence with Crosscare for the purpose of this study, February, 2014.)

<sup>70</sup> An expert forum convened by the Department of Social Protection in 2012 to look at issues experienced by migrants accessing social security. The Forum consists of representatives of Nasc, Crosscare, Doras Luimní, FLAC and New Communities, along with representatives of various areas of the Department of Social Protection (Department of Social Protection, 2014).

revised Habitual Residence Condition application form (HRC1 form), publication of which is pending.<sup>71</sup>

#### 4.1.3 Guidelines and Training in the Assessment of the Habitual Residence Condition

Operational guidelines on the HRC, available on the DSP website, are intended to *explain in detail the HRC together with providing a detailed guide as to how Deciding Officers/Designated Persons ... of the Department of Social Protection can reach decisions*

(Department of Social Protection, 2013a).

The latest version of the Operational Guidelines was issued in November 2013. The Guidelines are periodically updated with the last update issued in February 2014 and are made available on the DSP website and intranet.<sup>72</sup> Within the DSP, internal Circulars are issued informing Deciding Officers about developments relevant to the HRC (approximately two per year).<sup>73</sup> Crosscare observed that significant improvements have been made in the availability of guidance to Deciding Officers in recent years.<sup>74</sup>

‘HRC awareness training’ is offered to information officers and frontline staff as a half-day course. HRC Deciding Officers may receive more in-depth training in the form of a one-day course that covers relevant legislation and the HRC, as well as case studies, including some from participants’ daily work.<sup>75</sup> Formal HRC training is offered on a voluntary basis to all DSP Deciding Officers, including HRC Deciding Officers.<sup>76</sup>

The nature of HRC training has evolved along with the concept itself, as described in Section 4.1. Initially Deciding Officers were trained to seek proof of two years residence in the CTA. In 2007 training in the ‘five factors’ was prioritised, while since 2009 the focus of the training is to assess the applicant’s right to reside first and then to look at the five factors.<sup>77</sup> Crosscare, Doras Luimní and Nasc (2012) state that the rebuttable presumption regarding previous residence within the Common Travel Area (contained in Section 246 (1) of the 2005 Act), ‘has no clear relevance’. NGOs consulted for the study stated that some Deciding Officers rely too heavily on the ‘two-year rule’ in assessing the HRC.<sup>78</sup> In the course of the current research the significance of the ‘two-year rule’, as a means of assessing the HRC, was evident among HRC Deciding Officers and DSP frontline staff. This

<sup>71</sup> Department of Social Protection, May 2014.

<sup>72</sup> Correspondence with DSP for the purpose of this study, June 2014.

<sup>73</sup> Interview with HRC Deciding Officers at local social welfare office, October 2013.

<sup>74</sup> Correspondence with Crosscare for the purpose of this study, 2014.

<sup>75</sup> Correspondence with Department of Social Protection for the purpose of this study, February 2014.

<sup>76</sup> Communication with a Department of Social Protection official for the purpose of this study, February 2014.

<sup>77</sup> Interview with Department of Social Protection Staff Development Unit for the purpose of this study, November 2013.

<sup>78</sup> Correspondence with Crosscare for the purpose of this study, February 2014. Interview with FLAC, November 2013.

perhaps reflects the fact that the rebuttable presumption regarding the two-year residence in the CTA, still exists in social welfare legislation. (Draft legislation has recently been published which, if enacted, would remove this reference.) The reliance on the two-year rule may also be a legacy impact of previous HRC training and/or a reflection of difficulties experienced by Deciding Officers in assessment of the more fluid five factors.

The Asylum Seekers and New Communities Unit, a DSP local office that deals mainly with migrants,<sup>79</sup> reported that staff are also offered training on very specific issues, for example the entitlements of EEA workers who have worked in the State for a very short time, or how to apply the HRC in cases involving victims of domestic violence. ASNCU staff noted that training was also available in cultural diversity awareness and anti-racism.<sup>80</sup>

NGOs point to a lack of understanding of the HRC among Deciding Officers. Crosscare, Doras Luimní and Nasc (2012) argue that ‘...seven years after its introduction, the Habitual Residence Condition continues to be misapplied’. Particular problems were reported regarding Deciding Officers not understanding the immigration status of Bulgarian and Romanian nationals’ and the non-application of the HRC exemption for EEA migrant workers. The Nasc (2013) report identifies similar barriers faced by Roma migrants in accessing social protection and healthcare and claims that there is resistance to grant payment, with the HRC frequently cited as a reason for non-payment. Nasc argue that a large number of refused applications for support made by Roma migrants are later granted upon appeal. This is interpreted as evidence of poorly informed decisions at first instance (Nasc, 2013). Nasc suggest that more training may be required on the HRC: the report observed instances of applicants being initially refused a Medical Card on the basis of not meeting the Habitual Residence Condition, despite the fact that entitlement to the card is not dependent on satisfying the HRC (Nasc, 2013). Doras Luimní and Nasc (2012) comment that although ‘guidelines on the social protection rights of people with various immigration stamps have been improved, they still do not include sufficient detail.’ The publication of this research prompted the Minister for Social Protection to establish a Migrant Consultative Forum in October 2012 to examine issues that concern migrants. A review of the Migrant Consultative Forum is planned for 2014 (Department of Social Protection, 2014).

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<sup>79</sup> In the Dublin area, migrants in particularly difficult circumstances who are not eligible for jobseekers payments, are referred to the Asylum Seekers and New Communities Unit (ASNCU). See Section 5 for more information.

<sup>80</sup> Interview conducted with officials at ASNCU, October 2013.

## 4.2 DISCRETIONARY CRITERIA AS APPLIED TO HEALTHCARE: THE ORDINARILY RESIDENT CONDITION

The ‘ordinarily resident’ condition, applied to health services, requires that an applicant has been resident or intends to be resident in the State for at least one year.<sup>81</sup> The condition was formally<sup>82</sup> introduced by way of the Health Amendment Act 1991 as the criterion for determining eligibility for health services in Ireland, but is not defined.

None of the provisions in the Health Act affect the operation of the EC regulations, which govern health service entitlements for EEA nationals.

### 4.2.1 Assessment of Ordinary Residence

Only medical card holders have full eligibility to free healthcare in Ireland. In order to qualify for a medical card/ General Practitioner (GP) visit card an applicant must declare to the Health Service Executive (HSE) that he or she is ordinarily resident, either on a written application form or online. If the applicant is deemed to be ordinarily resident he/she will then be subject to a means test and have to meet other qualifying conditions.

Assessment of ordinary residence is made at the point of payment/non-payment for a service. If a presenting service user fails to supply insurance details, or fails to demonstrate that he or she is covered under EU rules (by showing a E-Form or S1)<sup>83</sup> the hospital accounts department will issue a bill for the full applicable charge. The onus then rests on the individual to show that he or she is not liable for the charge.<sup>84</sup>

In order to establish that a person is ordinarily resident a Health Service Executive (HSE) may require the following documentary evidence:

- Proof of property purchase or rental, including evidence that the property in question is the person’s principal residence.
- Evidence of transfer of funds, bank accounts, pensions etc.
- A residence permit or visa.
- A work permit or visa, statements from employers etc.

<sup>81</sup> <http://www.hse.ie/eng/services/list/1/schemes/mc/>.

<sup>82</sup> The Ordinarily Resident Condition existed before 1991 but was not formally introduced until the *Health (Amendment) Act 1991*.

<sup>83</sup> An E-Form is confirmation from a Member State that the holder has healthcare entitlement for which that state is liable, see the Health Service Executive (2014). The S1 form allows a person to register for healthcare if he or she resides in an EEA or Switzerland but is insured in a different one of those countries (this is typically the case of pensioners retiring abroad).

<sup>84</sup> Interview with HSE official for the purpose of this study, November 2013.

- In some instances, the signing of an affidavit (a sworn written statement) by the applicant.<sup>85</sup>

#### **4.2.2 Guidelines and Training in the Ordinarily Resident Condition**

Guidelines on the Ordinarily Resident Condition for eligibility for Health Services were issued by the Department of Health in July 1992 (Circular 13/92) to Health Boards and Voluntary/Joint Board Hospitals.<sup>86</sup> Training in the condition is not currently undertaken.<sup>87</sup>

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<sup>85</sup> See [http://www.citizensinformation.ie/en/health/entitlement\\_to\\_health\\_services/entitlement\\_to\\_public\\_health\\_services.htm](http://www.citizensinformation.ie/en/health/entitlement_to_health_services/entitlement_to_public_health_services.htm).

<sup>86</sup> Correspondence with Department of Health, November 2013.

<sup>87</sup> Interview with Health Service Executive, November 2013.

# Section 5

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## Interaction Between Social Security and Immigration Policy and Practice

Section 5 considers the extent to which coordination exists between immigration and social security policymaking and operational practice in Ireland. Instances of interaction as well as gaps in policy and practice are discussed below. This Section is concerned almost exclusively with non-EEA nationals, because it is to this group that the immigration system applies.

### 5.1 LINKAGES/INTERACTIONS AT POLICYMAKING LEVEL

Historically, Irish immigration and social security policies have evolved separately and limited evidence exists of a deliberate nexus between migration and social security policymaking in Ireland. The Department of Justice and Equality and the Department of Social Protection follow standard government procedures in terms of policymaking linkages. For example memoranda are circulated to all government departments for views ahead of the introduction of new policies or legislation. In addition, interdepartmental committees may be set up to look at specific issues, such as the interdepartmental committee set up prior to the introduction of new immigration rules for non-EEA students in 2010, on which DSP was represented.<sup>88</sup>

As discussed, the two discretionary conditions which apply to social assistance and healthcare respectively, the Habitual Residence and Ordinarily Resident Conditions, operate entirely separately and an applicant for either service will be assessed individually under each. Instances of interaction as well as gaps in policy and practice regarding non-EEA nationals accessing social security are discussed below.<sup>89</sup>

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<sup>88</sup> Correspondence with the Department of Social Protection for the purpose of this study, February 2014.

<sup>89</sup> Crosscare asserted that even where clear guidelines exist, a problem remains in the gap between policy and practice. Correspondence with Crosscare for the purpose of this study, February 2014.

## 5.2 COORDINATION IN THE OPERATION OF THE IMMIGRATION AND SOCIAL SECURITY SYSTEMS

### 5.2.1 *Burden on the State*

Section 4 of the *Immigration Act 2004* entitles an Immigration Officer, on behalf of the Minister for Justice, to give a non-EEA national permission to enter or remain in the State. Such permission may be refused if the individual is not in a position to support him or herself and any accompanying dependants, effectively becoming a ‘burden on the State’. The Immigration Officer may attach conditions relating to duration of stay, engagement in employment, business or a profession in the State as he or she thinks fit, and the conditions may be amended at any time by an Immigration Officer. When deciding which conditions to attach to a person’s residence permit an Immigration Officer is obliged to take account of all the circumstances including a person’s income, earning capacity and other financial resources.

Non-EEA nationals may therefore have the requirement not to become a ‘burden on the State’ listed among their conditions of residence.<sup>90</sup> On renewal of a non-EEA nationals’ residence permit, the conditions stipulated in his or her original registration letter may be checked by the Garda National Immigration Bureau (GNIB) or the Irish Naturalisation and Immigration Service (INIS). Exactly what would constitute a ‘burden on the State’ is not defined and the concept does not have an express legislative basis.

INIS officials reported that in practice, the requirement for a non-EEA national not to become a ‘burden on the State’ is not individually cited as a reason to refuse renewal of a non-EEA national’s permission to remain. Instead a more general, case-by-case assessment of compliance with the original permit conditions is made. For certain individuals, accessing social welfare could be a sufficient reason not to renew a residence permit, in the context of a more general assessment of compliance with the original permit conditions.<sup>91</sup>

The Irish Naturalisation and Immigration Service (2013a) commented on the importance of the concept in protecting State funded services:

*... immigration authorities do not determine eligibility for State funded services and in many cases, particularly as regards social welfare payments, the eligibility conditions are the same for Irish citizens as for migrants... the immigration system must restrict entry to significant numbers of persons who if allowed to come to Ireland would give rise to substantial liabilities in terms of State services. At the same time, when a*

<sup>90</sup> Correspondence with officials of General Immigration section, Irish Naturalisation and Immigration Service, November 2013.

<sup>91</sup> Interview with officials of General Immigration section, Irish Naturalisation and Immigration Service, October 2013.

*person is granted immigration permission and it is made conditional on not being a burden on the State, failure to abide by this condition may lead to termination of permission, notwithstanding any eligibility rules that may be in place by State sector providers of services as regards access to those services. This represents what might be referred to as an 'immigration Contract'.*

DSP noted that while the receipt of universal payments like Child Benefit by a person who is employed or self-employed will not be considered as 'being a burden on the State', reliance on basic assistance such as SWA could, and the person may invalidate his or her right to reside in the State (Department of Social Protection, 2013a).

Deciding/Determining officers are advised to contact the Department of Justice on a case-by-case basis, where an applicant's GNIB card and letter states that one of the conditions of the permission is not become a burden on the State (Department of Social Protection, 2013b). INIS operates a dedicated email address for such queries from DSP Deciding Officers on non-EEA national applications for social security.

### **5.2.2 Employment Permit Holders**

Employment permits are issued by the Department of Jobs, Enterprise and Innovation (DJEI) to the prospective employee and a certified copy is issued to the employer. The permit allows the holder to be employed in the State by the named employer and in the occupation and location specified on the permit. Generally, an employment permit holder is issued with Stamp 1 residence permission by GNIB/INIS. Green Card holders may progress to a Stamp 4 after two years; an immigration status which allows free access to the labour market.<sup>92</sup>

Residence permits and employment permits have therefore different expiry dates and conditions attached, with certain implications for migrants who wish to access social welfare. For example if an employment permit holder loses their job they may remain in the State to look for another job until the expiry of their residence permit (residence Stamp 1). Under certain circumstances an unemployed Third-Country National may have his or her residence permit extended for a limited period in order to search for work.<sup>93</sup> However, in the context of an application for jobseekers allowance there is some ambiguity as to whether an unemployed non-EEA national worker, resident in the state on a Stamp 1 permission, can be deemed to be 'available for and genuinely seeking work', which is a qualifying condition for that payment, given that the employment permit is issued in respect of a specific job. The Department of Jobs,

<sup>92</sup> See Quinn and Gusciute, 2013 for further discussion.

<sup>93</sup> Non-EEA nationals who have been made redundant may apply for an extension of their residence permit of up to six months. See also Irish Naturalisation and Immigration Service (2010).

Enterprise and Innovation has stated that a non-EEA national must be employed within the terms of the employment permit which includes the job title and salary. An employment permit holder is required to notify the Department of any changes in circumstances and this will be taken into consideration in the renewal of their permit. If the employment specified in the permit ceases or there is a break in the employment contract then the permit is invalid and should be returned to the Department of Jobs, Enterprise and Innovation for cancellation.<sup>94</sup>

### 5.2.3 *Victims of Domestic Violence*

As discussed in Section 3.1.1 holders of a Stamp 3 residence permit, issued to dependants, do not have access to social security in their own right and may not work. New immigration guidelines for victims of domestic violence were published by the Irish Naturalisation and Immigration Service (INIS) during 2013 (Irish Naturalisation and Immigration Service, 2013b). The Guidelines provide that victims may make a request for an independent immigration status, but that permission granted will generally be at the same level of permission as that originally held i.e. normally a Stamp 3 permission.<sup>95</sup>

INIS stated that depending on individual circumstances, for example length of time in the State, non-EEA migrant victims of domestic violence may be issued with a Stamp 4, which allows full access to the labour market/social security.<sup>96</sup> According to the Guidelines consideration may be given to granting permission to work where it becomes necessary for the victim to work to support themselves or family members lawfully residing in the State.<sup>97</sup> All decisions are at the Minister's discretion. The Guidelines also note that the perpetrator of domestic violence could be regarded as having breached the 'good character' condition attached to their immigration permission and could lead to a revocation or non-renewal of subsequent status (Joyce, 2013).

The Domestic Violence Coalition<sup>98</sup> (2013) stresses the need for guidelines to be issued to frontline staff of the Department of Social Protection to ensure that appropriate consideration of domestic violence situations is undertaken, and that the habitual residence assessment takes significant account of the applicant's immediate need for safety.

In addition the non-EEA family members of EU citizens may retain a right of residence in the State on an individual and personal basis in the event of the

<sup>94</sup> Correspondence with Department of Jobs, Enterprise and Innovation, February 2014.

<sup>95</sup> HRC training, delivered by Department of Social Protection, Staff Development Unit, 13 November, 2013.

<sup>96</sup> Correspondence with INIS official, February, 2014.

<sup>97</sup> The stated policy of the Department of Jobs, Enterprise and Innovation is to allow any person holding a Stamp 1, 1A, 2, 2A or 3 who is already resident in the State, to apply for an employment Permit, as long as they satisfy the eligibility criteria of the scheme. Source: correspondence with the Department of Jobs, Enterprise and Innovation, February 2014.

<sup>98</sup> Comprised of NGOs: AkiDwA; The Domestic Violence Advocacy Service; Doras Luimní; The Immigrant Council of Ireland; Longford Women's Link; NASC; Sonas; Women's Aid; ADAPT Services.

Union citizen's divorce or annulment of his or her marriage, where the Minister for Justice is satisfied that the retention of such a right is warranted by particularly difficult circumstances, such as the spouse having been a victim of domestic violence while the marriage was subsisting.<sup>99</sup>

### 5.2.3 *Non-Schematised Scenarios*

In the Dublin area, migrants in particularly difficult circumstances (often homeless, and/or with unclear immigration status) who are not eligible for jobseekers payments, are referred to the Asylum Seekers and New Communities Unit (ASNCU). ASNCU Determining Officers often process applications from migrants for short-term emergency payments under the SWA scheme. ASNCU officials reported frequent contact with the INIS/GNIB headquarters, on a case-by-case basis, regarding atypical scenarios, where the interaction of immigration and social security policies is not schematised, for example: regarding a non-Irish prisoner on temporary release from prison who has no accommodation or means, or in the case of a destitute international student whose part-time work arrangement has fallen through.<sup>100</sup> The ASNCU service is not available nationwide and provision for this heterogeneous group of migrants varies between counties; local health offices in some counties refer directly to Dublin. ASNCU also work with RIA to repatriate citizens of new EU Member States<sup>101</sup> who are destitute, i.e. they have no means of their own and cannot satisfy the HRC. FLAC has pointed to ambiguity regarding the remit of the ASNCU and which categories of migrants should present there.<sup>102</sup>

### 5.2.4 *Information Sharing*

Lists of persons deemed to be evading deportation orders are circulated to Deciding Officers/Determining Officers by INIS/GNIB. This list contains the names and date of birth of the individuals in question (DSP-issued Personal Public Service Numbers are not routinely shared with INIS/GNIB).<sup>103</sup> DSP officials have no remit to inform GNIB/DSP about persons presenting with irregular immigration status.<sup>104</sup> INIS and DSP work together at a strategic level on social

<sup>99</sup> Under Regulation 10 of the *EC (Free Movement of Persons)(No. 2) Regulations 2006, as amended*. Comments received from EMN legal consultant.

<sup>100</sup> Interview with officials of ASNCU, October 2013.

<sup>101</sup> Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

<sup>102</sup> Correspondence with FLAC for the purpose of this study, February 2014.

<sup>103</sup> A group has been set up within INIS to examine the integration of the foreign national registration process (INIS/GNIB) with the DSP Client Identity Services (CIS) and Public Service Card (PSC) processes. The INIS/GNIB and DSP datasets would be combined to issue a hybrid EURP-PSC, with stated objectives of monetary benefits to the State, stronger identity management and deterrence of fraud. If pursued, INIS would seek to roll this approach out in late 2014. Comments received from the Border Management Unit, Irish Naturalisation and Immigration Service, October 2013.

<sup>104</sup> Interview with officials of ASNCU, October 2013.

security fraud, for example in the context of the Central Investigations Unit within INIS.<sup>105</sup>

### 5.3 OTHER LINKAGES BETWEEN THE IMMIGRATION AND SOCIAL SECURITY SYSTEMS

#### 5.3.1 Access to Family Reunification

An assessment of the HRC takes account of the location of an applicant's 'centre of interest' (as discussed in Section 4.1.2). The location of close family members forms a large component of an assessment of a person's centre of interest (Department of Social Protection, 2013a). Depending on the type of employment permit held, non-EEA nationals may be permitted to apply for their family members to join them in Ireland.<sup>106</sup> Ireland does not participate in *Directive 2003/86/EC* on the right to family reunification and decisions on family reunification are made at the discretion of the Minister for Justice and Equality.

The Minister for Justice and Equality has recently published new guidelines intended to provide clarity on the criteria for family reunification.<sup>107</sup> The document sets out, *inter alia*, the financial criteria applying for family reunification cases and the income levels required (excluding income from social welfare).<sup>108</sup> The employment and income requirements attached to family reunification applications vary according to the category of the sponsor. Non-EEA nationals who hold an employment permit or a Stamp 4 immigration permission are eligible to sponsor applications for family reunification and must show gross income in each of the previous two years in excess of that applied by the Department of Social Protection in assessing eligibility for Family Income Supplement. Social welfare payments are not considered to be reckonable as earnings for this purpose. Becker et al. (2013) argue that the degree of Ministerial discretion in granting family reunification is problematic.

### 5.3 INTERACTION BETWEEN INTEGRATION AND SOCIAL SECURITY POLICY

Ireland does not provide centrally coordinated integration courses for migrants and access to social security is not linked to participation in integration activities. After a certain period all recipients of unemployment assistance are directed towards activation supports e.g. training courses. If a migrant does not have sufficient language skills to participate he or she may be advised to take English language classes. Refusal to participate in an English class/training course may lead to a payment being reduced or suspended. However long waiting lists for

<sup>105</sup> Interview with officials of General Immigration section, Irish Naturalisation and Immigration Service, October 2013.

<sup>106</sup> Green Card holders and scientific researches on a Hosting Agreement are entitled to immediate family reunification.

<sup>107</sup> See Department of Justice and Equality (December 2013).

<sup>108</sup> Correspondence with INIS official, February 2014. See also Irish Naturalisation and Immigration Service (2013a).

English language classes were reported.<sup>109</sup> The *Annual Monitoring Report on Integration 2013* noted a continued lack of a clearly defined strategy for English language provision for adults and the lack of available data on funding allocated to teaching English as a foreign language (McGinnity et al., 2014).<sup>110</sup>

### **5.3.1 Access to Long-Term Residence and Naturalisation**

Crosscare, Doras Luimní and Nasc (2012) and Power and Szlovak (2012) argue that non-EU citizens might not apply for social welfare payments, despite being in hardship and being entitled to them, in case of negative consequences for their long-term residence status and/or citizenship application. More detailed questions (which specifically address the receipt of social assistance or other state support and the reasons behind such receipt) were introduced on a revised naturalisation application form in June 2011, and represent progress in this regard (McGinnity et al., 2013).

### **5.3.2 Availability of Translation, Interpretation or Other Forms of Support to Third-Country Nationals wishing to Access Social Security**

Interpretation supports are available to applicants for social security, on request. The extent to which this service is used varies depending on the client-profile accessing the office in question: the ASNCU have an interpreter available on site each morning while other local offices provide access to a telephone service, which is seldom used. Primary application forms are available in English only and DSP state that forms are translated to other languages, on request. Supporting documentation submitted with a claim may also be translated by DSP.<sup>111</sup> Community Information Services offer help to migrants with filling out forms on request.<sup>112</sup> Crosscare agreed that in practice interpretation services are seldom used and stated that in their experience many migrants had not understood information/instructions received at the local social welfare office.<sup>113</sup>

The complexity of the Irish social welfare system is an issue that has been raised by NGOs as impacting negatively on migrant applicants (Crosscare, Doras Luimní and Nasc, 2012).

<sup>109</sup> Interview with Department of Social Protection, Deciding Officers from a local office, Dublin, October, 2013.

<sup>110</sup> According to Census 2011, 11 per cent of Irish residents spoke a language other than English or Irish at home. Out of those who spoke a foreign language at home, 21 per cent reported their ability to speak English as 'not well' or 'not at all'. See Central Statistics Office (2012).

<sup>111</sup> Correspondence with Department of Social Protection for the purpose of this study, February 2014.

<sup>112</sup> Interviews conducted with officials at ASNCU and local office, October 2013.

<sup>113</sup> Correspondence with Crosscare for the purpose of this study, February 2014.

# Section 6

## External Dimension of Social Security

This section discusses bilateral agreements on social security which Ireland has concluded with certain non-EEA countries. An overview of these agreements and their main provisions is provided, and the exportability of social security payments to other countries is considered.

### 6.1. OVERVIEW OF BILATERAL SOCIAL SECURITY AGREEMENTS WITH NON-EEA COUNTRIES

Ireland has Bilateral Social Security Agreements with seven non-EEA countries (See Table 6.1) In addition bilateral agreements are in operation with the UK (concerning the Isle of Man and the Channel Islands), Austria and Switzerland.<sup>114</sup>

**Table 6.1 Bilateral Social Security Agreements/Understandings with Third Countries**

Country	Date of Commencement	Statutory Instrument
Australia	1 April 1992	<i>S.I. No. 84 of 1992</i>
	1 January 2006 (revised)	<i>S.I. No. 799 of 2005</i>
Canada	1 January 1992	<i>S.I. No. 317 of 1991</i>
Japan	1 December 2010	<i>S.I. No. 527 of 2010</i>
Republic of Korea	1 January 2009	<i>S.I. No. 552 of 2008</i>
New Zealand	1 March 1994	<i>S.I. No. 57 of 1994</i>
Quebec <sup>115</sup>	1 October 1994	<i>S.I. No. 120 of 1995</i>
The United States of America (USA)	1 September 1993	<i>S.I. No. 243 of 1993</i>

**Source:** Department of Social Protection.

The main aim of the bilateral agreements is to protect the pension rights of persons who have paid social insurance contributions in Ireland and have reckonable periods in the other country. Reckonable periods in the other country may be periods of insurance or of residence depending on the social security system in that country.<sup>116</sup> These agreements cover<sup>117</sup> State Pension (Contributory), Invalidity Pension, Widow's/ Widower's/ Surviving Civil Partner's

<sup>114</sup> Largely overtaken by EU Regulations.

<sup>115</sup> Quebec is listed separately as a separate agreement to that which applies in the rest of Canada is in force with Quebec due to the differences in their social security legislation. In the case of Quebec 'country' should be read as meaning 'province'.

<sup>116</sup> See Department of Social Protection, Bilateral Social Insurance Agreements. Available at <http://www.welfare.ie/en/Pages/home.aspx>.

<sup>117</sup> Bilateral social security agreements also cover State Pension (Transition) and Bereavement Grant but as both of these payments have been discontinued since 2014 they are not included in this section.

(Contributory) Pension and Guardian’s Payment (Contributory) and are extended to dependants and survivors.

Recipients of Irish and/or social security pensions from any of the countries with which Ireland has a bilateral agreement may qualify for extra social security benefits such as Free Travel, Fuel Allowance and Household Benefits subject to usual qualifying conditions.<sup>118</sup> There are no provisions in any of the Bilateral Agreements in relation to non-contributory pensions.<sup>119</sup>

Certain specific provisions apply to the temporary assignments of ‘posted workers’. Generally a person is subject to the social security legislation of the country where he or she is employed however in the case of ‘posted workers’ (usually in cases where a worker is sent to another country by their employer) the worker remains subject to the social security legislation of the sending state for a specified length of time (See Table 6.2 for a summary of these provisions).<sup>120</sup>

**Table 6.2** Sending Country Applicability under Bilateral Social Security Agreements/ Understandings with Third Countries

Bilateral agreement	The length of time one may continue to be subject to the social security of the sending country	Extension
Irish/ Australian	First 4 years	May be extended
Irish/Canadian	First 24 months	May be extended
Irish/Japanese	First 5 years	May be extended
Irish/Korean	First 5 years	May be extended
Irish/New Zealand	First 24 months	No provision to extend
Irish/Quebec	First 24 months	May be extended
Irish/USA	First 5 years	May be extended

**Source:** Department of Social Protection.

## 6.2 EXPORTABILITY OF STATE PENSION TO OTHER COUNTRIES

Independently of any bilateral agreements the contributory State pension may generally be exported outside of Ireland. It can be accessed anywhere with a payment made via an Electronic Fund Transfer (EFT) to an Irish account or account outside the State. Payment is made in the currency of the country in which the account is held. In general terms, the non-contributory State pension requires that the Habitual Residence Condition is satisfied, with a maximum of 12<sup>121</sup> weeks eligible for payment outside Ireland.<sup>122</sup>

<sup>118</sup> See Bilateral Agreements - Guidelines on Application of Bilateral Agreements. Available at <http://www.welfare.ie/en/Pages/home.aspx>.

<sup>119</sup> Communication with Department of Social Protection for the purpose of this study, February 2014.

<sup>120</sup> See Department of Social Protection, Bilateral Social Insurance Agreements. Available at <http://www.welfare.ie/en/Pages/home.aspx>.

<sup>121</sup> Six months in the case of Northern Ireland or until the person qualifies for benefit in Northern Ireland, if sooner.

<sup>122</sup> Correspondence with Department of Social Protection for the purpose of this study, February 2014.

# Section 7

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## Key Findings

This study is primarily concerned with the rules and regulations which govern immigrants' access to social welfare and healthcare, and with the application of these parameters of the social support system. The actual number of immigrants who avail of services partly depends on these rules and regulations but also on the demand for services. It is difficult to draw conclusions based on available administrative data on the proportions of Irish and non-Irish nationals in receipt of welfare payments, however we find no evidence of a large or systematic over-representation of immigrants among welfare recipients in Ireland.

A Habitual Residence Condition (HRC) applies to claims for most social assistance and universal payments in Ireland. The term 'habitually resident' is not defined in Irish law but implies 'that a person has been here for some time, from a date in the past, and is intending to stay for a period into the foreseeable future' (Department of Social Protection, 2013a). Currently, unless an individual has been resident within the Common Travel Area for two years prior to making an application for social welfare, or there are other clear signs to the contrary, he or she is presumed not to be habitually resident. The individual's application must then be assessed under five factors which require the decision maker to exercise his or her discretion, particularly on whether or not the available evidence indicates that the applicant's 'centre of interest' is in Ireland.

NGOs consulted for the study argue that the assessment of the HRC is too subjective and too complex for consistency in decision-making to be achieved. The significance attached by HRC Deciding Officers to evidence of a two-year residence in the Common Travel Area, when making a HRC decision, was evident in interviews conducted with DSP officials and NGOs consulted for this study. This perhaps reflects the fact that the rebuttable presumption regarding the two-year residence in the CTA still exists in social welfare legislation. (Draft legislation has recently been published that, if enacted, would remove this reference.) This reliance may also be a legacy impact of previous HRC training on the 'two-year rule' and/or a reflection of difficulties experienced by Deciding Officers in assessment of the more fluid five factors. HRC Deciding Officers may choose to receive formal in-depth training while HRC awareness training may be undertaken by DSP information officers and frontline staff.

The legality of an applicant's residence is fundamental to rules on access to social welfare payments to which the HRC applies. Under provisions contained in the

*Social Welfare and Pensions (No.2) Act 2009* an individual must have a 'right to reside' in the State in order to satisfy the HRC; if the right to reside is not evident the claim cannot be awarded and assessment of the HRC becomes irrelevant. Generally the practical assessment of a non-EEA national's right to reside by Deciding/Determining Officers is straightforward. The applicant must show his or her GNIB card which indicates the date up to which the bearer has a legal right to reside in the State. In practice, the right of an EEA national to reside in the State is much more difficult to assess in the context of an application for social welfare. DSP officials indicated that it can be hard to check the date of an applicant's entry to the State. In addition the employment history of the applicant becomes critical in determining whether or not the applicant can avail of EEA 'migrant worker status'.

Irish immigration and social security policies have evolved separately and limited evidence exists of a deliberate nexus between migration and social security policymaking in Ireland. Certain points of ambiguity arising from current immigration and social security policy exist, including the following:

- While some residence stamps require a non-EEA national not to become 'a burden on the State', this requirement does not have an express legislative basis and what constitutes 'a burden on the State' is not clearly defined.
- The access of non-EEA national workers who hold Stamp 1 immigration permission to Jobseeker's Allowance is unclear. Such workers hold employment permits which are contingent on employment in a specified job. If employment in that job ceases it is uncertain whether the applicant would be deemed to be 'available for and genuinely seeking work' - one of the main qualifying conditions for Jobseeker's Allowance.
- Non-EEA migrant victims of domestic violence, whose immigration status is dependent on the perpetrator, can make a request for an independent immigration status. However permission granted will usually be at the same level as that which was held originally i.e. Stamp 3 permission issued to dependants, which does not permit access to the labour market or to social security. Depending on individual circumstances, such migrants may be given permission to work at the Minister for Justice and Equality's discretion.

In the Dublin area, migrants in particularly difficult circumstances and in need of emergency social welfare payments are referred to the Asylum Seekers and New Communities Unit (ASNCU), where individual circumstances are assessed on a case-by-case basis. This service is not available nationwide and provision for such migrants varies between counties.

Operating alongside and entirely independently of the HRC is the requirement to be 'Ordinarily Resident' in order to access healthcare without charges (other

criteria also apply). The Ordinarily Resident Condition requires that an applicant has been resident or intends to be resident in the State for at least one year.

# Annex I

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## Case-Studies on Access to Social Security

### CASE STUDY 1

Tho and Lien, a married couple holding Vietnamese citizenship, aged 28 and 30, moved to Ireland ten years ago. They hold long-term residence permits. Tho has worked in a car manufacturing company for the last eight years, paying obligatory insurance contributions throughout this time. Lien has worked as a chef in the restaurant of a large hotel, also paying obligatory insurance contributions, for the last two years. Tho and Lien are expecting the birth of their first child in six weeks' time. Last week, the car manufacturing company where Tho works announced that they were making him redundant. Faced with the loss of Tho's income at a time when Lien would need to take time off work, following the birth of their child, Tho decided to apply for unemployment benefits while Lien applied for maternity benefits.

### *Likely Outcome Within the Context Of Irish Social Security and Immigration Systems*

Tho and Lien have been residing in the State for ten years and are likely to be Stamp 5 holders, meaning they are permitted to remain in Ireland indefinitely, 'without condition as to time'. (They may also be eligible for Irish citizenship.) They have a clear 'right to reside' and they would also be deemed to be 'habitually resident' in the State.

Tho has been paying obligatory insurance contributions for the last eight years; therefore he would qualify for Jobseeker's Benefit (JB). He would be entitled to the benefit for nine months.<sup>123</sup> After nine months his entitlement would cease and he would have to apply for Jobseeker's Allowance (JA), which is means-tested and dependent on satisfying the HRC.<sup>124</sup>

Lien would qualify for Maternity Benefit. Under the Maternity Protection Act 1994, a woman who qualifies for Maternity Benefit is entitled to claim Family Income Supplement (FIS), provided she meets the conditions of FIS payment and

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<sup>123</sup> The duration of Jobseeker's Benefit was reduced by three months from 3 April 2013. For people with 260 or more PRSI contributions it was reduced from 12 months to nine months and for people with fewer than 260 PRSI contributions it was reduced from nine to six months.

<sup>124</sup> Tho would be issued with an application form and HRC form at his local welfare office or Intreo centre and have his application decided locally.

has a family.<sup>125</sup> It is also very likely that Lien will qualify for Child Benefit once her child is born.<sup>126</sup> In the context of renewal of immigration permission it is very unlikely that accessing social welfare payments mentioned above would constitute ‘a burden on the State’ in this particular case.<sup>127</sup>

## CASE STUDY 2

Jasmine is a single parent, aged 29, holding Filipino citizenship, who moved to Ireland two and a half years ago. She has a 2-year old child (also holding Filipino citizenship) that lives with her and another child aged five that lives in the Philippines with Jasmine’s mother. She holds a temporary/salaried worker residence permit that has been renewed once. Jasmine has worked as a nurse in a residential day-care unit in Ireland for two and a half years. She sends a small amount of money every month to the Philippines to help support her daughter. Last month, Jasmine’s employer announced significant cuts in staff salaries in response to budget reductions. Faced with a significantly reduced income, Jasmine has moved into a hostel as she can no longer afford to rent private accommodation. She has also been forced to halve the amount of money she sends to her family in the Philippines every month. She has decided to apply for family benefits and guaranteed minimum resources.

### *Likely Outcome Within the Context Of Irish Social Security and Immigration Systems*

Jasmine has been residing in the State for two and a half years and her residence permit has been renewed once. She is most likely to be Stamp 1 holder, which means her permission to remain in the State is contingent on her employment.

There was some uncertainty among those consulted for the study as to whether or not Jasmine would be deemed to habitually resident in the context of a social welfare application. In particular it is unclear whether the fact that Jasmine’s other child does not live with her in Ireland might impact negatively on a HRC assessment. DSP Deciding Officers consulted for the current study did not think this would present an insurmountable obstacle, while NGO consulted foresaw problems.<sup>128</sup> ASNCU observed that if Jasmine owns any property in her country of origin this might also have implications regarding the HRC.<sup>129</sup> (Jasmine’s current temporary living situation may also cause difficulties; providing proof of address/residency is required in accessing some payments.)<sup>130</sup>

<sup>125</sup> A pregnant woman with no other children will not qualify for this payment until the birth of the baby.

<sup>126</sup> Correspondence with Department of Social Protection for the purpose of this study, February 2014.

<sup>127</sup> Interview with Immigration and Naturalisation Service (INIS) official for the purpose of this study.

<sup>128</sup> Interview with FLAC for the purpose of this study, November 2013.

<sup>129</sup> Interview with Department of Social Protection official for the purpose of this study.

<sup>130</sup> Recent case law indicates that there are reasonable grounds for concluding that Jasmine would be habitually resident here. She has adopted her residence in Ireland voluntarily and for settled purposes as part of the regular order of her

In relation to future renewal of Jasmine's residence permit, the Irish Naturalisation and Immigration Service indicated that recourse to public funds under these circumstances would not be sufficient reason not to renew a permit and that Jasmine's residence permit would probably be renewed provided she has a valid work permit and was not in breach of other conditions.<sup>131</sup>

In terms of payments Jasmine may apply for Child Benefit, One-Parent Family Payment (OFP) and Family Income Supplement (FIS) under the Family Benefits branch. Child Benefit is a universal payment and Jasmine would be entitled to it in relation to her child residing in the State, provided she satisfies the HRC. She may qualify for OFP if she satisfies a means-test and the HRC.

There is a prescribed time for claiming Child Benefit and OFP which may be problematic for migrant workers such as Jasmine. Child Benefit must be claimed within 12 months after the month in which the child was born/became a member of the family or the month the child came to reside in Ireland. OFP in the case of a single person must be claimed within three months of the birth of the child. Jasmine would have to make a late claim for both payments. Failing to make a claim within a prescribed time may disqualify a person from receiving payment in respect of any period prior to the date of claim and a payment may be backdated only if the Deciding Officer is satisfied that there was a good cause for the delay in making the claim. In Jasmine's case it is unclear whether her claims would be backdated.<sup>132</sup> Jasmine may qualify for FIS if she works 19 hours or more per week and her average weekly income is below a prescribed amount.<sup>133</sup>

Jasmine may qualify for Supplementary Welfare Allowance (SWA) and Rent Supplement under the guaranteed minimum resources branch. She may qualify for SWA provided she satisfies a means-test and the HRC. However if a person is in full-time employment, i.e. in employment for more than 30 hours per week he or she will usually not qualify for SWA, a condition which may affect Jasmine. She may qualify for rent supplement provided she can show that she was able to afford the rent at the beginning of her tenancy and that she could have continued to pay rent but is unable to do so because of a change in her circumstances which occurred after she started renting. She will have to satisfy both a means-test and the HRC to qualify. Similarly to SWA she may not qualify if she is in full-time employment.<sup>134</sup>

Considering her current financial situation Jasmine may also qualify for Exceptional and Urgent Needs Payment under the SWA scheme. While this is

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life for the time being. As she has been here for two and a half years, her period of residence would likely constitute an 'appreciable time' too. See Supreme Court judgement in *AS v. CS [2010] 1 IR 370*.

<sup>131</sup> Interview with Immigration and Naturalisation Service (INIS) official for the purpose of this study.

<sup>132</sup> Interview with FLAC for the purpose of this study, November 2013.

<sup>133</sup> Application forms for each payment need to be sent to a specific specialised unit; Child Benefit is administered in Letterkenny, Co. Donegal, OFP is administered by local welfare offices and FIS is administered in Longford.

<sup>134</sup> Jasmine should apply for both payments to the Department of Social Protection's representative at her local health centre. In some areas new Rent Supplement applications are processed by centralised Rent Units.

usually a single payment to help meet essential, once-off expenditure it may be paid on a weekly basis in exceptional circumstances.<sup>135</sup> This payment is not subject to the HRC. Jasmine may also be entitled to a medical card or a GP visit card depending on her financial status.<sup>136</sup>

### CASE STUDY 3

Senghor is a high-skilled worker from Senegal. He arrived in Ireland six years ago with a temporary residence permit arranged through the IT company that employed him. Senghor is single and does not have children, but has recently succeeded in bringing his elderly mother to the country on the basis of family reunification. Aged 80, his mother is entirely dependent on Senghor's income. Last week, Senghor suffered an accident at work that left him incapable of carrying out the work for which he was employed for a period of three years. He decided to apply for invalidity benefits, sickness benefits, family benefits and benefits in respect of accidents at work and occupational diseases.

#### *Likely Outcome Within the Context Of Irish Social Security and Immigration Systems*

Senghor has been residing in the State for six years and is highly skilled. He is most likely to be a former Green Card, now Stamp 4 holder. Green Cards are issued for two years with a view to long-term residence. Stamp 4 holders have full access to the labour market and there can be certain individual conditions attached to their entitlements to access social security.

Senghor would not qualify for most benefits that he has applied for, due to the structure of these benefits. He is likely to qualify for Illness Benefit and for Benefits in respect of accidents at work and occupational diseases.

#### *Invalidity Benefits*

Invalidity Pension is a payment to insured people who are permanently incapable of work because of an illness or incapacity. Senghor would not qualify for an Invalidity Pension at present as to qualify one has to have been incapable of work for at least 12 months and be likely to be incapable of work for at least another 12 months. Senghor would not qualify for Partial Capacity Benefit as one must be in receipt of an illness benefit or invalidity pension to qualify. If his incapacity continues, he may qualify in the future.

#### *Sickness Cash Benefits*

Illness Benefit is a payment for people who cannot work because they are sick or ill. Provided Senghor satisfies medical conditions for this benefit he would be

<sup>135</sup> Interview with Department of Social Protection official for the purpose of this study.

<sup>136</sup> Deciding Officers' observations during a training course.

entitled to it for a period of 52 weeks based on his PRSI contributions. When his entitlement to Illness Benefit finishes, he could apply for Invalidity Pension, if his incapacity is serious enough. Alternatively, he could apply for the means-tested Disability Allowance (DA). DA is subject to HRC, but it is more than likely that Senghor would satisfy the HRC test.<sup>137</sup>

### *Family Benefits*

There are no family benefits that Senghor may be entitled to; Ireland does not have any system of family benefits for elderly dependants.<sup>138</sup> He would not qualify as a carer for his elderly mother as due to his injury he would be deemed unfit to care.

### *Benefits in Respect of Accidents at Work and Occupational Diseases*

Senghor may qualify for Injury Benefit provided he is incapable of work for more than three days as a result of his injury. Once his entitlement to Injury benefit ceases<sup>139</sup> he may qualify for Disablement Benefit (see Annex II).

Depending on the length of period that Senghor is unable to work for, his work permit may cease. However he may be allowed to remain in the State on humanitarian grounds. He is unlikely to be seen as 'a burden on the State'. It is worthwhile noting that while the case study states that he was able to bring his elderly mother to the State, this is a very unlikely scenario.<sup>140</sup> A highly restrictive approach is taken in regards to family reunification involving elderly dependent parents. Usually only exceptional circumstances will warrant a positive decision (INIS, 2013).<sup>141</sup>

### *Other Benefits*

Senghor may also qualify for Household Benefits, Free Travel Card, Medical Card, Fuel Allowance and Rent Supplement.<sup>142</sup>

<sup>137</sup> Correspondence with Department of Social Protection for the purpose of this study, February 2014.

<sup>138</sup> *Ibid.*

<sup>139</sup> This payment can be paid for up to a maximum of 26 weeks.

<sup>140</sup> Interview with Immigration and Naturalisation Service (INIS) official for the purpose of this study.

<sup>141</sup> Elderly dependent relatives must be covered by private medical cover and will be granted Stamp 0 permission renewable on annual basis. The sponsor has to meet certain financial conditions and sign a legal undertaking to bear complete financial responsibility for the elderly dependent relative.

<sup>142</sup> Deciding Officers' observations during a training course.

# Annex II

## Overview of the National Social Security System Presented in the MISSOC National Guides<sup>143</sup> as it Applies to Non-EEA Nationals (Benefits and Programmes Available, Financing Mechanisms and Accessibility)

'Branch' of social security	Benefits and programmes included in each branch	Financing mechanisms (contributory/non-contributory/mixed)	Accessibility by Third-Country Nationals* <i>Long-term residents, workers, the self-employed, unemployed persons, family members of Third-Country Nationals</i>
I. Healthcare	<p>Medical Card <i>A card issued by the Health Service Executive (HSE) allowing the holder to receive certain health services free of charge.</i></p> <p>GP Visit Card <i>A card issued by the HSE allowing the holder to visit family GP free of charge.</i></p>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed
II. Sickness cash benefits	<p>Illness Benefit <i>A payment for persons who cannot work due to an illness and who satisfy the PRSI contribution conditions. This payment is not linked to employer's policy on pay for sick leave.</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers
III. Maternity and paternity benefits	<p>Benefits in Kind <i>Benefits that entitle all resident women to prenatal and postnatal services and care for infants under six weeks free of charge.</i></p>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed Family members of TCNs
	<p>Maternity Benefit <i>A payment to women who are on maternity leave from work or self-employment and who are covered by social insurance.</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers Self-employed

<sup>143</sup> Payments that are discontinued as of January 2014 are excluded from this table (State Pension (Transition) and Bereavement Grant have been discontinued from 1 January 2014 for all applicants. The Mortgage Interest Supplement scheme is closed to new entrants from 1 January 2014. The scheme will be wound down for existing claimants over a four-year period.)

	<p><b>Adoptive Benefit</b>  <i>A payment to an adopting mother or a single male who adopts a child, takes adoptive leave from work or self-employment and is covered by social insurance.</i></p>		
IV. Invalidity benefits	<p><b>Invalidity Pension</b>  <i>A weekly payment to persons who cannot work because of a long-term illness or disability and are covered by social insurance</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers
V. Old-age pensions and benefits	<p><b>State Pension (Contributory)</b>  <i>A payment to persons from the age of 66 who satisfy PRSI contribution conditions.</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers Self-employed
	<p><b>State Pension (Non-Contributory)</b>  <i>A payment for persons from the age of 66 who do not qualify for a contributory State Pension, satisfy a means test and are habitually resident in the State.</i></p>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed
VI. Survivors' benefits	<p><b>Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension</b>  <i>A payment to the husband, wife or surviving civil partner of a deceased person who has not remarried or re-entered into a civil partnership and is not cohabiting with a person as a spouse or a civil partner</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed Family members of TCNs
	<p><b>Guardian's Payment (Contributory)</b>  <i>A payment based on a deceased parent/step-parent's PRSI contributions payable to an orphan or a guardian of an orphan.</i></p>		
	<p><b>Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension</b>  <i>A means-tested payment to a husband, wife or surviving civil partner who does not qualify for contributory Widow's, Widower's or Surviving Civil Partner's pension</i></p>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed Family members of TCNs
	<p><b>Guardian's Payment (Non-Contributory)</b>  <i>A means-tested payment to an orphan or a guardian of an orphan if he or she is not entitled to a contributory guardian's payment.</i></p>		
	<p><b>Widowed or Surviving Civil Partner Grant<sup>144</sup></b>  <i>A once-off payment designed to assist with the income support needs of a widow, widower or surviving civil partner</i></p>	Mixed**	Yes TCNs holding long-term residence permits Workers Self-employed

<sup>144</sup> This payment is linked to entitlement to other payments hence a person would qualify as long as he/she qualifies for the main payment.

	<i>immediately following the death of his/her spouse/civil partner.</i>		Unemployed Family members of TCNs
VII. Benefits in respect of accidents at work and occupational diseases	<p><b>Injury Benefit</b> <i>A payment payable to a person who is unfit to work due to work related accident or disease.</i></p> <p><b>Disablement Benefit</b> <i>A payment payable to a person who has suffered a loss of physical or mental faculty because of an accident at work, an accident travelling directly to or from work or a prescribed disease contracted at work.</i></p> <p><b>Medical Care</b> <i>A scheme that covers the cost of medical expenses that are not covered by the HSE or by the Treatment Benefit Scheme. This scheme only applies to Occupational accidents and prescribed occupational diseases under the Occupational Injuries Scheme.</i></p>	Contributory***	Yes TCNs holding long-term residence permits Workers
	<p><b>Incapacity Supplement</b> <i>A payment payable to a person who is in receipt of Disablement Benefit and is considered permanently incapable of work as result of occupational accident or disease and who does not qualify for another social welfare benefit.</i></p>	Contributory	Yes TCNs holding long-term residence permits Workers
	<p><b>Death Benefits</b> <i>May be payable to dependants of a person who dies a result of an accident at work or a prescribed occupational disease or to dependants of a person who at the time of his or her death was in receipt of a fifty per cent or over Disablement Pension, regardless of the cause of death.</i></p>	Contributory***	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed <sup>145</sup> Family members of TCNs
VIII. Family Benefits	<p><b>Child Benefit</b> <i>A universal payment to parents for the support of their child/children.</i></p>	Universal	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed Family members of TCNs <sup>146</sup>
	<p><b>Family Income Supplement</b> <i>A weekly tax-free payment available to employees on low remuneration with children.</i></p>	Non-contributory	Yes TCNs holding long-term residence permits Workers
	<b>One-Parent Family Payment</b>	Non-contributory	Yes

<sup>145</sup> Though not explicitly excluded, an accident at work would not be likely to arise in the case of an unemployed person.

<sup>146</sup> Spouses/Civil Partners/Cohabitants of work permit holders who are not permitted to work in the State are given the benefit of their spouse's/civil partner's/cohabitant's status to enable them satisfy the Habitual Residence Condition for Child Benefit. See Department of Social Protection, <http://www.welfare.ie/en/Pages/Child-Benefit.aspx> for more information.

	<i>A weekly payment for men and women under 66 years age who are bringing children up without the support of a partner.</i>		TCNs holding long-term residence permits Workers Self-employed
IX. Unemployment Benefits	Jobseeker's Benefit <i>A weekly payment to persons who are out of work and are covered by social insurance.</i>	Contributory	Yes TCNs holding long-term residence permits Self-employed <sup>147</sup> Unemployed <sup>148</sup>
	Jobseeker's Allowance <i>A means-tested weekly payment to persons who are out of work and do not qualify for Jobseeker's Benefit or have exhausted their entitlement to it.</i>	Non-contributory	Yes TCNs holding long-term residence permits Self-employed <sup>149</sup> Unemployed <sup>150</sup>
X. Guaranteed Minimum Resources	Supplementary Welfare Allowance <i>A basic weekly allowance to eligible persons who have little or no income.</i>	Non-contributory	Yes TCNs holding long-term residence permits Unemployed Family members of TCNs
	Exceptional and Urgent Needs Payments <i>Payments under the SWA Scheme which are designed to help meet essential, once-off, exceptional or urgent expenditure, which a person could not reasonably be expected to meet out of their weekly income</i>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed Family members of TCNs
	Disability Allowance <i>A weekly allowance payable to persons with a disability.</i>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed
	Blind Pension <i>A means-tested payment payable to persons who are blind or visually impaired.</i>		
	Farm Assist <i>A means-tested income support scheme for farmers.</i>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed
	Fuel Allowance <i>A payment under the National Fuel Scheme paid to persons who are in receipt of long-term social welfare and who are unable to provide for their own heating needs.</i>	Non-contributory	Supplement paid with other benefits when qualifying
	Free Travel	Mixed**	Yes

<sup>147</sup> Self-employment contributions do not give entitlement to JB and an applicant would have to have previously paid PRSI contributions as an employee to qualify. A self-employed person may be entitled to JB in respect of days of unemployment, where the conditions of entitlement are satisfied. For example, if a person is engaged under a contract for service to work (on a self-employed basis) for three days per week, and is unemployed for the remainder of the week, s/he may qualify for JB in respect of the days of unemployment - provided the qualifying conditions are satisfied.

<sup>148</sup> A person must be unemployed for at least four days in seven days.

<sup>149</sup> A self-employed person (including a farmer) may be entitled to JA provided s/he satisfies the normal qualifying conditions.

<sup>150</sup> A person must be unemployed for at least four days in seven days.

	<i>A scheme which allows free travel for everyone aged 66 and over provided they are permanently living in the State. A person who is in receipt of Blind Pension payments is also entitled to Free Travel.</i>		TCNs holding long-term residence permits Family members of TCNs
	Living Alone Increase <i>A weekly payment for persons aged 66 or over who are in receipt of certain social welfare payments and who are living alone.</i>	Mixed**	Yes TCNs holding long-term residence permits
	Household Benefits <i>A scheme designated to assist with the costs of running a household. It includes electricity/gas allowance and free television licence.</i>		
	Rent Supplement <i>A payment to persons who are living in private rented accommodation and cannot provide for the cost of their accommodation from their own resources.</i>	Non-contributory	Yes TCNs holding long-term residence permits Unemployed
XI. Long-term care benefits	Carer's Benefit <i>A payment payable to insured persons who leave the workforce to care for a person(s) in need of full-time care and attention.</i>	Contributory	Yes TCNs holding long-term residence permits Workers
	Carer's Allowance <i>A means-tested payment payable to persons who are looking after a person who needs support because of age, physical/learning disability or illness</i>	Non-contributory	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed
	Constant Attendance Allowance <i>A payment that may be payable to a person who is in receipt of Disablement Benefit and who is so seriously disabled as to need someone to assist them daily at home to attend their personal needs for at least six months.</i>	Contributory - in relation to qualifying benefits	Yes TCNs holding long-term residence permits Workers
	Domiciliary Care Allowance <i>A payment to the carer of a child with a disability so severe that the child requires care and attention and/or supervision substantially in excess of another child of the same age.</i>	Universal	Yes TCNs holding long-term residence permits Workers Self-employed Unemployed
	Respite Care Grant <i>An annual payment by the Department of Social Protection made to carers receiving certain long-term care benefits payments.</i>	Mixed**	Yes TCNs holding long-term residence permits Family members of TCNs

**Source:** The Department of Social Protection, the Health Service Executive and the MISSOC Guide.

**Notes:** \* For the purpose of this table the categories of Third-Country Nationals mentioned in column four are defined as follows:

*'Non-EEA nationals holding long-term residence permits'<sup>151</sup> in the context of this study refer to non-EEA nationals holding a Stamp 5, i.e. persons permitted to remain in the State without condition as to time.*

*'Unemployed' in the context of this study refers to a person who was previously employed in the State and who is permitted to remain in the State to search for other employment.*

*'Family Members' in the context of this study refer to non-EEA spouse/dependants of non-EEA nationals employment permit holders. Thus 'family members' will normally be Stamp 3 holders, persons permitted to remain in the State on condition that they do not engage in any business or profession and do not enter employment.*

*\*\* In relation to the Irish social welfare system mixed financing mechanism refers to payments which are dependent on qualifying for other social security payments, which can be contributory and non-contributory.*

*\*\*\* While these payments do not require a specific number of social insurance contributions, only people who are employed under certain insurable PRSI classes are eligible for these payments.*

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<sup>151</sup> Ireland has not opted in to *Directive 2003/109/EC* concerning the status of Third-Country Nationals who are long-term residents, and in the absence of a statutory scheme, an administrative long-term residence is open to employment permit holders and their dependent spouses and scientific researchers only.

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