

# Life with Dignity: Minimum Income Support in Ireland

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## I. Introduction

There is no doubt that the protection of minimum income in Ireland is a social priority. The at-risk-of-poverty rate in Ireland is currently 13.1%, which indicates that a significant percentage of the population has nominal equivalised disposable incomes which are under the at-risk-of-poverty threshold (defined as “60% of the median nominal equivalised disposable income”)<sup>1</sup>. Those most at risk are those who are unemployed (35.2%), those who cannot work due to health-related problems (35.2%), those who are over the age of 65 years (19%), and those who live alone (age 65+ 33.6%, under 65 years 32%). 17.7% of people experience enforced deprivation in Ireland, which is defined by reference to eleven types of deprivation<sup>2</sup> and

1 Central Statistics Office, ‘Survey on Income and Living Conditions 2022’ < <https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionsilc2022/poverty/> > accessed 05.12.2024.

2 These include being: unable to afford to replace any worn out furniture, unable to have family or friends for a drink or a meal once a month, unable to afford a morning, afternoon or evening out in the last fortnight, unable to afford new (not second-hand)

5.3% of people are living in consistent poverty.<sup>3</sup> This measure is correlated to employment status with the rate being highest amongst those who are unemployed and those who cannot work due to ill-health.<sup>4</sup> Therefore, the need for a minimum income protection is real but as this chapter reveals is not constitutionally protected and while legislation exists, is not indexed or benchmarked and is subject to both economic and non-economic conditions which can impact on its effectiveness.

This chapter provides an overview of the legal (both constitutional and legislative) protections of minimum income in Ireland, followed by a more detailed excursus into the existing protections and their subtleties. The chapter analyses four specific aspects of minimum income protections, namely the benefit and its adaptation, the economic and non-economic conditions attached to such protection and the importance of activation in the development of social protection mechanisms. The main purpose of social protection in Ireland today (for those of working age) is to mitigate against social risks i.e. to replace income temporarily lost due to periods of unemployment, injury, disability, sickness or maternity.<sup>5</sup> Additionally, minimum income in old age is secured through either contributory or assistance-based schemes.

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clothes, having been without heating at some stage in the past year, unable to keep the home adequately warm, unable to afford to buy presents for family or friends in the past year, unable to afford a roast joint (or equivalent) once a week, unable to afford two pairs of strong shoes, unable to afford a warm waterproof coat, unable to afford a meal with meat, chicken, fish (or vegetarian equivalent) every second day. Central Statistics Office, 'Survey on Income and Living Conditions: Enforced Deprivation 2022' (23 November 2022) < <https://www.cso.ie/en/releasesandpublications/ep/p-silced/surveyonincomeandlivingconditionssilcenforceddeprivation2022/deprivationitemss/> > accessed 21.11.2024.

3 Defined as being at risk of poverty and experiencing enforced deprivation. See Central Statistics Office, 'Survey on Income and Living Conditions 2022' < <https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/poverty/> > accessed 05.12.2024.

4 Central Statistics Office, 'Survey on Income and Living Conditions 2022' < <https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/poverty/> > accessed 05.12.2024.

5 Commission on Taxation and Welfare Secretariat, 'Introduction to the Irish Social Protection System' (18 June 2021), p. 6.

## II. Overview

### 1. Normative Background

#### a) Historical Context

Social protection in Ireland has suffered in some ways from its rather non-traditional start. Grappling with the management, establishment, and development of national priorities in the aftermath of independence from the United Kingdom, the official provision of social protection was deferred, and existing systems remained in place to serve the needs of the newly independent population. This meant that colonial legacies, such as the British Poor Laws, provided the new Irish citizens with modest rates of social protection with low contributions. This was supplemented by support from the Catholic Church in maintaining certain social services. It was not until 1947 that the Department of Social Welfare was finally established and the beginnings of the modern social protection principles we see today were expounded.

The implications of this turbulent beginning are that the Irish social protection system has been impacted by many conflicting influences in its development: a Catholic focus on charity and voluntarism, an Anglo-Saxon liberal focus on market privilege and individual responsibility and, upon joining the EU in 1972, the EU ideals of income replacement, social insurance and comprehensive public services. The effect of this confluence of, often contradictory, ideologies has been that the system of social protection in Ireland has developed in a rather piecemeal way, developing hybrid forms of protection which reflect differing rationales and ideologies.<sup>6</sup>

#### b) Constitutional Law and Constitutional Case Law

Constitutional protections in Ireland do not expressly address issues of minimum income support.<sup>7</sup> This is not unusual as many constitutional documents shy away from such specificities. The Irish Constitution is no different and there are no express rights to social protection arising from it.

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6 M. Cousins and G. Whyte, *Social Protection Law in Ireland* (3<sup>rd</sup> ed. Kluwer Law International 2021).

7 Ibid., para. 31.

Impliedly, it is possible to ground such a claim on other constitutional articles. The basis for these arguments could arise from Article 40.3 (the right to dignity), Article 41.2.1 (a gender specific provision protecting the role of mothers in the home) and, potentially, Article 43 (the right to property). All these constitutional provisions could provide a basis for a potential constitutional right to minimum income. However, there are significant obstacles to such claims.

Firstly, while Article 40.3 provides that the State guarantees “*in its laws to respect, and, as far as practicable to defend and vindicate the personal rights of the citizen*”, which has been held to include a right to dignity<sup>8</sup>, such a right is mired in functionality. This means that the right to dignity has only ever been interpreted as a right to be treated with dignity<sup>9</sup> which would be an uneasy foundation for a right to be provided with minimum income. Additionally, even if it could be invoked, this right is not absolute and is subject to justification on a number of grounds including the common good, protection of public order and morality, the protection of the rights and freedoms of others and the best interests of children or vulnerable persons.<sup>10</sup> Where issues involving legislative budgetary considerations have arisen in the past, the judiciary have traditionally shied away from interfering in these decisions given that the legislature is often in a better position to assess what might be in the common good. In fact, the enforcement of socio-economic rights has been stymied by such rationales. For example, in the case of *O’Reilly v Limerick Corporation*<sup>11</sup>, it was held that socio-economic claims should be “*advanced in Leinster House rather than in the Four Courts*”, a nod to the fact that this is in effect a legislative rather than a judicial matter. Therefore, it is arguable that Article 40.3 and a right to dignity would not be an obvious ground for a claim for minimum income in Ireland.

Secondly, there is a potential claim arising from Article 41.2.2 (recently the subject of an unsuccessful constitutional referendum) which provides that the “*State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their*

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8 E. Dewhurst, ‘Human Dignity in Ireland’, in: P. Becchi and K. Mathis (eds.), *Handbook of Human Dignity in Europe* (Springer 2019), pp. 431–451.

9 High Court, *MX v Health Service Executive* [2012] IEHC 491; *PP v Health Service Executive* [2014] Unreported High Court No. 10792P.

10 E. Dewhurst (n 8), pp. 443–445.

11 High Court, *O’Reilly v Limerick Corporation* [1989] ILRM 181.

*duties in the home*". This could arguably be a basis of social protection and minimum income claim as it imposes a positive (albeit gender specific) duty on the state to ensure that women have sufficient economic support to engage in labour within the home<sup>12</sup>, a potential foundation of a right to social protection. However, the prevailing academic opinion is that such a right is a "protective guarantee"<sup>13</sup> only and unlikely to impose "financial obligations on the State to support mothers in the home given that tax and social welfare impact on public expenditure"<sup>14</sup>. This certainly chimes with the approach of the courts with respect to socio-economic rights already discussed previously.

There is an argument that the right to social protection could be regarded as a property right under Article 43. Cousins<sup>15</sup> notes that while this has not been expressly litigated, there is an argument that if an applicant meets all the eligibility criteria for a social protection payment and is not excluded by any relevant exceptions, then a property right may arise in Irish constitutional law. He bases this assertion on the implication in the Supreme Court decision in *Re Article 26 and the Health Amendment (No 2) Bill 2004*<sup>16</sup> which implied that such a right might be a chose in action which may be actionable as an infringement on the right to property. Whether this could be translated into a right to minimum income though is doubtful. The Supreme Court in *PC v Minister for Social Protection*<sup>17</sup> held that a statutory welfare payment was not a property right as the entitlement could be varied by the legislature. The discretionary and means-tested nature of minimum income requirements may mean that the legislature could argue that the right to a specific quantity of payment is not protected by the property rights in the Constitution being a matter exclusively within the preserve of the legislature.<sup>18</sup>

At a legislative level, the Social Welfare (Consolidation) Act 2005 to the present day, provides for the legislative right to social protection. Addition-

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12 Irish Human Rights and Equality Commission, 'Policy Statement on Article 41.2 of the Constitution of Ireland' (2018), p. 9.

13 The Convention on the Constitution, 'Second Report of the Convention on the Constitution' (2013), pp. 12-13.

14 Ibid., pp. 12-13.

15 M. Cousins and G. Whyte (n 6), para. 33.

16 Supreme Court, *Re Article 26 and the Health Amendment (No 2) Bill 2004* [2005] IESC 7.

17 Supreme Court, *PC v Minister for Social protection* [2018] IESC 57.

18 M. Cousins and G. Whyte (n 6), para. 33.

ally, this legislation is supplemented by Ministerial Regulations which detail the payments to be provided and the specifics of the payments, including definitions and transitional provisions. The Department of Social Protection also issues guidelines on certain aspects relating to the provision and application of social protection.<sup>19</sup> The legislation is guided constitutionally by Article 45 of the Constitution entitled the Directive Principles of Social Policy. Article 45 is non-justiciable but provides that the “*State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life*” and “*pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged*”. In case of *TD v Minister for Education*<sup>20</sup> it was stated that these principles are an “*ingenious method of ensuring that social justice should be achieved while excluding the judiciary from any role in the attainment of that objective*”. Therefore, while not justiciable, they should act as a guide to the legislature on their decision-making in these areas.

### c) International Law and International Case Law

As a dualist state, Ireland incorporated the European Convention on Human Rights into Irish domestic law in 2003.<sup>21</sup> The ECHR is not a “shadow Constitution”<sup>22</sup> but rather the Act provides that courts must attempt to interpret domestic law in line with the ECHR in as far as is possible.<sup>23</sup> However, this only applies to statutory law. The only potential argument which could arise in the Irish context would be in relation to Article 1, Protocol 1. According to the interpretation of this provision by the European Court of Human Rights, Member States have the freedom to decide whether to provide a particular social protection scheme and, more importantly, to set the type and amount of benefits which can be afforded under any particu-

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<sup>19</sup> Ibid., para 33.

<sup>20</sup> Supreme Court, *TD. v Minister for Education* [2001] IESC 101.

<sup>21</sup> European Convention on Human Rights Act 2003.

<sup>22</sup> Department of Justice, Equality and Law Reform 2003 introducing the European Convention on Human Rights Act, see < <https://emn.ie/legislation/european-convention-on-human-rights-act-2003> > accessed 05/12/2024.

<sup>23</sup> European Convention on Human Rights Act 2003, Section 2.

lar scheme.<sup>24</sup> Therefore, there is no minimum level which is imposed by membership of the Council of Europe which could be enforced judicially in Ireland.

#### d) Discretion in Minimum Income Protection

An analysis of the constitutional, legislative and international protections of minimum incomes in Ireland reveals two important points. Firstly, it would require some very creative judicial interpretation to provide a justiciable right to minimum income. Secondly, even where such protections might exist these are tempered by a judicial reluctance to interfere with the democratic legislative process. This in turn impacts on the manner in which social protection in Ireland is determined whether by the legislature or by those who administer social protection. The lack of constitutional and legislative protection coupled with judicial reluctance to interfere with legislative decision-making essentially means that there is a lot of discretion left to both the legislature (which is subject to political machinations) and the administrators of the systems (mainly Deciding Officers within the Department of Social Protection). Such discretion and subjectivity permeate the system and leads to inconsistency, and with that potential inequality. The protections which do exist are essentially too weak to mitigate against these inadequacies.

## 2. Social Benefits

### a) Overall Structure of the System

The system of social protection Ireland, including the right to minimum income, has developed over time into a tripartite model based on three distinct systems: universal benefits, contribution-based and social assistance, with an overarching right to Supplementary Welfare Allowance which is means-tested right to social protection where income (from whatever source) falls below a certain minimum level. Essentially this payment is available where there is no or other income available (subject to the means

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24 European Court of Human Rights, *Sukhanov and Ilchenko v. Ukraine* (2014) Applications Nos. 68385/10 and 71378/10, para. 36; *Fedulov v. Russia* (2019) Application No. 53068/08, para. 66.

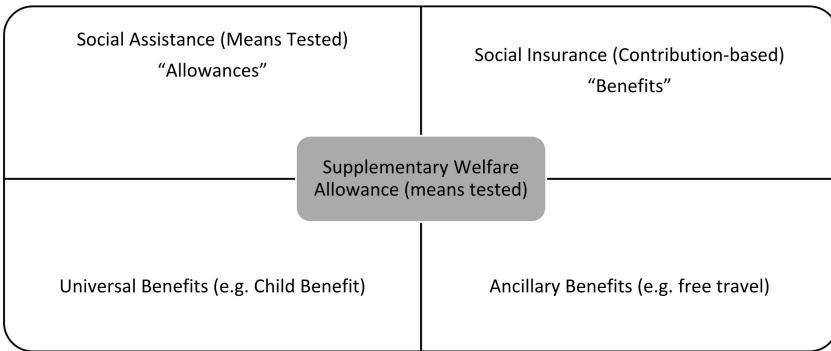
test). Where recipients have an income which is below that of Supplementary Welfare Allowance, they will be given an amount which allows them to be brought to the level of such allowance. Supplementary Welfare Allowance is only available for as long as no other social protection payments are available. Once an applicant becomes entitled to another payment, Supplementary Welfare Allowance is then withdrawn. To a certain respect then, Supplementary Welfare Allowance is only meant as a temporary, stop-gap measure to ensure that each person has a minimum income essentially equivalent to the rate of this allowance. The rate is set each year in the national budget, is not indexed or benchmarked but is a matter of political discretion. Table 1 illustrates how the existing systems in Ireland currently interact.

Social insurance or contribution-based benefits are based on two inter-related principles: contribution and solidarity. The central idea is that individuals contribute during their lifetime when they are economically active which entitles them to benefits in the event of inactivity or retirement. The solidarity principle recognises that there is a “*long-standing social contract between employers, employees, the self-employed and the State. Social insurance contributions are collected over time from income and then redistributed to provide income support for contributors who, at a given point, are facing one of a set of contingencies covered under social insurance (e.g. unemployment, illness, caring responsibilities or reaching pension age)*”<sup>25</sup>. Social assistance payments, on the other hand, are based on ensuring a minimum floor of protection for those who do not satisfy the conditions for a contributory payment. The aim of these provisions is to cover gaps in the social protection system.<sup>26</sup> Finally, universal payments are provided to all persons regardless of contribution or means. They are based on meeting certain criteria but once these are met the payments are made universally. Supplementary welfare allowance is essentially a base minimum income payment which is payable either to those who have no income, or as a top-up to those whose family income falls below the rate of this minimum payment to bring it in line with this basic minimum.

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25 Commission on Taxation and Welfare Secretariat, ‘Irish Social Protection System’ (n 5), p. 7.

26 Ibid., p. 8.



Overall, these benefits, allowances and universal payments are categorical (dependent on individual life circumstances), are flat rate in nature and are provided as low-level cash transfers with additional top-ups. They are also supported by ancillary services, many of which are underdeveloped in many respects. Education is generally free, but some schools do request voluntary contributions from parents/guardians in respect of their children to cover certain school costs or to provide additional services. Healthcare is a hybrid system with 47% of the population relying on private health insurance<sup>27</sup> while the rest are entitled to either free GP or hospital care or both (this is generally means-tested except for those over 70 or under 18 years). Childcare is a persistent issue because of a '*lack of affordable, accessible and available childcare provision*'<sup>28</sup>. The National Childcare Scheme has alleviated this to some extent, but it still remains a barrier for many working parents, particularly women. There is an increasing reliance also on Housing Assistance Payment, Rental Accommodation Scheme and Rent Supplement due to the lack of affordable housing in Ireland.

Table 2 outlines the different payments available in Ireland and whether they are insurance-based, universal or assistance-based.

27 Statista, 'Share of population with private health insurance coverage in Ireland from 2012 to 2023' (26 April 2024) < <https://www.statista.com/statistics/1399880/private-health-insured-share-in-ireland/#:~:text=In%202021%2C%2047%20percent%20of,Ireland%20from%202002%20to%202021>> accessed 21.11.2024.

28 National Economic and Social Council, 'The Future of the Irish Social Welfare System: Participation and Protection' (November 2020), p. 24.

| Universal     | Contribution-Based                                                                                                                                                                          | Assistance-Based                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Child Benefit | State Pension (Contributory)<br>Widow's, Widower's and Surviving Civil Partner's Contributory Pension<br>Invalidity Pension<br>Illness Benefit<br>Job Seeker's Benefit<br>Maternity Benefit | Disability Allowance<br>Job Seeker's Allowance<br>State Pension (Non-Contributory)<br>Carer's Allowance<br>One-Parent Family Payment<br>Family Income Supplement/Working Family Payment<br>Housing Assistance Payment / Rent Supplement<br>Supplementary Welfare Allowance) (temporary until a claim for another social protection payment is confirmed – it can be combined with other allowances but only as far as it does not exceed the rate of Supplementary Welfare Allowance)<br>School supports<br>Fuel Allowance |

## b) Old-Age Protection

With respect to older persons over the retirement age in Ireland (currently 66 years), the State Pension (Non-Contributory) is available. This is a means-tested social assistance payment financed from general taxation. The means test includes an assessment of both cash income and capital (excluding the personal home). If a person is entitled to a State Pension (Contributory), funded from their national insurance contributions over many years, they cannot also claim a State Pension (Non-Contributory). However, some individuals with limited contributions may decide to forfeit their State Pension (Contributory) in favour of the non-contributory payment where it is more financially lucrative to do so. In addition, to the State Pension (Non-Contributory) or a low-rate State Pension (Contributory) certain social protection payments are also available which are generally means-tested. This so-called Basic Income Support in Old Age includes payments such as Rent Supplement, Living Alone Increase, Household Benefits Package, Free Travel Pass, Fuel Allowance, Island Increase and Centenarian's Payment.

### c) Protection for Job Seekers

Individuals who are unemployed and seeking work can apply for the contribution-based job seeker's benefit or for the assistance-based job seeker's allowance, which is means-tested. The job seeker's benefit is paid for 6 or 9 months, depending on the previous contribution period. If a recipient is entitled to contributory benefit, they will be able to apply for the allowance once their payment period has ended. Moreover, some individuals who are only entitled to a reduced rate of job seeker's benefit<sup>29</sup> may decide to apply for job seeker's allowance right away.

### d) Uptake

The general uptake of all social protection payments is significant. The Irish State spent €24.6 billion in 2022 on social protection payments, over half of which (€12.8 billion) was spent on social assistance payments. Pensions were naturally the highest proportion of this expenditure (38.2%), with working age supports (15.3%), illness, disability and caring payments (21.6%), universal child benefit payments (11.6%) and supplementary welfare payments (4.5%) accounting for the majority of the rest of the expenditure.<sup>30</sup> Almost 65% of the population were beneficiaries of the social protection system in 2022.<sup>31</sup> When examining how this transfers to households, it is estimated by the Central Statistics Office that 14.8% of gross income per household per week arises from social transfers.<sup>32</sup>

## III. Analysis

The technical administration of the social protection system in Ireland is complex but is based on a rationale of providing minimum floors of

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29 Recipients with less than 300 euros weekly earnings see table 4.

30 Department of Social Protection, 'Statistical Information on Social Welfare Services 2022' (2022), p. 11 < <https://www.gov.ie/pdf/?file=https://assets.gov.ie/262944/3bdd325b-db94-4daf-90c3-b6c00682a7d9.pdf#page=null> > accessed 21.11.2024.

31 Ibid., p. 24.

32 Central Statistics Office, 'Survey on Income and Living Conditions 2022. Household Income' (22 February 2022) < <https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/householdincome/> > accessed 21.11.2024.

protection. As such, means-testing is commonplace (outside of the insurance-based system) and non-economic conditions are also attached to many payments. Activation is a common goal of work-related payments, but this has not yet filtered into other social protection payments. There is no indexation or benchmarking of social protection payments, and this has had the effect of reducing the effectiveness of these payments in meeting their basic functions as a minimum floor of protection, especially during a cost-of-living crisis. This section reviews the benefits and adaptation of social protection payments, the economic and non-economic conditions attached to such payments and an assessment of functionality.

## 1. Benefits and Adaptation

The rationales for social protection in Ireland are twofold: (a) providing a minimum floor of protection for those who may need support due to a certain life situation (such as disability or unemployment) via social assistance which is generally means-tested and (b) providing solidarity for those who have contributed to social protection systems at economically active points in their lives via contribution-based social benefits. There is also the universal child benefit which is related to individual circumstances.

The main *social assistance payments* and their personal weekly rates (excluding top-ups) are:

Table 3

| Allowances (non-insurance-based) | Personal rate per week                                                                                                                                                                     |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Disability Allowance             | €232 per week                                                                                                                                                                              |
| Job Seeker's Allowance           | €232 (over the age of 25)<br>€141.70 (18-25 years)                                                                                                                                         |
| State Pension (Non-Contributory) | €266 (66-80 years)<br>€276 (80+ years)                                                                                                                                                     |
| Carer's Allowance                | €248 (under 66 years caring for 1 person)<br>€372 (under 66 years caring for 2 or more persons)<br>€286 (over 66 years caring for 1 person)<br>€429 (over 66 caring for 2 or more persons) |
| One-Parent Family Payment        | €232                                                                                                                                                                                       |

| <b>Allowances (non-insurance-based)</b> | <b>Personal rate per week</b>                                                                                                                                                                                          |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Working Family Payment                  | This payment provides 60% of the difference between the working family payment income limit for your family size and your assessable income.                                                                           |
| Rent Supplement                         | Amount paid is based on ensuring that income, after paying rent, does not fall below a minimum level.                                                                                                                  |
| Supplementary Welfare Allowance         | €230 individuals above 18 and living independently<br>€141.70 (18-24 and not living independently)<br>Top-ups are available for qualified adults (at a rate of €154), children under 12 (€46) and those over 12 (€54). |
| School supports                         | Rates and supports available depend on each situation                                                                                                                                                                  |
| Fuel Allowance                          | €33 for 28 weeks per year                                                                                                                                                                                              |

The main *contribution-based payments* and the weekly personal rates (excluding top-ups) are:

*Table 4*

| <b>Contribution-based benefits</b>                                    | <b>Personal rate per week</b>                                                       |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| State Pension (Contributory)                                          | Maximum is €277.30 per week                                                         |
| Widow's, Widower's and Surviving Civil Partner's Contributory Pension | Maximum is €277.30 per week over 66 / €237.66 per week under 66 years               |
| Invalidity Pension                                                    | €237.50                                                                             |
| Illness Benefit                                                       | Depends on weekly earnings but those earning maximum €300 or more will receive €232 |
| Job Seeker's Benefit                                                  | Depends on weekly earnings but those earning €300 or more will receive €232         |
| Maternity Benefit                                                     | €274                                                                                |

*Universal payments include:*

*Table 5*

|               |                    |
|---------------|--------------------|
| Child Benefit | Monthly rate:      |
|               | 1 child: €140      |
|               | 2 children: €280   |
|               | 3 children: €420   |
|               | 4 children: €560   |
|               | 5 children: €700   |
|               | 6 children: €840   |
|               | 7 children: €980   |
|               | 8 children: €1,120 |

Despite much debate around indexation in Ireland, there is currently no formal system of indexation or benchmarking for the determination of social protection payments. These are determined instead annually as part of the budgetary process. In 2001 the Social Welfare Benchmarking and Indexation Working Group (SWBIG)<sup>33</sup> was established and agreed that social protection rates should be benchmarked, particularly that they should be index-linked to Gross Average Industrial Earnings (GAIE) despite the limitations of this approach. The National Anti-Poverty Strategy in 2002 set key targets, namely 30% of GAIE. In Budget 2007 this benchmark was finally reached although not formally applied. The Government made a commitment in the National Action Plan for Social Inclusion to “maintain relative value of the lowest social welfare rate at least at €185.80 in 2007 terms, over the course of this Plan (2007-2016), subject to available resources”<sup>34</sup>.

Since then, increments have been made on social protection payments annually based on political discretion but no formal attention to benchmarking has been paid. In the most recent Budget 2025, for example, the Government announced the largest social welfare package in the history of the State but this was based purely on where they perceived need to be i.e. assisting households through a mix of cost of living payments, targeted supports and across the board increases to weekly payments. This has the effect of limiting long-term planning and can be particularly precarious for those facing retirement.

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33 Economic and Social Research Group, ‘Final Report of the Social Welfare Benchmarking and Indexation Group’ (September 2001).

34 Office for Social Inclusion, ‘National Action Plan for Social Inclusion 2007-2016’ (February 2007), p. 14.

## 2. Economic Conditionality: Situation of Need (The Means Test)

Whereas contribution-based benefits are paid on the basis of the number of contributions accrued in active employment, social assistance payments are based on the individual circumstances of the applicant, often achieved by way of a means test. This fits well with the rationale for such payments which is based on need to ensure that individuals do not fall below a certain minimum income threshold. The rate of social assistance is determined on a sliding scale dependent on need. There are two main assessments which take place in determining means in individual cases: household income and capital. In general, this is the same for all social assistance payments with some minor variations discussed in the table below.

Household income is assessed through an examination of all sources of income available to the applicant, including all cash income expected, in the coming year. Cash income includes income from employment or self-employment, including farm income, income from a social protection pension from another country and maintenance payments. Income from other social assistance or benefits payments are not taken into account. The test is based on individual circumstances but also takes account of household structures.<sup>35</sup> This means that any income arising from partners, spouses, civil partners or cohabitants are taken into account for the purposes of the means test. It has been pointed out that the corollary of this is that *“the presence of a spouse or partner, and any children, is a factor in determining the final payment rate through the payment of extra amounts for adult and child dependants”*<sup>36</sup>.

Capital is also assessed as part of the means test.<sup>37</sup> The rationale for this is that there is an “expectation that people with reasonable amounts of capital and property are in a position to use that capital, or to realise its value, to support themselves without having to rely solely on a means-tested welfare payment”.<sup>38</sup> The capital assessment includes the value of savings, investments, shares and any property, excluding the main residence. A formular has been developed to assess the value of capital for social welfare payments. The first €20,000 is not assessed. After this the next €10,000

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35 Commission on Taxation and Welfare Secretariat, ‘Irish Social Protection System’ (n 5), p. 9.

36 Ibid., p. 9.

37 Although not for all social assistance payments, see Table 6 below.

38 Commission on Taxation and Welfare Secretariat, ‘Irish Social Protection System’ (n 5), p. 9.

is assessed at a rate of €1 per €1,000, followed by the next €10,000 being assessed at a rate of €2 per €1,000. Any balance beyond this is assessed at €4 per €1,000. There is a slightly different calculation for those on Disability and/or Carer's Allowance where the first €50,000 is excluded from the means test and for Supplementary Welfare Allowance where the first €5,000 is not taken into account.

This table indicates which payments are subject to a means test, whether household income is assessed and whether and to what extent capital is assessed.

*Table 6*

| Means-Tested                     | Household Income Assessment                                                                                           | Capital Assessment                |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| Disability Allowance             | Yes                                                                                                                   | Yes, except for the first €50,000 |
| Job Seeker's Allowance           | Yes                                                                                                                   | Yes, standard formula applies     |
| State Pension (Non-Contributory) | Yes                                                                                                                   | Yes, standard formula applies     |
| Carer's Allowance                | Yes                                                                                                                   | Yes, except for the first €50,000 |
| One-Parent Family Payment        | No, single-person assessment                                                                                          | Yes, standard formula applies     |
| Working Family Payment           | Yes                                                                                                                   | No                                |
| Rent Supplement                  | Yes                                                                                                                   | Yes, standard formula applies     |
| Supplementary Welfare Allowance  | Yes                                                                                                                   | Yes, except first €5,000          |
| School supports                  | Yes                                                                                                                   | Yes, standard formula applies     |
| Fuel Allowance                   | Yes, assessable income limit applied (this means income must be less than the State Pension (Contributory) plus €200) | No                                |

However, some income and assets are protected from being assessed as part of the means test. These are commonly referred to as "disregards". For most payments, the standard formula is that the principal residence of the applicant is not assessed as part of a means test unless the applicant receives an income from it. If an applicant rents a room, any rental income over

€14,000 per years is assessable. Other payments have different disregards. For example, rental income under €14,000 is generally disregarded unless you are renting to an employee or immediate family member. Additionally, for those receiving non-contributory pensions, any income from rent is disregarded.

### 3. Non-Economic Conditionality: Age and Habitual Residence

While most conditions for accessing social protection payments are economically focussed (insurance contributions, activation, means test), there are other non-economic conditions which often determine access to a payment. The two most common in the Irish context are age and residence.

Age is clearly a condition for accessing pension-related payments but it can also be applicable to other payments such as job seeker's allowance. Age may, for example, reduce or increase payments depending on the particular payment in question, which is common in respect of work-related payments. Additionally, the general application of minimum ages of eligibility for certain selected payments is widespread. For child benefit there is no minimum age of eligibility but this is to be expected considering its universal application. However, other payments are restricted to those over 16 (disability allowance) or 18 (all working age payments) or pension age (state pension). Other schemes have even higher minimum ages attached such as 66 in the context of the free travel scheme, 70 for household benefits packages and 80 for pension increases.

The habitual residence condition is another common condition attached to many social protection payments, including those that are universal in nature.<sup>39</sup> While there is no official legal definition in Irish law, it is commonly agreed that in practice such a condition means that the applicant has a proven link with Ireland. This implies that the applicant must have been in Ireland for some time and there is also an intention to remain. The applicant must prove their own entitlement to the social welfare payment so the onus is on the applicant to prove all of these conditions. Ryan and Power discovered that interactions with applicants are very limited and decisions

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39 Section 246, Social Welfare Consolidation Act 2005 (as amended). However, Deciding Officers and Designated Persons must also have regard to S.I. No. 548/2015 – European Communities (Free Movement of Persons) Regulations 2015.

are often made “based purely on the documents submitted by applicants”<sup>40</sup>. The law is clear that if you have no legal right to reside in Ireland, then habitual residence cannot be established.<sup>41</sup> Once residence is established, five conditions must be met to determine whether an applicant is habitually resident: (a) length and continuity of residence, (b) length and purpose of any absence from Ireland, (c) nature and pattern of employment, (d) main centre of interest, and (e) future intentions to live in Ireland as it appears from the evidence.<sup>42</sup> These criteria are checked by a statutorily appointed Deciding Officer based in the Department of Social Protection who have full discretion in their determination. An appeal is available in all social protection matters to the Social Welfare Appeals Office. This office operates independently of the Department of Social Protection. A further appeal is also available to the High Court on a point of law or by way of judicial review. Harmon and Garrett have identified that the administrative discretion is subjective and open to “inconsistent interpretation”<sup>43</sup> leading inevitably to unfair results in some cases.

A recent case from 2020<sup>44</sup> illustrates the very strict application of this principle by Social Welfare Appeals Officers in Ireland. The applicant was a single mother of two children who had arrived in Ireland in 2013, seven years earlier. She had claimed asylum and was granted refugee status in 2019. She had resided in Ireland for the duration of this application. She applied for a One Parent Family payment to support childcare costs so that she could pursue an educational course. Her initial application was refused on the grounds that she had not satisfied the habitual residence condition due to the fact that her presence in the State was not in accordance with

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40 M. Ryan and M. Power, ‘Understanding how decision makers practice discretion in the context of Habitual Residence Condition in the Republic of Ireland’ *Irish Journal of Sociology* 28 (2020)2, pp. 143, 144.

41 Section 15, Social Welfare and Pensions (No. 2) Act 2009 amending section 246 of the Social Welfare Consolidation Act 2005 by inserting section 246(5).

42 Social Welfare and Pensions Act 2007, Section 30. See also Community Law and Mediation, ‘Thematic Note G0116: Right to Reside and Habitual Residence Condition’ (2020) < <https://communitylawandmediation.ie/casebase/thematic-note-g0116-right-to-reside-and-habitual-residence-condition/> > accessed 21.11.2024.

43 A. Harmon and P. Garrett, ‘It’s like Weber’s “iron cage”: Irish social workers’ experience of the Habitual Residence Condition’ *Critical and Radical Social Work* 3 (2015)1, pp. 35, 37.

44 Community Law and Mediation, ‘Social Welfare Appeal G0128: One Parent Family Payment/Habitual Residence Condition’ (2020) < <https://communitylawandmediation.ie/casebase/social-welfare-appeal-g0128-one-parent-family-payment-habitual-residence-condition/> > accessed 21.11.2024.

her permission-to-remain which had been subject to the condition that she would make every effort to gain employment and not become a burden on the State. As she was not in employment at the time of the application, the Appeals Officer took the view that she had failed to satisfy the habitual residence condition. The applicant appealed to the Chief Appeals Officer on the grounds that the decision was erroneous by reason of some mistake in fact. During this time the applicant had become employed as a cleaner. As a result of this, the Chief Appeals Officer overturned the decision following a review of all the facts. The decision illustrates the fact that habitual residence decisions can turn not only on permanence and intention but also on the basis of following the conditions of their residence in the State.

#### 4. Activation

For the most part, activation policies (a focus on active assistance to return to the labour market rather than merely income support) are targeted at those receiving unemployment allowances or benefits of some kind with the aim of encouraging people to return to the labour market. Social protection in Ireland aims to encourage activation in three main ways. The first is through facilitation of people to join the labour market. The second is to assist unemployed people to find work. The third is to incentivise progression from part-time to full-time work.<sup>45</sup> These policies apply regardless of whether the applicant is in receipt of social insurance payments or assistance payments.

There is activation conditionality to the receipt of job seeker's allowance and job seeker's benefit (contributory payment). For those who apply for such payments, they must be able to demonstrate that they are "*capable of work and be available for and genuinely seeking work*". This is a mandatory condition which will otherwise reduce the rate of payment. This has been interpreted as meaning that an applicant must be willing to accept any reasonable offer of employment (based on their skills, qualifications and experience), willing to accept any reasonable offer of training, re-training, work experience or education to improve their prospects of finding employment, and be able to show that they have taken reasonable steps to ensure they have the best prospects of getting employment. The core

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45 Commission on Taxation and Welfare Secretariat, 'Activation and the Public Employment Service' (19 November 2021), p. 3.

activation work is carried out by the Department of Social Protection and the Irish Public Employment Service (Intreo). Therefore, the process of activation is essentially two-way: the jobseeker must “*maintain contact with the labour market and take up opportunities available to them*” and the public employment service must provide “*income support, job search assistance and an evidence-based set of interventions that improve*” job-seeking prospects.<sup>46</sup> The sanction for non-compliance is a reduction in the rate of payment.

While currently activation measures are reserved mainly for those in receipt of job seeker’s payments, there has been some discussion of extending this to other cohorts namely, adult dependents of people in receipt of job seeker’s payments and recipients of other income support payments.<sup>47</sup> Modified activation measures have recently been extended to lone parents in receipt of income support. This was achieved by reducing the child qualifying age criteria for the One Parent Family Payment from 18 years to 7 years. Once their child reaches the age of 7, they no longer qualify for this payment but can avail of Jobseeker’s Transitional Payment, which involves a labour activation component (they must be capable of work but does not require them to work given their caring responsibilities).<sup>48</sup> One Parent Family Payment recipients are subject to a maximum weekly earnings limit but there is no such limit for Jobseeker’s Transitional Payment. This means that there is capacity to increase their hours worked and income. The Institute for Labor Economics has concluded that these reforms have led to an increased in working hours for lone parents<sup>49</sup> which has in turn led to an increase in household income of between 8-12%. Overall, these lone parents saw an increase of between 20-29% in earnings from employment and a 10-13% reduction in poverty.<sup>50</sup> Extending activation to other cohorts is more challenging given the multiple inequalities they face. Indeed, ques-

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46 Ibid., p. 12.

47 Ibid., p. 12.

48 P. Redmond, S. McGuinness and C. Keane, ‘The Impact of One Parent Family Payment Reforms on the Labour Market Outcomes of Lone Parents’, in: IZA Institute for Labor Economics, *Discussion Paper Series* (April 2020), p. 1 < <https://docs.iza.org/dpl3109.pdf> > accessed 21.11.2024.

49 An increase of between 2-5 hours per week. See P. Redmond, S. McGuinness and C. Keane (n 48), p. 1.

50 P. Redmond, S. McGuinness and C. Keane (n 48), p. 1.

tions such as whether this is desirable or what economically valuable work is, need to be answered first.<sup>51</sup>

#### IV. Concluding Remarks

The fundamental rationale underpinning social protection in Ireland is to provide a minimum floor of protection. In 2021, the Commission on Taxation and Welfare developed a briefing paper on social protection which included an impact assessment of the social protection system.<sup>52</sup> Using a variety of measures they assessed a number of working age payments against the ‘at-risk-of-poverty’ rate which measures the impact of social transfers in reducing poverty. This stands currently at 13% in Ireland but if all social transfers and pension income was excluded it would be in excess of 40%. This indicates that social transfers play a significant role in reducing poverty. However, Ireland is facing a number of crises which threaten the effectiveness of the system. Crises exist with housing, the cost-of-living and high inflation and these generate “a risk of increasing poverty and inequality,<sup>53</sup> with structurally vulnerable groups known to experience inflation at a higher rate than the official measure”<sup>54,55</sup> The Irish Human Rights and Equality Commission recently called for indexation of welfare payments which has the potential to “uphold living standards for the most structurally vulnerable members of society, offsetting the effect of

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51 Commission on Taxation and Welfare Secretariat, ‘Public Employment Service’ (n 45), p. 14.

52 Ibid., p. 19.

53 Parliamentary Budget Office, ‘Inflation Issues for Ireland 2022’ (2022), p. 2.

54 These groups included lower-income households, households that rent their home from a local authority, households renting privately, one-parent households, households where the dwelling is owned outright, and rural households. See Central Statistics Office, ‘Estimated Inflation by Household Characteristics’ (September 2022).

55 Irish Human Rights and Equality Commission, ‘Policy Statement on the Index Linking of Welfare Payments (Welfare Indexation)’ (03 February 2023), p. 4 < <https://www.wihrec.ie/documents/policy-statement-on-the-index-linking-of-welfare-payments-welfare-indexation/> > accessed 26.11.2024.

cost of living increases<sup>56</sup>.<sup>57</sup> This call has been supported by the Oireachtas Committee on Budgetary Oversight<sup>58</sup> and would contribute significantly to social inclusion.<sup>59</sup>

Despite the lack of indexation, Ireland follows other continental countries in providing contribution-based and assistance payments. It also attaches economic (means test) and non-economic (habitual residence and age) conditionality to its protection system. Activation in Ireland is primarily focused on job seeking but considerations are being given to extending these policies outside the unemployment realm. In the spirit of social inclusion and understanding intersectional inequalities, movements to extend activation are being led by more theoretical discussions on what the purpose of the social protection system is and what the State conceives to be economically valuable. These moves are to be commended as they fit strongly with the ethos of the Preamble to the Irish Constitution which calls for the promotion of the common good, so that “the dignity and freedom of the individual may be assured”.<sup>60</sup>

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56 Quoting Social Justice Ireland, ‘Social Welfare Rates Budget 2022: The case for benchmarking and indexation’ (September 2021), p. 5; See also T. Callan, C. Keane and M. Regan, ‘Assessing the distributional impact of budgetary policy: The role of benchmarks and indexation’ Budget Perspectives No. 2020/2, the Economic and Social Research Council (2019), p. 3 where it states that “[i]f benefit payment rates do not keep pace with price inflation, welfare recipients experience losses of real income.”.

57 Irish Human Rights and Equality Commission, ‘Policy Statement on the Index Linking of Welfare Payments’ (n 55), p. 5.

58 The Committee recommended that indexation would provide greater certainty and planning for fixed and low-income households. Committee on Budgetary Oversight, ‘Work Programme November 2021-October 2022’ (2021), p. 6.

59 Government of Ireland, ‘Roadmap for Social Inclusion 2020-2025: Ambition, Goals, Commitments’ (2020), p. 15.

60 Constitution of Ireland, Preamble.