Access by persons in the International Protection Process to Income Support Payments

Questions for DEASP

On the basis of the above, the Advisory Group would appreciate clarification on the following questions:

1. If persons in the International Protection process are to be permitted to access appropriate social assistance payments, what provision would need to be made in law:
    - to permit such access?
    - to guard against any unintended extension of access beyond those in process and awaiting a decision on status'?

2. Has DEASP any views on whether access should be granted to some or all Social Assistance schemes (provided conditionality is met)?

3. Has the Department a view on any alternative approach to provide support under the SW Code to those in the international protection process?

DEASP response

Question 1:

Section 246(7) of the Social Welfare Consolidation Act 2005 (as amended) provides that persons in the International Protection process cannot be regarded as habitually resident and as such may not access standard social assistance payments.

Initial consideration would suggest that there are two ways in which people in the international protection system could be permitted access to "appropriate social assistance", both of which would require legislative amendments:

- Amendments to section 246(7) to remove such people from the list of those who "shall not be regarded as being habitually resident in the State" for the purposes of the SW Act. This would mean that people in this group would be subject to HRC in the same way as any other applicant, giving rises to the difficulties of assessing the 5 factors. Some protection seekers would not satisfy HRC and there would be subsequent knock-on effect on the appeal system.

- Introduction a general exemption to the HRC provisions for people in the international protection system – this would put this group of people in a much better position than others who would still have to satisfy the condition.

It is not clear what is meant by “appropriate social assistance” – the two possible options set out above assume it includes all schemes to which the HRC currently applies. If the intention was that the extension was to be limited to say SWA or certain other schemes then perhaps some further amendments would be needed, as in addition to the provisions in section 246, reference to the requirement to be habitually resident is also included in the sections of the Act governing the relevant schemes.

It may be possible to draft the necessary legislative amendments in such a way as to guard against extension to any other groups. However, consideration should be given to the bigger unintended consequence of the potential pull factor of access to social assistance payments (and possibly child benefit). Another factor to consider is the secondary benefits that can follow the payments covered by HRC e.g. recipients of Disability Allowance may have entitlement to the Free Travel. So, the costs would be greater than just the cost of extending eligibility to one or more of the schemes covered by Section 246.

Questions 2 and 3:

Protection seekers who reside in accommodation provided by the International Protection Accommodation Services of the Department of Justice & Equality currently receive Daily Expenses Allowance (DEA) from DEASP.

Ireland opted in to the EU (recast) Reception Conditions Directive (RCD) (2013/33/EU) which lays down standards for the reception of applicants for international protection from 30 June 2018. Ireland transposed the conditions set out in the Directive through the European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230 of 2018). These regulations placed the system of direct provision on a statutory basis.

DEA is payable under Article 4 of the European Communities (Reception Conditions) Regulations 2008 (S.I. No. 230 of 2018). DEA is defined in the Regulations as follows:

> “daily expenses allowance” means that part of the material reception conditions that constitutes a weekly payment made, under a scheme administered by the Minister for Employment Affairs and Social Protection, to a recipient in order for the recipient to meet incidental, personal expenses;

Whether it is necessary or not to permit protection seekers to access social assistance payments should be considered in the context of the considerable existing scope within the Regulations to amend how DEA is currently administered.

DEA is currently payable at the weekly rate of €38.80 and €29.80 per child. These rates are not contained in the Regulations but are set by Government.

The Regulations provide that material reception conditions shall be provided to a protection seeker at an accommodation centre assigned to them by D/Justice & Equality. Under the EU (recast) Reception Conditions Directive, this is an optional provision and could be amended in the Regulations. There is scope to introduce different levels of support to protection seekers that meet certain criteria.

The Regulations already provide that in exceptional circumstances, material reception conditions can be provided in a different manner to that provided in the Regulations where (*a*) an assessment of a recipient's specific needs is required to be carried out, or (*b*) the accommodation capacity normally available is temporarily exhausted.

The Regulations provide that the Daily Expenses Allowance may be means assessed where a person is in receipt of an income for a reasonable period of time. (The Regulations include a period of 12 weeks as a reasonable period). This has not yet been implemented. (A similar measure to allow for the Department of Justice & Equality to charge for accommodation has also not yet been implemented). The intended scope of this is persons engaged in remunerative employment or self-employments, but it could also include persons who have an income from any source over and above the existing rate of DEA.

Extract from Article 4 of the European Communities (Reception Conditions) Regulations 2008 (S.I. No. 230 of 2018).

Provision of material reception conditions

4. (1) A recipient shall, subject to these Regulations, be entitled to receive the material reception conditions where he or she does not have sufficient means to have an adequate standard of living.

(2) The entitlement of a recipient under paragraph (1) is subject to the requirement that—

(*a*) the material reception conditions concerned be made available to him or her only at an accommodation centre that has been designated under Regulation 7 in respect of him or her, and

(*b*) he or she complies with the house rules of the accommodation centre.

(3) Notwithstanding paragraph (2), the Minister may, during the period beginning on the date on which a recipient becomes a recipient, and ending on the date on which an accommodation centre is designated under Regulation 7 in respect of the recipient, make the material reception conditions available to a recipient at a reception centre.

(4) Where paragraph (3) applies, the Minister shall, without delay, inform the recipient in writing, in a language that he or she may reasonably be supposed to understand, of—

(*a*) his or her obligations under the house rules of the reception centre in which he or she is being accommodated, and

(*b*) the contact details of the office of the—

(i) Legal Aid Board (Refugee Legal Service), and

(ii) Health Service Executive,

that services the area in which the reception centre referred to in subparagraph (*a*) is located.

(5) The Minister may, exceptionally and subject to paragraph (6), provide the material reception conditions in a manner that is different to that provided for in these Regulations where—

(*a*) an assessment of a recipient's specific needs is required to be carried out, or

(*b*) the accommodation capacity normally available is temporarily exhausted.

(6) The provision of the material reception conditions authorised by paragraph (5) shall—

(*a*) be for as short a period as possible, and

(*b*) meet the recipient's basic needs.

Supports for Persons who take up Employment

There is a range of supports to assist people to enter employment and to account for/ overcome fears over potential loss of welfare supports. They include the following (with links to further information on each measure):

Jobseekers

- People who work 3 days a week or less, may receive Jobseeker's Allowance or Jobseeker's Benefit for the days they do not work.

- A fast-tracking system is in place for people who sign off Jobseeker's Allowance to take up work for a short period (of up to 12 weeks) or to go on a short training course (lasting up to 12 weeks). Their payment can be re-instated without delay, provided they inform their Intreo Centre before commencing employment/training.

- Part-Time Job Incentive – (PTJI) is a scheme which allows persons who are long-term unemployed to take up part-time employment for less than 24 hours per week and receive a special weekly income supplement. Participants in this scheme are expected however to continue to make efforts to find full-time work.

People with Children

- The Back to Work Family Dividend is available for lone parent and long-term jobseeker families with children return to work. It can be paid in addition to the Working Family Payment. This is a weekly payment for up to 2 years. People who qualify are paid the equivalent of any increase for qualified children that they were being paid on a jobseeker or one-parent family payment (up to a maximum of 4 children) for the first year in employment. Half that amount will be paid weekly for the second year.

Benefit of Work Estimators

- The Department has created benefit of work estimators which show how starting work or increasing working hours could affect the persons potential income. The estimate will include income from your employment and any social welfare payments you may still be entitled to.

Disability Payments and Employment

- People in receipt of certain disability payments may be allowed to work or attend training. People getting Illness Benefit and Invalidity Pension cannot work (except for unpaid voluntary work). They can transfer to the Partial Capacity Benefit scheme if they wish to work.

Disability Allowance

- If a person ceases claiming Disability Allowance on commencement of employment, but has had to leave their job within one year, there is a fast-track system in place to reinstate the payment

- They also retain their free travel for a further 5 years after their DA stops.

- In addition anyone who takes up employment/self-employment will automatically get the DA income disregard. Which is the first €120 of weekly means is disregarded, 50% of earnings between €120 and €350 are assessed and earnings over €350 are fully assessed.

SWA policy unit, DEASP, 12/08/2020