Chapter 15

Migrants' Access to Social Protection in Ireland

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15.1 Overview of the National Social Security System and Main Migration Features in Ireland

This chapter focuses on the link between migration and welfare in Ireland. The chapter has two main goals. First, it presents the general legal framework regulating the welfare system in Ireland, paying particular attention to any potential differences in terms of conditions of access to social benefits between national residents, non-national residents, and non-resident nationals. Secondly, the chapter discusses how these different groups of individuals access social benefits across five policy areas: unemployment, health care, family benefits, pensions, and guaranteed minimum resources.

15.1.1 Main Characteristics of the National Social Security System

It is important to note that the social security and health care systems are almost entirely separate in Ireland. The social welfare system is administered by the Department of Social Protection (DSP). The health care system is the responsibility of the Department of Health. It is implemented by the Health Services Executive (HSE) in conjunction with a range of publicly and privately owned hospitals and institutions and staff who are both employed by the HSE and by private bodies and

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private doctors who have a contractual relationship with the HSE to provide public health care.

The foundations of the Irish health and social welfare system were laid when Ireland was a part of the UK. The first national system of income maintenance payments was established in the Poor Law (Ireland) Act of 1838. Subsequent UK legislation in relation to workmen's compensation (1898), old age pensions (1908) and national insurance (1911) also applied to Ireland. Following Independence in 1922, a number of additional schemes were introduced including unemployment assistance (1933), widows' and orphans' pensions (1935) and children's allowance (1943). In 1947 a new Department of Social Welfare (now the Department of Social Protection) and a Department of Health were established for the planning and administration of social welfare and health respectively. In 1952 the existing social insurance schemes were brought together into one unified system of social insurance.

The Irish social welfare system is primarily a system of income support payments which can be divided into three different categories: social insurance or contributory payments; social assistance or means-tested payments; and universal child benefit which is residence-based and unrelated to income or previous contributions (McCashin 2004, 2019; Cousins 2005, 2016).

Only a very limited number of health-related services are provided under the social insurance system, and the main public health care provision is by way of a separate national health scheme operated under the auspices of the Department of Health. Social insurance is funded on a PAYG basis by contributions paid by employers and employees with any short-fall being met by the State. Both social assistance and child benefit payments are funded out of general taxation.

In 2017 total social welfare expenditure amounted to €20bn.¹ This accounted for one quarter of current Government expenditure (26.4%) and 8.3% of GNP. The funding of this expenditure in 2017 came from the State (50%), employer's contributions to the SIF (36%), employee's contributions (11%) and contributions from the self-employed (3%). Of 2 million people in receipt of a social welfare payment, the vast majority (86%) were Irish, while 11% came from European Union (EU) countries and 3% were third-country nationals.²

The social insurance scheme applies to all private sector employees earning over a certain minimum payment each week (currently €38). Employees are insured against the risks of old age, disability, unemployment, invalidity, occupational injuries, survivorship, and maternity. Full social insurance cover was extended to the civil and public service in respect of new employees in 1995. Social insurance also covers the self-employed since 1988 but only in respect of a limited range of long-term benefits (e.g state pension) and some short-term benefits such as maternity. Over three million people are insured under the social insurance scheme, over 2.3 million for all benefits.³

¹ DEASP, Annual Statistical Report 2017.

² Ibid

³ Ibid

Pay-related social insurance (PRSI) contributions can be categorised into four groups:

- **Full-rate social insurance contributions** (Classes A, E, F, G, H, N) which qualify for most (or all) benefits.
- Self-employed contributions (Class S) which are generally only relevant to long-term benefits.
- Modified-rate social insurance contributions (Classes B, C and D) paid by certain civil and public servants.
- **Voluntary contributions** made by people (under age 66) who are no longer covered by compulsory PRSI provided they satisfy certain conditions.

'Credited' contributions are also awarded to persons who have already a record of paid contributions but who are unable to continue paying contributions due to certain contingencies such as unemployment or illness. These credited contributions assist in qualifying for social insurance benefits.

The social assistance scheme provides benefits for the traditional insurance categories and payments for lone parents, a residual supplementary welfare allowance for persons with insufficient means, an allowance for carers and an earnings-related payment for low income families in employment. Unlike social protection payments in most European countries, social welfare payments are flat-rated, with increases in respect of qualified adult and children.⁴ A limited pay-related scheme, which was introduced in the 1960s, was phased out and eventually abolished. The Irish social welfare system is highly centralised. All aspects of planning, implementation and delivery are the responsibility of the DEASP.

In contrast to social protection systems in some European Catholic countries, the Irish case is notable for an absence of a corporatist welfare system, involving different insurance schemes for different categories of workers and tripartite management by employers, unions and the State. However, Cousins (2005) argues that the Irish welfare state is strongly segmented. If we take the three-sector model of the Irish labour force dividing this into the public sector, the foreign trans-national sector and indigenous industry and services, there is a striking complementarity between the preferences of these sectors and the structuration of the Irish welfare system. Employees in the public sector receive relatively high benefits through (largely unfunded) public occupational pensions schemes and have job security. Employees in the high-profit, high-productivity transnational corporations also tend to receive relatively high welfare benefits but this time through the private welfare capitalism of occupational benefits. Finally, the largest group of employees – those employed in the comparatively low-productivity, indigenous Irish manufacturing and services sector are covered only by the flat rate public welfare benefits.

Ireland has a national health type system funded by taxation (and co-payments). The system is a means-tested one with those with 'full eligibility' for health care being entitled to most health services without cost or subject to nominal charges

⁴There are reduced payment for persons with lower levels of contributions.

while the rest of the population are entitled to public health care subject to charges. The total expenditure in 2017 was €15.2 billion for the delivery and contracting of health and personal social services.

15.1.2 Migration History and Key Policy Developments

Ireland has a long history of emigration dating back to before the Great Famine in the mid-1800s. In more recent decades, the pattern of net emigration continued up to the 1990s, except for a short period in the 1970s. However, with the improved economic conditions and the expansion of the EU from 2004, there was a major increase in immigration.

Following the Great Recession commencing in 2008, emigration again exceeded immigration but this has reversed as the Irish economy recovered.⁵ The number of immigrants to the State in the year to April 2018 [i.e. May 2017 to April 2018] increased to 90,300 (6.7%), while the number of emigrants declined to 56,300 (−13.1%). This resulted in net inward migration to Ireland in 2018 of 34,000, the highest level of net inward migration since 2008. Of the people who immigrated to Ireland in 2018, almost one third (31.5%) were Irish nationals; another third (34.4%) came from the EU; while the final third (34.2%) came from non-EU countries.

In April 2016, persons born abroad accounted for 17.3% of the population.⁶ The main EU countries whose nationals live in Ireland are Poland, the UK, and Lithuania (followed by Romania and Latvia). The main non-EU countries amongst immigrants to Ireland are Brazil, India and the USA (followed by China). The main countries to which Irish nationals emigrate are the UK followed by other EU15 countries. The main non-EU destination countries are Australia, the USA and Canada, reflecting a common language and long tradition of emigration.⁷

Ireland has had a common travel area with the UK for many decades and is not part of the Schengen Area. Irish migration policy has been largely driven by its membership of the EU (e.g. labour migration) and its links to the UK (e.g. refusal to join Schengen). However, the Irish approach to economic migration from EU countries has been relatively open (e.g. no restrictions were imposed on ‘new’ EU migrants accessing the labour market in 2004).

One area of concern has been economic migration from outside the EU and related asylum issues. From negligible levels, claims for asylum reached a peak of over 11,000 in 2002, leading to changes (discussed below) in access to social protection benefits and to ongoing changes in the law concerning the recognition of refugee status and related issues. However, in more recent years, the number of individuals claiming asylum has fallen back with 3700 applications in 2018 (up

⁵Population and Migration Estimates, CSO statistical release, 28 August 2018.

⁶CSO, Census 2016 Summary Results.

⁷https://www.cso.ie/multiquicktables/quickTables.aspx?id=pea18_2

Table 15.1 Indicators of migrant integration in Ireland

Ireland (2014)	Value (0–100)
Overall score (with health)	52
Labour market mobility	38
Family Reunion	40
Education	30
Health	58
Political participation	73
Permanent residence	49
Access to nationality	59
Anti-discrimination	66

Source: <http://mipex.eu/ireland>

from 2900 in 2017). Eurostat reports that in 2017, 3058 third-country nationals received authorisation to reside in Ireland for family reasons (for the first time).⁸

Irish immigration policy more generally has tended to develop on an *ad hoc* basis without a very explicit policy or legal framework (for an overview of recent trends in immigration and asylum, see Sheridan 2018). However, Ireland has recently adopted a Migration Integration Strategy and an annual report monitoring integration presents a picture which is not disfavoured as to the successful integration of many migrants (McGinnity et al. 2018). As the report points out, however, migrants are a diverse group and some groups are much more likely to face unemployment, higher rates of poverty and racism. In a comparative context, the Migrant Integration Policy Index (MIPEX) shows that Ireland performs well on some indicators of integration (especially political participation), but poorly on others such as education, labour market mobility and family reunification (for a more in-depth discussion, see Arnold and Quinn 2017) (Table 15.1).

15.2 Migration and Social Protection in Ireland

Irish social welfare law does not contain any nationality requirements. Nor does it generally contain 'duration of residence' requirements. The key issue in relation to access to benefits for non-nationals is the habitual residence condition (HRC) which applies to social assistance payments and child benefit (although it does not apply to social insurance benefits). In addition, although not part of social welfare law, many non-nationals are granted residence statuses which require that they do not claim social welfare benefits.

The fact that there is no general residence requirement for social insurance payments means that Irish nationals may qualify for long-term benefits (such as

⁸Eurostat, First permits issued for family reasons by reason, length of validity and citizenship.

contributory state pension) even if they are living abroad (as long as they satisfy the contribution and other requirements). The same applies in principle to non-nationals (both EU and non-EU) although in practice such persons are less likely to have the relevant Irish social insurance contributions. The following social insurance payments can be paid abroad:

- [Invalidity Pension](#)
- [State Pension \(Contributory\)](#)
- [Disablement Benefit](#) under the occupational injuries scheme
- [Guardian's Payment \(Contributory\)](#)
- [Widow's, Widower's or Surviving Civil Partner's \(Contributory\) Pension](#)
- [Death Benefits under the Occupational Injury Benefit Scheme](#)
- [Bereavement Grant](#).

There are generally specific disqualifications in the case of 'absence from the state' in relation to short-term social insurance benefits (such as illness benefit or jobseekers benefit) so that payment abroad is generally not allowed, subject of course to specific EU rules. The rules concerning specific provisions are discussed below. However, in general, people on social welfare are allowed to take up to 2 weeks holidays abroad each year and the social welfare payment will continue to be paid.⁹

Prior to 1 May 2004, there was no long-term 'residence' requirement in most areas of Irish social welfare law. Persons who were resident outside the country were disqualified for certain benefits, in particular means tested payments. However, individuals moving from another country qualified for benefits more or less immediately (subject to satisfying the other relevant conditions). In the run-up to the accession of the eight new Member States from Central and Eastern Europe (in addition to Malta and Cyprus), a number of EU countries exercised their rights under the accession treaties to impose restrictions on the immigration of workers from the new Member States for a period of up to seven years. Ireland did not do so. However, in the Social Welfare (Miscellaneous Provisions) Act, 2004, Ireland introduced a new habitual residence condition (HRC) in relation to all means tested allowances and child benefit. Social insurance benefits remain payable without any such restrictions.¹⁰

The relevant HRC provisions are now contained in Section 246 of the Social Welfare (Consolidation) Act 2005 and in each of the relevant chapters concerning the payments affected. These provisions require individuals to be 'habitually resident' in Ireland in order to be eligible to apply for jobseeker's allowance, state pension (non-contributory), widow(er)s pension, guardians payment (non-contributory), one parent family payment, carer's allowance, disability allowance, supplementary

⁹There are a number of exceptions in relation to specific schemes which affect very few people and are not discussed here.

¹⁰The requirement of a certain minimum number of contributions to qualify for insurance benefits may mean that migrants will not immediately qualify for benefits although persons covered by EU law may be able to aggregate contributions paid in other states in order to qualify.

welfare allowance (except exceptional needs payments and urgent needs payments), and child benefit.

Section 246(4) of the Social Welfare (Consolidation) Act, 2005 (as amended) (the Act) states that officers should take into consideration all the circumstance of the case when determining if a person is habitually resident in Ireland, including: a) the length and continuity of residence in the State or in any other particular country; b) the length and purpose of any absence from Ireland; c) the nature and pattern of the person's employment; d) the person's main centre of interest, and; e) the future intentions of the person concerned as they appear from all the circumstances.

In 2009 the Oireachtas [Parliament] made it a requirement that, in order to be habitually resident, a person must have a right to reside (RtR) in Ireland. S. 246 (5) of the Act now states that 'a person who does not have a right to reside in the State shall not, for the purposes of [the] Act, be regarded as being habitually resident in the State.' S. 246(6) goes on to list various categories of persons – including Irish citizens, a person who has a right to enter and reside in Ireland under various EU laws, and refugees in respect of whom a declaration of refugee status is in force – who are to be taken to have a right to reside in Ireland. Conversely, s. 246(7) provides that various persons shall not be regarded as being habitually resident in the State for the purpose of the Act. Note that this applies to habitual residence in general and does not relate only to rights of residence. These include asylum seekers in respect of whom a declaration of refugee status has not (yet) been granted (s. 246(7)(a)).

The HRC applies to both nationals and non-nationals although it will, of course, be easier in many cases for Irish nationals to satisfy the HRC as they automatically have a right to reside in Ireland whereas non-nationals do not. The HRC is, of course, subject to EU law so that if a person is entitled to a benefit under EU law (e.g. where Ireland is the competent Member State) then EU law overrides the HRC.

The structure of the Irish system means that in relation to most social benefits, resident nationals and foreigners are formally treated the same. However, in the case of those payments covered by the HRC, in practice it will generally be more difficult for an EU national to qualify for a benefit than for an Irish national to do so, and more difficult again for a non-EU national to do so. However, there is no direct discrimination against non-nationals and the Irish courts have held that the HRC is not in breach of Irish or EU law.¹¹

One other area in which the law might affect entitlement to benefits is that, in many cases, third-country nationals will require work permits in order to work legally in Ireland. It is understood that foreign nationals who require an employment permit under the Employment Permits Act 2003 (as amended) but who are in employment without such a permit are *not* considered to be insurable.¹² Therefore, they would be unable to build up an entitlement to a contributory benefit.

¹¹ *Munteanu v Minister for Social Protection*, [2017] IEHC 161; [2019] IECA 236.

¹² <http://www.welfare.ie/en/Pages/Scope%2D%2D-Insurability-of-Employment.aspx>

15.2.1 Unemployment

There are two main unemployment payments: contributory jobseeker's benefit and mean-tested jobseeker's allowance. To qualify for Jobseeker's Benefit (JB), one must be aged under 66 and be unemployed; have had a substantial loss of employment; be capable of work; be available for and genuinely seeking work; and satisfy the contribution requirements.

To qualify for Jobseeker's Benefit, one must have paid Class A, H or P PRSI contributions. Class A is the category paid by most private sector employees. Class H is paid by soldiers, reservists and temporary army nurses, who do not qualify for Jobseeker's Benefit until they have left the army. Class P applies to sharefishermen or sharefisherwomen classified as self-employed. To qualify, a person must have paid:

- At least 104 weeks of PRSI; and
- 39 weeks of PRSI paid or credited in the relevant tax year; or
- 26 weeks of PRSI paid in the relevant tax year and 26 weeks of PRSI paid in the tax year immediately before the relevant tax year.

The relevant tax year is the second-last complete tax year before the year in which the claim is made. So, for claims made in 2018, the relevant tax year is 2016. Jobseeker's Benefit may be paid for up to 156 or 234 days of unemployment depending on the total contributions paid since commencing employment. A person with 260 or more contributions paid may qualify for 234 days and a person with less than 260 total contributions paid will qualify for 156 days. A separate Jobseeker's Benefit (Self-Employed) was introduced in November 2019.

The rules for the means-tested allowance are similar but this is also subject to the HRC. As noted, to be entitled to either payment a person must be available for work. DEASP interprets this as meaning that the person must be legally able to work. Thus, a non-EU national who does not have a work permit will not be considered to be available for work and would not qualify for a payment.

15.2.2 Health Care

In terms of entitlement to health care, the Health Act 1970 draws a distinction between persons having 'full eligibility' for services (Category 1) and those with 'limited eligibility' (Category 2). Persons with 'full eligibility' are commonly described under the non-statutory name of medical-card holders. They are defined as 'persons who, in the opinion of the Health Services Executive are unable without undue hardship to arrange general practitioner medical and surgical services for themselves and their dependants'. In assessing who qualifies for this category, the Health Service Executive takes into consideration the person's overall financial situation. In practice, the determination of who is entitled to 'full eligibility' is

implemented by departmental circulars. Those with medical cards Category 1 gain access to a range of health and social care services without charge (or subject to limited charges), including GP care, and inpatient and outpatient hospital care. However, due to long waits for some services (outpatient appointments, planned hospital care, etc.), while there is an entitlement to care, people may be unable to access care within a reasonable period of time. People in Category 1 get access to all prescription drugs subject to limited charges. Those without medical cards (category 2) either access public hospital care free of charge (public outpatient appointment) or subject to a statutory charge. However, most have to pay the full cost of visiting a GP and the initial proportion of prescription costs.

The Health Acts limits entitlement to health care to persons who are 'ordinarily resident in the State'. The concept of ordinary residence has received relatively little judicial consideration in Ireland – especially in a health and social welfare context. Section 4 of the 1991 Act allows the Minister to issue guidelines to the HSE to assist it in deciding whether or not a person is ordinarily resident in the State. These guidelines provide that a person will normally be regarded as 'ordinarily resident' in Ireland if he/she satisfies the HSE that it is his/her intention to remain in Ireland for a minimum period of one year. The person's dependants must also satisfy the criterion of 'ordinary residence' in order to establish eligibility for health services.

However, the law provides that a person who is not ordinarily resident in Ireland but who, in relation to a particular service which is available to persons with full eligibility, is considered to be unable, without undue hardship, to provide that service for himself/herself or the dependants shall be granted full eligibility for that service. Thus a non-resident person may be granted full eligibility in a case of hardship. The 'ordinary residence' rule is, of course, subject to the provisions of EU law. In addition, persons may be entitled to seek health care treatment abroad under EU law.

Unlike many EU countries in Ireland, cash benefits related to sickness and disability operate entirely separately from the health care system. There are three main sickness and disability benefits: short-term illness benefit (for those incapable of work), long-term invalidity pension (for those permanently incapable of work), and the means-tested disability allowance. In the case of illness benefit, a person must satisfy the following two conditions to qualify for payment: s/he must have at least 104 weeks of PRSI contributions paid since starting work and a record of contributions in a recent tax year. In the case of invalidity pensions, the claimant must have 260 paid PRSI contributions (Class A, E, H or P) and 48 contributions paid (Class A, E, H or P) or credited in the last or second last complete contribution year before the claim. In general, the long-term invalidity pension may be payable abroad but, subject to specific EU rules, the other illness and disability benefits are generally only payable in Ireland.

15.2.3 Pensions

The Irish pension system provides for a state pension (contributory) and a means-tested state pension (non-contributory). Pension age is currently 66 but is being raised on a phased basis to 68 (to age 67 from 2021, age 68 from 2028). There is also a specific widow's and widower's pension (both contributory and non-contributory). In practice, most of the people in receipt of these pensions are over pension age.

To qualify for a State Pension (contributory), one must be aged 66 or over and have paid Class A, E, F, G, H, N or S social insurance contributions. A person must have paid social insurance contributions before a certain age (generally 56), have a certain number of social insurance contributions paid (currently 520) and have a certain average number of contributions over the years since s/he first entered insurance – the rate of pension depends on the average number of contributions.

In general, the contributory pensions can be exported but non-contributory pensions cannot. The HRC applies to the non-contributory pensions and, thus, a person who is not habitually resident in Ireland as defined above (including having a right to reside in Ireland) will not qualify for pension. There do not appear to be any other provisions which would specifically affect non-nationals.

15.2.4 Family Benefits

In the case of family benefits, Ireland has a maternity benefit (payable for 26 weeks), a paternity benefit (payable for 2 weeks) and is in the course of introducing a parental benefit (payable from November 2019). These are all insurance based payments and the HRC will not apply. Therefore, there are no specific obstacles to non-nationals qualifying for these benefits if they satisfy the relevant conditions. Maternity benefit may be payable abroad in EU/EEA countries (under EU rules) and for up to 6 weeks in other countries.

The PRSI contributions can be from both employment or self-employment – the PRSI classes that count for Maternity Benefit are A, E, H and S (self-employed). To qualify for the benefit, employed persons must have at least 39 weeks of PRSI paid in the last 12-month period; or at least 39 weeks of PRSI paid since first starting work and at least 39 weeks of PRSI paid or credited in the relevant tax year or in the tax year immediately following the relevant tax year; or at least 26 weeks of PRSI paid in the relevant tax year and at least 26 weeks PRSI paid in the tax year immediately before the relevant tax year.

In the case of child benefit (a universal family benefit payable to all persons with children), the HRC does apply (subject to EU law). In addition, and again subject to EU law, the child must be ordinarily resident in Ireland. Therefore, it will in general be more difficult for non-nationals to qualify for child benefit. Irish nationals living outside Ireland will not generally qualify. In addition, as noted above, asylum

seekers are specifically excluded from those who are habitually resident in Ireland. Therefore, asylum seekers (almost inevitably non-EU nationals) cannot qualify for child benefit (or other payments subject to HRC).

15.2.5 Guaranteed Minimum Resources

The Irish minimum income payment is known as supplementary welfare allowance (SWA). This is a residual (means-tested) payment payable to persons who do not qualify for one of the other conditional payments in the social welfare code (and who are not in full-time employment or study). It is also payable to persons pending a decision on their claim for a mainstream payment and on an ongoing basis where there is no such entitlement. It is not time-limited. The SWA system provides for additional weekly supplements in respect of costs such as housing and diet, for urgent needs payments and for once-off exceptional needs payments.

The HRC applies to SWA (except exceptional needs payments and urgent needs payments). Thus while non-nationals (both EU and non-EU) are generally eligible for SWA, they may not qualify for it due to the HRC and claiming SWA may indicate that an EU national does not have a right to reside. In addition, asylum seekers (who are not considered to be habitually resident) are not entitled to SWA. They are instead provided for by a system of 'direct provision' (DP) which involves the provision of accommodation, food and other needs. There is also a small cash payment for people in DP.

15.2.6 Bilateral Social Security Agreements

Ireland has bilateral Social Security Agreements with Canada, the Republic of Korea, Australia, the United States of America, New Zealand, Québec, Switzerland (largely superseded by EC Regulations), Japan and the United Kingdom covering those parts of the United Kingdom that are outside of the European Union at the time of writing i.e. Isle of Man and the Channel Islands. These agreements cover the main (non-EU) countries where Irish nationals emigrate (USA, Canada and Australia) and the country which is the largest source of non-EU migrants (i.e. USA) but not Brazil, India and China (which are the next largest sources of such migrants). These agreements protect the pension entitlements of Irish people who go to work in these countries and they protect nationals of those countries who work in Ireland. They allow periods of Irish social insurance and, depending on the legislation in the other country, periods of residence/contributions which are completed in the second country to be taken into account for determining workers' entitlement to pensions. They are generally based on the approach adopted in the EU co-ordination regulations and include specific arrangements for posted workers. The Agreements cover long-term payments (state pension, invalidity pension, widow's/

widower's pension, guardian's payment), without covering unemployment or short-term illness. Ireland and the UK have also agreed a new bilateral agreement which will take effect when the transition period of the UK departure from the EU expires at the end of 2020.

These agreements do not cover health care (in-kind). However, Ireland and Australia have a reciprocal health agreement. This means that Australian visitors to Ireland are entitled to receive emergency public hospital treatment subject to the normal charges for non-medical card holders in Ireland. They are also entitled to assistance towards the cost of prescribed drugs and medicines on the same basis as people normally resident in Ireland. Similarly, Irish visitors to Australia will receive emergency services and assistance towards the cost of prescribed drugs and medicines on the same basis as persons ordinarily resident in Australia.

15.2.7 *Obstacles and Sanctions*

As discussed, the main obstacle in the social protection system to access to benefits for non-nationals is the HRC. Table 15.2 shows the total number of claimants disqualified on the basis of the HRC, with a breakdown by nationality. As observed, after a peak in 2009, the numbers of individuals disqualified from accessing social benefits have declined significantly. However, those affected are mainly non-nationals.

Table 15.3 also shows the number of appeals and their outcomes, indicating that the number of appeals has declined in recent years and they are generally more likely to be successful than in the previous period.

Claiming a means-tested social welfare payment can also impact on a person's right to reside, on family reunification and on naturalization as it may indicate that a person is not self-sufficient. However, it does not appear that there has been any quantitative study of the extent to which this occurs. In addition, a number of immigration statuses for third-country nationals require that a person does not claim a social welfare benefit.

Table 15.2 Claims disallowed under Habitual Residence Condition, 2005–2015

Nationalities	2005	2006	2007	2008	2009	2010 ^a	2011	2012 ^b	2013	2014	2015**
Irish	N/A	N/A	N/A	N/A	N/A	650	455	428	264	240	N/A
Other	N/A	N/A	N/A	N/A	N/A	5256	4039	2389	2580	2318	N/A
Total	4599	4361	5123	6297	10,582	5906	4494	2817	2844	2558	1380

Source: Oireachtas [Parliament] Debates, 25 October 2016

^aFigures for 2010 are incomplete due to industrial action

^bThe figures for 2012–2015 do not contain Carers Allowance

Table 15.3 HRC appeals finalised 2005–2016

Year	Total	Allowed	Part allowed	Disallowed	Withdrawn
2005	535	216	4	315	0
2006	705	255	21	427	2
2007	699	182	8	507	2
2008	889	162	16	710	1
2009	1219	254	39	923	3
2010	3817	625	77	3111	4
2011	4551	1799	279	2470	3
2012	1827	846	127	844	10
2013	1191	441	64	683	3
2014	1171	448	56	665	2
2015	886	342	31	510	3
2016	712	251	26	435	0
TOTAL	18,202	5821	748	11,600	33

Source: Oireachtas [Parliament] Debates, 21 February 2017

15.3 Conclusions

Historically Ireland had low levels of immigration from other countries and the social welfare system did not include any nationality or, in most cases, residence requirements. However, given the expansion of the EU in 2004 and concerns about a significant increase in migrant flows, Ireland followed the earlier UK example by introducing a habitual residence test. Subsequently, in 2009, Ireland again followed the UK approach by introducing a right to reside as part of the HRC. This forms the main obstacle to non-nationals qualifying for means-tested benefits and child benefit. There has been considerable debate about the HRC but this has only led to minor changes in the law and clarification of how the HRC is to be applied. As we have seen, claiming a benefit may also affect a person's access to family reunification and a number of immigration statuses require that one does not claim social welfare. Studies of the impact of the HRC are set out in Pavee Point (2011); Crosscare et al. (2012); and SAFE Ireland (2013).

Concerns about a significant increase in asylum seekers coming to Ireland in the late 1990s and early 2000s led to the introduction of a system of direct provision (see Working Group 2015). This has meant that asylum seekers are provided for separately to the general social welfare system.

In the case of health care, there has been a long-standing rule that a person must be ordinarily resident in Ireland (subject to limited exceptions). The operation of the health care system is rather opaque and it is entirely unclear how this is implemented in practice (see also Quinn et al. 2014). There are very few studies of this topic (see, e.g. Migge and Gilmartin 2011; Stan 2015).

There is not a great deal of debate about these issues at present and opposition to the HRC appears to have abated somewhat as its application has been refined by DEASP and it has become more routine. Legal challenges to the HRC itself have

been unsuccessful although there have been a number of more successful challenges concerning whether or not a person has a right to reside under EU law.¹³

So, on the one hand, there is little discussion about relaxing the current rules but, on the other, there do not appear to be any concrete proposals to restrict further access of non-nationals to benefits. While there are, from time to time, headlines about abuse of the Irish social welfare system by non-nationals, this has not reached the same salience in societal and political debates as in other countries such as the United Kingdom.

Overall, Irish social welfare policy on migrants has developed not from a social protection perspective but rather from a labour market and immigration control approach. On the one hand, there has been a desire to encourage labour migration into Ireland but, on the other, a desire to discourage unwanted ‘economic’ migration (i.e. migration which may be economically justified from the migrant’s perspective but is not considered to be so from the government’s perspective). Given the absence of a comprehensive immigration framework, the limited capacity of the immigration authorities to enforce the law, and the practical difficulties in doing so (e.g. in enforcing deportation), the social welfare system has been used to discourage unwanted immigration by removing (or limiting) entitlement to social protection. Of course, this took place within the context of EU rules so that changes which applied to EU nationals (such as the HRC) had to be EU-law compliant. In contrast, changes applying to third country nationals (such as the Direct Provision scheme) are subject to challenge under the Irish Constitution and/or the European Convention on Human Rights and these provisions have generally been upheld in the Irish courts.¹⁴

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References

- Arnold, S., & Quinn, E. (2017). *Family reunification of non-EU nationals in Ireland*. Dublin: ESRI.
- Cousins, M. (2005). *Explaining the Irish welfare state: An historical, comparative and political analysis*. New York: Edwin Mellen.
- Cousins, M. (2016). The Irish social protection system: Change in comparative context. In M. P. Murphy & F. Dukelow (Eds.), *The Irish welfare state in the twenty-first century: Challenges and change*. London: Palgrave Macmillan.

¹³ C-442/16 – Gusa v Minister for Social Protection (2017).

¹⁴ C.A. -v- Minister for Justice and Equality [2014] IEHC 532.

- Crosscare, Doras Luimní & Nasc (2012). Person or number? Issues faced by immigrants accessing social protection: A 'snapshot' of 54 cases presenting to NGOs across Ireland. Nasc, Crosscare Migrant Project and Doras Luimní. <http://dorasluimni.org/wp-content/uploads/2017/07/person-or-numberreport.pdf>. Accessed 25 February 2019.
- McCashin, A. (2004). *Social security in Ireland*. Dublin: Gill and Macmillan.
- McCashin, A. (2019). *Continuity and change in the welfare state: Social security in the Republic of Ireland*. London: Palgrave Macmillan.
- McGinnity, F., Fahey, É., Quinn, E., Arnold, S., Maître, B., & O'Connell, P. (2018). *Monitoring report on integration 2018*. Dublin: ESRI.
- Migge, B., & Gilmartin, M. (2011). Migrants and healthcare: Investigating patient mobility among migrants in Ireland. *Health & Place*, 17(5), 1144–1149.
- Pavee Point. (2011). Impact of the Habitual Residence Condition (HRC) on Travellers and Roma. Pavee Point <https://www.lenus.ie/bitstream/handle/10147/143240/PositPapImpactHRCOnTravellersRoma.pdf;jsessionid=74E9C7196C049BF6E01A852C438018FE?sequence=1>. Accessed 25 February 2019.
- Quinn, E., Gusciute, E., Barrett, A., & Joyce, C. (2014). *Migrant access to social security and healthcare: Policies and practice in Ireland*. Dublin: ESRI.
- SAFE Ireland. (2013). Report on the impact of the Habitual Residence Condition on women seeking protection and safety for themselves and their children from a domestic violence perpetrator. SAFE Ireland <https://www.safeireland.ie/wp-content/uploads/SI-Impact-Habitual-Residency-Condition-Sept2013.pdf>. Accessed 25 February 2019.
- Sheridan, A. (2018). *Annual report on migration and asylum 2017: Ireland*. Dublin: ESRI.
- Stan, S. (2015). Transnational healthcare practices of Romanian migrants in Ireland: Inequalities of access and the privatisation of healthcare services in Europe. *Social Science & Medicine*, 124, 346–355.
- Working Group. (2015). Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. [Place of publication and publisher not specified].

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