Augmenting social welfare for asylum seekers in Ireland

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Abstract
Lessening perceived pull factors and preventing alleged abuse of welfare systems is proffered as the key rationale for significantly limited weekly social welfare payments for persons claiming asylum. Despite these narratives continuing to dominate parliamentary, Government, judicial and public thinking for almost two decades, between 2016 and 2019, weekly payments to asylum seekers in Ireland doubled, albeit starting from an extraordinarily low level. This article presents the first comprehensive description, analysis and critique of how and why this doubling of weekly social welfare payments for asylum seekers occurred. Framed within the context of a Government sponsored reform initiative, the reasons for weekly payment increases to asylum seekers is multifaceted. Rather than being able to trace policy proposals through publicly accessible information, extensive reliance was made on obtaining documentation through the Freedom of Information Act. The inter-actions of political expediency, legislative reform, and implementing reform proposals, all contributed to further protection of social welfare rights for asylum seekers in Ireland. Nevertheless, these advances must be viewed in light of continuing rejection of equal applicability of social assistance law to persons seeking asylum.

KEYWORDS
Asylum seekers; social welfare law; social welfare policy; direct provision; Ireland; governance; freedom of information; law reform.

Introduction
Asylum seekers have existed on the margins of welfare states for decades (Geddes 2000, Hayes 2002, Tsoukala 2005, van Oorschot 2008). Asylum seekers sit uncomfortably within citizen centric concepts of the Marshallian welfare state (Tweedy and Hunt 1994). The ‘us’ – citizens – and ‘them’- asylum seekers dichotomy has become more expressive (Dwyer and Brown 2005, Bales 2013, Dalli 2019), so as to be deeply embedded within European Union legislation pertaining to social rights for asylum seekers (EU RCDr 2013). Law plays a central role in delivering political social policy objectives into legally definitive rights entitlements. Judges across jurisdictions often declaim social welfare law as ‘policy-orientated’, with significant flexibility in interpreting welfare rights as legislative rights (Simpson 2018). In an era of continued concerns for the survival of welfare states, and the question of entitlement linked to migration status, Ireland presents an intriguing example of how weekly payments for persons seeking asylum have been discussed, evaluated and eventually increased.

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Asylum seekers are individuals whose claim for refugee or subsidiary protection have yet to be determined through administrative and legal processes under Irish law (IPA 2015). A significant time period, often many years, will pass between making an application for protection, and receiving a valid decision on the protection claim (McMahon Report 2015, pp.350–355, McMahon 2019b). Therefore questions of entitlement to social assistance emerge. Pre-April 2000, asylum seekers in Ireland were entitled to access a variety of social assistance and rent supplement payments once equally applicable to all legislative requirements were met (Thornton 2007). Rent supplement permitted asylum seekers to source housing in the then (as now) overheated and poorly regulated private rental market (Hearne 2016; Murphy 2020), with a significant portion of weekly/monthly rental cost met. In April 2000, the Irish government introduced a system known as ‘direct provision’ (DSFCA 2000; Government Decision S180/20/10/0122A 2000). Direct provision refers to communal accommodation of asylum seekers in collective centres, meals generally provided in a canteen, or sometimes through provision of food so as to self-cater in shared kitchens and the payment of a weekly direct provision allowance (Thornton 2014a, Ombudsman 2018, 2019, Buckley 2019; see Note 1) Communal accommodation and food is provided on a no-choice basis within one of the thirty-eight direct provision centres in Ireland that asylum seekers will be dispersed to. When introduced, it was stated that people would be within the system for no more than six months (Government Memorandum 2000, Thornton 2019); however most people will spend many years within the system awaiting determination of the protection claim (Dáil Éireann Debates 2008, 2013, 2019). Between April 2000 and June 2017, adult asylum seekers were entitled to the payment of direct provision allowance of €19.10 per week, with an additional amount of €9.60 per dependent child per week. Other than the weekly direct provision allowance, and some exceptional payments, made twice yearly for clothing and for certain other expenses relating to childbirth, travel to protection interviews, and some school costs (SWCA 2005, s.201; S.I. No. 230/2018, Reg. 2, DEASP 2019), asylum seekers are not entitled to any other form of social assistance payments (Thornton 2013). Government responsibility for the system of direct provision was placed within the Department of Justice, who had no previous role in social supports for asylum seekers. Arnold (2012), Brady (2010), Breen (2007) and Thornton (2013, 2014a) have explored in detail the administrative and legislative removal of asylum seekers from the traditional confines of Irish welfare law since April 2000. The system of direct provision and direct provision allowance did not have any legislative basis until 2018 (S.I. No. 230/2018).

On three occasions (see Note 1, p. 453) the rate of direct provision allowance was increased, in January 2017, June 2017 and March 2019, resulting in current rates of €38.80 per week for an adult, and €29.80 per week per child. As of May 2020, direct provision allowance granted to asylum seekers ranges between 22% of the usual full basic social assistance payment rate for a single asylum seeker, to 34% for a couple with two children (see Note 2, p. 453). While acknowledging the unique set of circumstances within a jurisdiction on the geographical periphery of Europe, increases to direct provision allowance occurred at times where many EU member states failed to abide by their limited social assistance obligations to asylum seekers under European Union law (EU RCDr 2013, EMN 2014, AID 2019). Preventing ‘pull factors’, protection of the Common Travel Area, protecting the welfare state, and seeking to justify the low weekly payment, along with accommodation and
meals, as enormously generous, have been key to privileging narratives, which have dominated government discourses on social assistance and shelter for asylum seekers in Ireland. What is most unusual about Ireland, is how at the same time that these dominant narratives permeated discussion on rights for asylum seekers, over time, direct provision allowance increased, albeit starting from an extraordinarily low base.

At this stage, one might rightfully expect, in an article exploring the process of social welfare law reform for asylum seekers, detailed reliance to be placed on public documents, on heated parliamentary exchanges and on deliberative consultations. Yet, political debates within the Oireachtas (Irish Houses of Parliament) failed to provide much in the way of satisfactory answers as to why increases in weekly payments for asylum seekers occurred. However, one should not expect such formalised democratic niceties from the Irish welfare state when dealing with asylum seekers. So, in order to understand the rationales and reasonings for increases to direct provision allowance for asylum seekers, near absolute reliance had to be placed on previously unavailable documentation obtained under the Freedom of Information Act (2014). Detailing correspondences, draft proposals, and off the cuff exchanges, this article examines how policy-makers and government ministers came to decisions on increases to direct provision allowance. This presents a useful reminder that reforming law is rarely linear and can occur covertly. Only through a detailed examination of Freedom of Information (FOI) documentation, totalling hundreds of pages, can some sense of the reasons for law reform in this arena be understood. The reasons for increases in weekly social welfare payments for asylum seekers can be explained by domestic political expediency, reform proposals, and the placement of legal rights on a legislative footing.

‘Pull factors’, ‘abuse’ & rights: dominant narratives on asylum seekers and welfare

Direct provision and limited weekly payments were justified by Government on three core grounds. First, claims that this system would reduce numbers seeking protection in Ireland. Second, the need to maintain the Common Travel Area for citizens of Ireland and the United Kingdom. Third, that the pre-April 2000 system of access to the welfare state was attracting ‘economic migrants’ (O’Donoghue 1999, McDowell 2003, Shatter 2013, Fitzgerald 2014). While it had been formal government policy that all asylum seekers who entered Ireland post April 2000, would only be offered direct provision, up to 2003, some asylum seekers, particularly families, would be granted access to general social assistance. In 2003, the Government specifically legislated to prevent asylum seekers accessing rent allowance (Government Ministerial Note 2003; Social Welfare (Miscellaneous Provisions) Act 2003, s13). The Department of Justice, gaining government approval for this change, had premised its argument on two grounds. First, the need to limit powers of officials in the Department of Social, Community and Family Affairs (DSCFA) as some would grant asylum seekers, in particular single parents and families, access to the ‘mainstream’ social assistance and rent supplement payments, where they had been in direct provision longer than six months (DSCFA 2002). Second, linked in with Ireland’s then *jus soli* citizenship law (Mullally 2005), the Government expressed concern that availability of rent supplement and other social assistance payments to late stage pregnant asylum seekers was seen as a ‘pull factor’ (Government
Ministerial Note 2003). In 2004, Ireland introduced a habitual residency condition so that access to most social assistance and rent supplement payments, including child benefit was restricted (O’Sullivan 2019). Asylum seekers were only specifically legislatively designated as not being able to meet the habitual residence condition in 2009 (Social Welfare and Pensions Act (No.2) 2009, s15). This was in response to a decision of the Chief Appeals Officer for social welfare that asylum seekers could be habitually resident for the purposes of social assistance law (Chief Appeals Officer 2009). The rationale of Department of Justice officials in arguing for a legislative response to this decision, was based on such a ‘pull-factor . . . hav[ing] the potential to swamp State services’ (DJELR 2009). So, while asylum seekers were fully excluded from Irish social welfare law, there was no legislative basis for the system of direct provision and direct provision allowance until June 2018 ((S.I. 230/2018). Until 2018, asylum seekers were legislatively prohibited from seeking or entering employment, meaning that there was no means for an asylum seeker to supplement such limited weekly payments (IPA 2015, s.15; S.I. 230/2018, Reg. 11; Thornton 2020). The key justification provided within political and legal discourses for the system of direct provision is on the basis that asylum seekers do not have to pay for accommodation, food, electricity and other essentials (C.A. and T.A 2014, para. 3.18).

There is no obligation upon asylum seekers to accept direct provision accommodation; however if they do not do so, no alternate accommodation, nor the weekly welfare payment, will be provided. So asylum seekers in Ireland have certain social rights protected outside the traditional Irish welfare system (SWCA 2005; Cousins 2012). At the same time, rights to access primary and post-primary education (Education Act 1998; reconfirmed in S.I. No.230/2018, Reg. 17) and cost free public medical health care and prescription medications (Health Act 1970; reconfirmed in S.I. No. 230/2018, Reg. 18) are accessed on the same basis as citizens in Ireland.

The two main political parties of government since Ireland gained independence, Fine Gael and Fine Fáil, along with smaller parties, in particular the Labour Party and the Green Party, have all played a significant role in either establishing or embedding poverty for asylum seekers as State policy (Garrett, 2015, Ní Chiosáin 2018; Maillot 2018). In 2014, in response to legal claims that a lone parent seeking asylum were subject to institutional living and low rates of weekly allowances for over four years, violated Irish constitutional precepts of dignity and equality, one senior civil servant stated (C. A. & T.A 2014, para. 3.20):

‘The allegations that living in this environment is a degrading or dehumanising experience is rejected and demonstrates a startling lack of appreciation for the daily realities of many other non-protection seekers, particularly given the difficult economic circumstances unem-ployed individuals and low income families currently face. While the applicants complain that their lifestyle is monotonous and routine, it is submitted that the facilities are designed to be suitable for a genuine protection seeker.’ [emphasis added].

Formal state policy foundations for the system of direct provision have been most coherently communicated within a Value for Money Report on Direct Provision (RIA 2010). The report authors were solely drawn from the Department of Justice, the Reception and Integration Agency and the Department of Finance. The 2010 Report focused on whether ‘mainstreaming’ asylum seekers’ rights in a manner that had been done prior to the introduction of direct provision, would be a means of ensuring value for
money. However, this was rejected as a potential money saving solution by the Report. The 2010 Value for Money Report was premised on the following basis (RIA 2010, p. 58):

If conditions for entitlement to Social Welfare and Rent Allowance were changed, then those not currently availing of RIA accommodation would be expected to apply for these payments, which would more than double the projected net additional Social Welfare/Rent Allowance cost. Granting entitlement to Social Welfare and Rent Allowance could also be a ‘pull factor’ and the numbers of new asylum seekers could rise significantly.

While the Report accepted that per-head, operating the system of direct provision, along with ancillary monetary and medical supports was more costly than mainstreaming access for asylum seekers within the confines of the Irish welfare state, the Report stated (RIA 2010, p. 57),

[the] ‘welfare supports option’ is likely to more than double the cost of providing for the accommodation needs of asylum seekers.

This conclusion was due to the fact that the Report’s authors assumed that all persons in the asylum system, not availing of direct provision accommodation and direct provision allowance, would be automatically entitled to claim rent supplement and supplementary welfare allowance (SWCA 2005). There was no consideration that some of those, not availing of direct provision, would not be entitled State support, due to the availability of their own resources. More recently, a further reasoning for removing asylum seekers from the welfare system has emerged. The then Tánaiste (Deputy Prime Minister of Ireland), Simon Coveney, argued that Ireland has one of the better systems of social welfare supports for asylum seekers in Europe. Those who objected to the direct provision system, were not, according to the Tánaiste ‘living in the real world’ (PA 2019, McMahon 2019).

Within the judicial sphere, a small number of judges expressed concerns at persons being subject to communal accommodation, and low-rates of weekly allowances for many years while awaiting a fair determination of a protection claim. Ms. Justice Clark noted in Netochuku Precious (2013, para. 18), that,

‘There are many hundreds of asylum seekers who are living in hardship in direct provision accommodation for years without permission to work and with little personal autonomy, while they await a date for a judicial review of negative decisions.’

Often judges noted the significant periods of times, often well over five years, that asylum seekers lived in direct provision accommodation centres, with limited weekly social welfare payments (F. O. v Minister for Justice 2013, B.S. v Minister for Justice 2014). Nevertheless, a court challenge to the then administrative, non-legislative nature of direct provision allowance for asylum seekers was unsuccessful. The Irish High Court found that it was permissible for the Irish Government to have a non-legislative system for the support of asylum seekers. Arguments that the rate of payment, at that stage had not increased for over fourteen years, violated the Irish constitution and/or European Convention on Human Rights, failed (C.A. & T.A. 2014, Thornton 2014b) due to lack of evidence of individual impact on rights to dignity, or proof of individual inhuman and degrading treatment. Mr. Justice Mac Eochaidh stated that the proper place to pursue an argument and agitate for an increase in direct provision allowance for asylum seekers was in the Oireachtas (Irish Parliament) (C.A. & T.A. 2014, para. 13.26). As the applicants in
C.A. were not being subject to absolute destitution, in the vein of what occurred in Limbuela (2005) or M.S.S. (2011) in challenges related to the Human Rights Act 1998 and Article 3 of the European Convention on Human Rights respectively, there was no reasonable prospect for maintaining a breach of human rights. Unlike in some other European jurisdictions (Winkler and Mahler 2013, Bales 2015, EDAL 2018), further court challenges to low rates of weekly payments for asylum seekers would have been unlikely to succeed. Therefore, the political arena was the only forum for arguing for increased weekly social welfare payments for asylum seekers.

**Pathways to social welfare increases for asylum seekers**

However, political pathways to reform or increase weekly payments for asylum seekers had proved difficult to agitate within since the introduction of the system of direct provision. The onset and continuation of the economic recession, and general political and public disinterest in welfare rights for asylum seekers was a key feature of this period. There were no formal or informal mechanisms to keep weekly payments for asylum seekers under review. Significant asylum seeker protests began in 2013 and continued through 2014. These protests highlighted the poor quality of direct provision accommodation, the low rates of direct provision allowance and the significant length of time that it was taking for determination of protection claims (Loyal and Quilley 2016). Around this time, concerns on rights for persons seeking asylum were expressed by the then minority government coalition partner, the Labour Party, which resulted in the establishment of a systematic exploration of the system of direct provision (Holland 2014, Department of An Taoiseach 2014). Headed by a retired High Court judge, Dr Bryan McMahon, the McMahon Group on the Protection Process and the system of Direct Provision, published its recommendations in June 2015 (McMahon Report 2015, Thornton 2015, Smyth 2016). The terms of reference for the McMahon Group were drafted over a one month period in August and September 2014 by senior civil servants in the Department of Justice and Equality (DJE) (DJE 2014a, 2014b, 2014c, 2014d, 2014e). There was agreement that various government departments had to be represented in the McMahon Group, so as to assess the ‘viability’ and ‘workability’ of any proposals made for reforms (DJE 2014f). A key concern for officials within DJE, was that civil society representatives, who would be invited on to the McMahon Group, had to accept the system of direct provision as the only manner in which asylum applicants would receive state supports (DJE 2014a, para. 4). Some officials within DJE believed that there was a need to invite these civil society organisations ‘into the tent’ (DJE 2014a, para. 4; DJE 2014f). There were some concerns around including asylum seekers within the McMahon Group, with one official fearing it would lead to ‘strident’ asylum seeker-led organisations having representation within the McMahon Group, and that the representatives would only seek ‘denunciations’ of the system of direct provision (DJE 2014a, para. 9). The eventual membership of the McMahon Group consisted of twenty-three representatives. They included the chairperson, Dr. Bryan McMahon, six government departments representing children, education, health, housing, public expenditure and welfare. Other state organisations and agencies were also represented on the group, including the Attorney General’s office, the chairpersons of the protection determination agencies and the Health Services Executive. Five civil society organisations with long
standing engagement with asylum and refugee issues, one academic, a retired Secretary General of the Department of Justice, and two asylum seekers, representing the Core Group of Asylum Seekers and Refugees, were also part of the McMahon Group (McMahon, 2015, p. 28).

The drafting of the terms of reference by government officials indicated that direct provision accommodation and lower rates of direct provision allowance would remain, although potential improvements within both were acknowledged as possibly having to occur (DJE 2014b, para. 4, 2014c, para. 2, 2014d, para. 8). A key focus was to ensure that spending on support for asylum seekers remained at then current levels of expenditure (DJE 2014b, para. 4(ii); DJE 2014c, para. 1; DJE 2014d, para. 12). The McMahon Group would not be permitted to consider or propose alternatives to direct provision, such as integrating asylum seekers within the general social welfare system (DJE 2014a, paras 2–3 and para. 11(iv); DJE 2014e, para. 3 and para. 8). ‘Radical’ proposals were not going to be entertained, given that ‘the man on the street’ saw little wrong with the system of direct provision or the then rate of direct provision allowance (DJE 2014a, para. 7). The published terms of reference explicitly focussed on reforming, rather than abolition or replacement of the system of direct provision (McMahon Report 2015, p. 27).

Within its early meetings, the McMahon Group had decided to explore the direct provision allowance (McMahon Files 2014a, p. 3; see Note 3, p. 453). Working groups around three themes were agreed upon in November 2014, with financial supports coming under Theme Two: Improved Supports (McMahon Files 2014b, p. 2). Very soon afterwards, the Department of Social Protection provided a financial supports working paper, outlining the cost to the exchequer of direct provision allowance from January 2008 to October 2014 (McMahon Files 2014c). More limited information was available on the precise amounts paid in exceptional needs payments to persons in direct provision, covering just 2013, up to October 2014 (McMahon Files 2014c). The Department of Social Protection then conducted a detailed costing options model on the three potential approaches described above, and with agreement of the Thematic Working Group, considered a fourth option, which was a more limited approach to the Cost of Living Index (McMahon Files 2015a, p. 1). Further exemplars were engaged with in terms of different family compositions and comparators between persons entitled to social welfare and persons in the system of direct provision, were rates to remain static or increase (McMahon Files 2015a, Appendix 2). The Department of Social Protection noted that the most likely person entitled to direct provision allowance, at end of January 2015, was a single adult (69% of all persons entitled to direct provision allowance), followed by a lone parent (22%), a couple with children (8%) and a couple with no children (1%) (McMahon Files 2015a, Appendix 3).

On the basis of these January 2015 figures, the cost of increasing direct provision allowance on the basis of the thematic group’s preferred option, was in the range of €4.1 million (McMahon Files 2015a, Appendix 4). In providing detailed costings options, the Department of Social Protection urged the McMahon Group to reflect on whether potential improvements to payments for persons seeking asylum, would result in a greater number of arrivals to Ireland, due to any increased supports available (McMahon Files 2015a, p. 2).

The Thematic Working Group which considered proposals for improved supports for persons in the asylum system, met on at least 11 occasions (McMahon Files 2015c, p. 7). The thematic group noted that the low level of direct provision allowance had arisen...
continuously during formal consultations by the Thematic Working Group, with asylum seekers (McMahon Files 2015c, p. 8–9). The fact that asylum seeking children were not entitled to child benefit, a (near) universal welfare payment, was noted, but there seemed to be limited discussion of making this monthly payment available to asylum seekers (McMahon Files 2015c, p. 13–19). The approach utilised in order to recommend an increase to direct provision allowance, was based on three considerations. First, trying to maintain the current overall cost of the entirety of the protection and direct provision systems (McMahon Files 2015c, p. 19). Second, the proposed increase to direct provision allowance had to be set at a level of rates of disposable income (after rent, but before food, electricity and other incidentals) that should be paid to asylum seekers, in light of the fact asylum seekers do not have to pay for rent, or food or electricity. Significant concerns were highlighted as regards persons entitled to social welfare or individuals in low-paid employment in Ireland, who should not be ‘disadvantaged’ by increasing direct provision allowance too much (McMahon Files 2015c, p. 13, 2015b, p. 2). Third, there seemed to be concerns that the system of direct provision was creating a ‘culture of dependency’ (McMahon Files 2015c, p. 19). There was no acknowledgement by the Thematic Working Group, that asylum seekers were at the time legislatively prohibited from entering employment, and many were forced to depend on the State. In making a recommendation to increase direct provision allowance (McMahon Files 2015c, p. 13), it was noted that officials from the Department of Social Protection would not commit to raising allowances inside its existing budget provision. The Department stated that whole of Government approval would be needed to provide additional funding, in the event of the proposals were to be adopted (McMahon Files 2015c, p. 19).

The whole of the McMahon Group was informed of the thematic group’s preferred increase option around March or April 2015 (McMahon Files 2015b), while that proposal was firmly placed before the McMahon Group on 25 April 2015 (McMahon Files 2015c). A majority of the thematic group recommended that the adult rate weekly payment be raised to €38.74 per week. The logic behind this was to maintain the percentage link between direct provision allowance and full rate supplementary allowance at just under 20% (see above, note 3). The child rate was to be raised to €29.80 per week (McMahon Files 2015c, p. 15). This child rate was linked to the dependent child allowance paid to social assistance recipients, who had a full social welfare payment, and received additional supplements for additional child dependent(s). Two other options had also been considered by the Thematic Working Group. First, doubling the rate of direct provision allowance, so as to result in a payment of €38.20 per week for an adult or €19.20 per week per child. Second, raising the rate of direct provision allowance in line with the Consumer Price Index between 2000 and 2014, to €25.59 per week per adult and €12.86 per week per child (McMahon Files 2015c, p. 16). All options were then compared to payments made to a single person and a couple with two children entitled to general social welfare payments. A single adult asylum seeker’s rate of payment at the recommended rate would have been 25% of the total welfare payment made to single adults seeking employment (McMahon Files 2015c, p. 17). A single person with two children relying on direct provision payment, would receive 35% of the payment that would be available to a single person with two children entitled to one parent family payment. Both cost comparator models were based on persons entitled to a social welfare payment, receiving rent allowance and minus the
personal contribution of €32 per week for rent. On 30 June 2015, the McMahon Group formally issued its report, which did not differ significantly from the Draft Report (McMahon Files 2015d, pp. 222–225) including the recommendation to increase direct provision allowance to the rate of €38.74 per adult and €29.60 per child, per week (McMahon Report 2015, p. 208).

The recommendations contained within the McMahon Report were hailed as a ‘yes equality moment’ for the rights of persons seeking asylum by the Labour Party junior government minister, who spearheaded the establishment of the McMahon Group (RTÉ 2015). The political, administrative and reform group discourse viewed asylum seeker access to social assistance in Ireland through the lens of ‘less eligibility’ (McDonald and Billings 2007). Like the ‘Poor Law’ concept of less eligibility, the key unifying discourse accepted as a given, was that an asylum seeker should be worse off than all individuals and families on the lowest level of social welfare provision in Ireland (Thornton 2009, 2015). Not only slightly worse off, but significantly so. The lower level of welfare provision for asylum seekers is seen as natural. State discourses, enabled by the McMahon Report, sought to paint asylum seekers within Ireland, as ‘clandestine’, despite having a clear legal entitlement to remain in Ireland until finalisation of their protection claims. This approach is all the more concerning when one considers the ‘concerns’ of the McMahon Report, that the system of direct provision as a whole was creating a ‘culture of dependency’. Yet there was no acknowledgement whatsoever of how that dependency was forced upon asylum seekers by the State. All discourses sought to paint asylum seekers as less deserving of the welfare minima in Ireland. So although the McMahon Group proposed increases to weekly payments for asylum seekers, notions of the undeserving poor, responsible for his or her own poverty within Ireland, was inherent throughout all discourses on asylum seekers and welfare. This may explain the significant reluctance by Government ministers, in the immediate aftermath of the McMahon Report recommendations, to act upon this limited increase proposal. The then Tánaiste (Deputy Prime Minister) who was also Minister for Social Protection, Joan Burton T.D., and departmental officials, were not all that keen on the proposed increases. First, ministerial officials claimed to a chairperson of an Oireachtas (Parliament) Committee, that the Department of Justice was responsible for direct provision allowance (DSP 2015a). Despite DSP claiming it had no role in direct provision allowance payments, in August 2015 proposed budgetary options within the Department of Social Protection, included raising direct provision allowance to the McMahon Group recommended levels (DSP 2015b, 2015c). These proposals were not contained within Budget 2016. Correspondence between the Minister for Social Protection and the Minister for Justice, indicated concerns by Social Protection that increases to direct provision allowance in line with the McMahon Report, could only be considered if there was a central government increase in the budget for Social Protection, and in light of the increasing numbers seeking asylum in Ireland and ‘events in Europe’ (DSP 2015d). These concerns of the Minister for Social Protection were further emphasised in the government Cabinet Committee on Social Protection (DSP 2015e). Financial measures announced in Budget 2016, delivered in October 2015, did not include any increase to direct provision allowance. As late as 17 December 2015, the Department of Social Protection stated that consideration of the increases proposed by the McMahon Report was ‘still ongoing’ (DSP 2015f, 2015g).
Implementing welfare payment increases

On 23 December 2015, costings for increasing the child rate to the McMahon proposed rate, as well as other lower rates of increases, occurred (DSP 2015h). On New Year’s Eve 2015, it seemed to be fundamentally agreed by civil servants, that the child rate of direct provision allowance would be increased (DSP 2015i). A €6 per week increase in child direct provision allowance, was to be given effect by 7 January 2016 (DSP 2016a, 2016c). Formal Government approval for this decision occurred on 5 January 2016 (Government Decision S180/20/10/0122H 2016). In the subsequent press release, the justification provided was that children in direct provision were a ‘particularly vulnerable group’, and the €6 increase was taken as an interim measure pending full consideration of the McMahon Report proposed increases (DSP 2016b, 2016d). The increase occurred close in time to the consideration of Ireland’s report to the UN Committee on the Rights of the Child (UN Convention on the Rights of the Child 1991). Government policy makers who discussed the increase initially, provided a narrative for Government representatives regarding the motivation for the increase (DSP 2016e). Given the lack of certainty as to why precisely the Government sought to implement a part increase at this particular time, it is reasonable to conclude that the Government had wanted to announce a positive development in the protection of the rights of child asylum seekers before the UN Committee on the Rights of the Child in January 2016 (DSP 2016e). This supposition is bolstered by the fact that formal approval from the Department of Public Expenditure did not happen until 2 February 2016 (DSP 2016f), yet payments had been granted since early January 2016. From the totality of the documentation, it is not a stretch to suggest the increase may have been an attempt to avoid or lessen criticism from the UN Committee on the significant violations of the UN Convention on the Rights of the Child that Ireland was engaging in when it came to child asylum seekers. Despite this €6 weekly increase, the UN Committee on the Rights of the Child expressed concern surrounding the significant differentials in welfare entitlements between asylum-seeking children and other children resident in or citizens of Ireland (UNCRC 2016, para. 66). Post this increase in direct provision allowance for children, a number of further costing exercises were conducted (DSP 2016g, 2016h). However, there was no inclusion of any rate increases in planning for Budget 2017. The Department of Social Protection stated that any increases were under ‘active consideration’ in August 2016 (DSP 2016i).

From the documentation made available under FOI, it appears that not until May 2017, did consideration of increases to direct provision allowance again occur. As with the January 2016 increases, the McMahon Report seemed secondary, not only to policy-makers and government ministers, but also to one member of the McMahon Group. On 24 May 2017, a non-governmental organisation that was part of the McMahon Group, the Children’s Rights Alliance, sent a letter to the Minister for Social Protection, requesting a €6 weekly increase to the child rate of direct provision allowance (DSP 2017a, see Note 4, p.454). With significant haste, Department of Social Protection officials completed costings on this request in early June 2017 (DSP 2017b). Internal preparation for government announcement of the €6 increase for children, plus a smaller increase for adult asylum seekers, to take the weekly payment for both groups to €21.60 per week occurred (DSP 2017c). The rationale for the increases were initially posited as due to
children being a ‘particularly vulnerable group’ who were within the system of direct provision (DSP 2017d), with limited justification present for the increase in adult direct provision allowance. However, the language of ‘particularly vulnerable group’ was opposed by the Department of Justice, wherein Justice officials successfully requested that the language be changed to children as a ‘group of particular focus’ (DSP 2017e). In the official press release, the Children’s Rights Alliance were credited with requesting the €6 per week increase for children (DSP 2017f). The proposal to increase the weekly social welfare payments for asylum seekers occurred close in time to when the then Minister for Social Protection, Leo Varadkar was seeking election as President of the Fine Gael party, which would result in him being appointed Taoiseach (Prime Minister). This occurred at a time when Minister Varadkar was under some political pressure for a previous hostile campaign against persons in receipt of social welfare. Media discourse had been focusing on Minister Varadkar’s problematic approach to persons subject to poverty in Ireland (Devereux and Power 2019). So as with the January 2016 increases, the June 2017 increases were less to do with implementing the reform proposals of the McMahon Report, and more to do with political expediency.

There were no proposals to further increase direct provision allowance for Budget 2018. However, in May 2017, the Irish Supreme Court found the absolute legislative prohibition on asylum seekers entering the labour market to be unconstitutional (N.H. V. v Minister for Justice 2017). In response to this decision, the Irish government decided to opt-in to the EU Reception Conditions Directive (Recast) (EU RCDr 2013, Seanad Éireann 2018, Dáil Éireann 2018, Kelleher 2018). This resulted in the system of direct provision and direct provision allowance being placed on a legislative footing (S.I. 230/2018, Regs. 2(1), 4, 7, 11, 17, 18). Within days of the entry into force of these Regulations, discussions on increasing direct provision allowance commenced. Officials within the Department of Employment Affairs and Social Protection (DEASP, formerly the Department of Social Protection) put forward a budget proposal to increase direct provision allowance to the McMahon proposed weekly payment rates (DEASP 2018a). DEASP officials noted the need to ‘engage’ with the Department of Justice and Equality prior to approving the weekly increase (DEASP 2018a, 2018g). Within emails, there was a tentative suggestion that weekly direct provision payments to asylum seekers be raised €5 across the board (DEASP 2018d, Foxe 2019). DEASP produced a Policy Proposal document, outlining two potential options. First, to increase the rate of direct provision allowance in line with the McMahon Report recommendations (DEASP 2018b). The second formal option, generally redacted in most of this FOI release, but not in one document (DEASP 2018c), suggested a payment of €41.50 per adult and €31.80 per child, to take into account inflation since the McMahon proposed increases from 2015. From the totality of the correspondence, as well as the fact that only the McMahon Group (2015) increases were costed and discussed in full, neither the €5 per week increase, nor the formal proposal under option two, were costed (DEASP 2018e, 2018f, 2018g).

The first formal notification from DEASP to the Department of Justice and Equality that significant planning had occurred to increase weekly payments for asylum seekers, did not occur until 25 September 2018. This was just two weeks before the announcement of the Budget 2019 (DJE 2018). The reaction of a key official within the Department of Justice and Equality was hostile to the increase. This official stated that the proposed rate increases would be exceptionally generous and failed to take account of the fact that
Ireland had introduced a right to work for asylum seekers (DJE 2018). The official noted that the McMahon Report had been fully implemented over twelve months prior (DJE 2018). Yet analysis from Nasc, the migrant and refugee support centre, and member of the McMahon Group, had concluded only twenty out of the one hundred and fifty-eight recommendations were fully implemented (Nasc 2017). Upon being informed that the proposed increases were still subject to approval from the Minister for Employment Affairs and Social Protection, the official then began to raise issues not directly relevant to the proposed increase. The official, without evidence, accused asylum seekers of having been working before lawfully entitled to do so, and within the same email suggested asylum seekers did not want to work so as to not contribute to the cost of accommodation and meals provided in direct provision centres (DJE 2018). No cognisance was taken of any representations made by this official. Without fanfare or even a press release, on 9 October 2018, the Minister for Social Protection increased the rate of direct provision allowance to €38.80 per week for adults and €29.70 per week per child. Documents were laid before the Irish Parliament, who formally approved the increase in direct provision allowance along with increases to other social assistance and social welfare payments as part of expenditure allocations (Budget 2019 2018). This was the first ever occasion the Irish Parliament had a formal say on the rate of allowances for asylum seekers since the introduction of the system of direct provision in April 2000. The increased rates became effective in March 2019. It should be noted, that while the McMahon Report (2015) sought to align weekly child direct provision allowance rates with mainstream lower dependent social assistance payment rates (McMahon Files 2015a, p. 15), this index-linking did not occur in Budget 2019 (2018), nor in Budget 2020 (2019). If this had occurred, then direct provision allowance weekly payment for children should be at a rate of €36 per week for children under twelve years, and €40 per week for children over twelve years (Budget 2020 2019). The adult rate is generally still aligned percentage wise with the McMahon Group proposals.

That such a significant increase occurred, so close to the adoption of the Regulations, based on costed policy proposals, is something that had not previously occurred with increases to asylum seekers weekly allowances. That it was subject to a parliamentary vote, which had never previously occurred with either the introduction of the allowance nor the two previous increases, is itself a significant step. That something as basic as parliamentary scrutiny of social welfare law and policy decisions is being praised, itself raises issues surrounding the by-passing of the Irish Parliament for almost twenty years on the issue of direct provision allowance for asylum seekers. That constitutional and legislative niceties are being observed, in order to increase direct provision allowance, is nevertheless, progress.

**Conclusions**

The placement of the system of direct provision and direct provision allowance for asylum seekers on a legal footing has contributed significantly, in my analysis, to enhancing social welfare payments to asylum seekers. It would be foolhardy to ignore the significant protests from asylum seekers and non-governmental organisations in this field over a near twenty-year period. While no doubt contributing to overall political discourse, representations from neither asylum seekers nor non-governmental
organisations (with the exception of the Children’s Rights Alliance), have ever directly resulted, at least within officialdom discourses, on reasons for payment increases. It would be wise to acknowledge that reforms have been piecemeal and have taken many years to occur. While one could not recommend the ‘Irish approach’ to increasing payments, it has to be acknowledged that increases in welfare payments for asylum seekers nevertheless did occur. Painfully slow, and at times done for political expediency, even with the dominant narrative of ‘pull factors’ and ‘abuse of the welfare state’ ever present, change did occur. The near ceding of Oireachtas (Parliament) control to government in this arena until 2018, contributed significantly to the disquiet that has, and still does, surround the system of direct provision for asylum seekers and the continued low level of weekly payment. The rather limited judicial engagement on legalities and rights within the direct provision system, other than the right to work, has provided government with the confidence to only slowly and partially engage with sustained critiques of the direct provision system from rights perspectives. The substantive changes to weekly payments for asylum seekers occurred for two core reasons: political expediency and implementing reforms of the McMahon Group, linked to placing direct provision allowance on a legislative footing. The degree to which the questioning of rights entitlements for asylum seekers will now continue, post the formal implementation of the McMahon Report recommendations on social welfare entitlements, remains to be seen. However, I would question whether this convoluted and drawn out process for increasing weekly social assistance payments will lead to a more fundamental societal, governmental, political and judicial questioning on the role and purpose of the welfare state and welfare law. That one section of Irish society, asylum seekers, are condemned to survive on weekly ‘paltry’ payments (X & X (No. 2) 2019, para 3), far removed from what Irish society generally believes to be a minimally acceptable social assistance income, is lamentable. Maybe this process can contribute to a more fundamental reassertion of an Irish welfare state that must be focused on need for all, and not obsess on the minutiae of immigration status.

Notes

1. Since June 2018, this payment is now formally known as ‘daily expenses allowance’ (S.I. 230/2018 2018, Reg. 2(1)), despite being paid weekly. For ease, I will utilise the name of the allowance as it is more widely known, direct provision allowance.

2. Comparing the full rate of the payment Supplementary Welfare Allowance (a social assistance payment available where entitlement to other social assistance contingency payments is not established), the cash payment to single asylum seekers has ranged from just under 20% of the full SWA rates in 2000, 14.1% in 2004, 9.6% in 2008, and 14% in 2014 (due to onset of the recession, there was a reduction in the core SWA rate). The percentage differential was similar for asylum seeking couples with or without children. Further particulars of percentage differentials were considered in the McMahon Files (2015b).

3. The McMahon Files were not obtained through the Freedom of Information Act (2014). As part of freedom of information (FOI) request 156/496/2016 a quote of €1,400 was made to receive the files that were requested. The McMahon Files were therefore obtained through other means. There may be some gaps in how proposals for increases to social welfare payments came about, developed or were formulated. Nevertheless, the totality of files I have access to indicates a high degree of narrative certainty.
4. Not contained within the FOI documentation released, this request was made by the Children’s Rights Alliance after a Department of Social Protection official by telephone requested them to send a letter asking for a €6 increase in late May 2017. This is based on information I received from a person with knowledge of the issue, however there is no documentary evidence to substantiate this.

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Online Materials

All Freedom of Information Act materials referenced in this article can be accessed on an online database, Exploring Direct Provision, www.exploringdirectprovision.ie.

References

Brady, S., 2010. One size doesn’t fit all: a legal analysis of the direct provision and dispersal system in Ireland, 10 YEARS on. https://www.flac.ie/


DEASP, 2018b, 16 July. *Supplementary welfare allowance policy unit, proposal increase to daily expenses allowance (formerly Direct Provision Allowance).*

DEASP, 2018c, 16 July. *Supplementary welfare allowance policy unit, proposal increase to daily expenses allowance (formerly Direct Provision Allowance) [un-redacted].*

DEASP, 2018d, 16 July. *Emails discussing increases in direct provision allowance for asylum seekers.*

DEASP, 2018e, 17 September. *List of budget options (Revised) 2019*.


DEASP, 2018g, 27 September. *Emails on proposal to increase direct provision allowance. Obtained through FOIA 2014*.


DJE, 2014b 28 August. Proposal to establish a working group on improvements to the protection process including direct provision and supports for protection applicants. Author: Mr. Michael J. Kelly, DJE.

DJE, 2014c 29 August. Proposal to establish a working group on improvements to the protection process including direct provision and supports for Protection Applicants. Author: Mr. Paul Hickey, DJE.

DJE, 2014d 04 September. Proposal to establish a working group on improvements to the protection process including direct provision and supports for protection applicants. Author: Mr. Paul Hickey, DJE.

DJE, 2014e 09 September. Proposal to establish a working group on improvements to the protection process including direct provision and supports for protection applicants. Author: Mr. Michael Kelly, DJE.

DJE, 2014f Undated. Suggested terms of reference and membership of working party on the protection process and direct provision. Author: Mr. Paddy J. Duffy.


DSP, 2015b, 07 August. Costing models for increases to direct provision allowance.


DSP, 2015e, 21 September. Briefing note for the Tánaiste and Minister of State for the Cabinet Committee on Social Policy and Public Service Reform.

DSP, 2015f, 17 December. Letter from SWA policy section, Department of Social Protection to SPIRASI on direct provision allowance.

DSP, 2015g, 17 December. Letter from SWA policy section, Department of Social Protection to Children’s Rights Alliance on direct provision allowance.

DSP, 2015h, 23 December. Annual Cost of Increasing DPA to Children at a rate of €1, €5.40, €9.50, €20.20 and €29.80.

DSP, 2015i, 31 December. Email of Helen Faughnan, Assistant Secretary of the Department of Social Protection, with memo.


DSP, 2016c 06 January. SWA circular 02/16: direct provision allowance: guidance on the increased child qualified rate.
DSP, 2016d 05 January. Information Note on Government Decision to Increase Direct Provision Allowance rate payable to children.

DSP, 2016e, 13 January. Communications between SWA Policy Unit and Government representatives in Geneva, Switzerland for consideration of Ireland’s combined third and fourth periodic reports to the UN Committee on the rights of the child.

DSP, 2016f 02 February. Direct provision increase: approval from department of public expenditure and reform.

DSP, 2016g 24 February. Direct provision rate scenarios prepared by SWA unit. Department of Social Protection.

DSP, 2016h 07 April. Direct provision rate scenarios prepared by SWA unit. Department of Social Protection.


DSP, 2017b, 08 June. Email from Mary Pracht, social protection, to Jackie Harrington.

DSP, 2017c, 09 –12 June. Multiple emails between Mary Pracht, social protection and Brian Merriman. Department of Justice and Equality.

DSP, 2017d, 13 June. Copy of (then embargoed) press release from Tánaiste (Deputy Prime Minister) and Minister for Justice and Equality. Frances Fitzgerald and Minister for Social Protection. Leo Varadkar.

DSP, 2017e, 13 June. Emails between Jackie Harrington and Mary Pracht, social protection. 13 June 2017.


DEASP, 2019. Back to school and footwear allowances. Dublin: DSP.


IPA (International Protection Act), 2015. No. 66 of 2015 (as amended).


McMahon Files, 2014c, Undated. Financial supports by the DSP to persons in direct provision. Author: Department of Social Protection. Likely to be November/December 2014.

McMahon Files, 2015a 03 March. Options/impact in relation to increasing the weekly direct provision allowance. Author: Department of Social Protection.

McMahon Files, (2015b, 25 April. Agreed recommendations from Theme 2 sub group for consideration.


McMahon Report, 2015 30 June. Working group to report to government on improvements to the protection process, including direct provision and supports to asylum seekers. Dublin: Department of Justice and Equality.


R (Limbuela and others) v Secretary of State for the Home Department, 2005. UKHL 66.

RIA (Reception and Integration Agency), 2010. Value for money and policy review: asylum seeker accommodation programme. 30 June.


X and X (no. 2) v Minister for Justice and others, 2019. IEHC 226.