

2006

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Mr Seán Aylward
Secretary General
Department of Justice, Equality and Law Reform
94 St. Stephens Green
Dublin 2

Re. Payments to Asylum Seekers and unaccompanied minors who fail to satisfy Habitual Residence Condition

Dear Seán,

I am writing to you in connection with payments to asylum seekers in direct provision.

The original Government decision leading to the setting up of the direct provision arrangements envisaged that asylum seekers would not have access to the social welfare system. On the introduction of direct provision, it was recognised that a small weekly payment was appropriate to provide for personal comforts. In the absence of any other arrangements being put in place to deliver such residual payments, this Department paid a basic supplementary welfare allowance (SWA) at the rate of EUR19.10 per adult per week and EUR9.60 per child per week, even though this necessarily meant that asylum seekers therefore had continued access to the social welfare system.

You will recall that your Minister agreed at the Cabinet Committee on Asylum Seekers of 11 December 2002 to take over responsibility for these payments to asylum seekers in direct provision. This would give effect to the original Government decision and would mean, for example, that it would no longer be necessary for asylum seekers to be issued with PPSNs, which they need in order to receive SWA.

We have continued to make these payments as an interim measure until such time as your Department put the necessary arrangements in place to make the payments.

In the meantime, Section 17 of the Social Welfare (Miscellaneous Provisions) Act, 2004 introduced a new provision to the social welfare code whereby new applicants for social assistance payments, including supplementary welfare allowance, are required to satisfy a habitual residence condition (HRC) as an additional eligibility condition in determining entitlement to a payment. This provision was given effect by commencement order from 1st May 2004.

The primary objective of the provision was to ensure that the State's social welfare system did not become overburdened by persons who have little or no connection with this country. This provision impacted on a number of categories of people, including:

1. Asylum seekers in direct provision centres operated by the Reception and Integration Agency;
2. Asylum seekers who have special needs and who are catered for in "step down" facilities, also operated under the Direct Provision system, but who were paid a full rate basic supplementary welfare allowance payment, currently €165.80 per week less a sum equivalent to the minimum contribution towards rent paid by rent supplement recipients currently €13 per week;
3. Unaccompanied minors who are in the care of the health boards and who received various rates of supplementary welfare allowance depending upon the type of accommodation provided.

Since 1st May 2004 payments have been made without proper legal authority in these cases, as SWA is not payable to the people in question because they do not satisfy the habitual residence condition. I find it regrettable that some two years later, these interim measures are still applying with no sign of any steps been taken by your Department to assume responsibility in this matter, as agreed at the Cabinet sub-committee. I do not understand why it is has not been possible to include these payments in the contractual arrangements that the RIA has with accommodation providers. In any event, the amount of work involved for your Department is now much less than it would have been previously, given that the volume of new asylum cases has fallen and the average length of stay has shortened.

In the circumstances I am now requesting as a matter of urgency that the necessary arrangements be put in place for your Department to take responsibility for the making of these payments so that the Department of Social and Family Affairs can withdraw from making payments that are in effect *ultra vires*.

Yours sincerely

John Hynes
Secretary General
Department of Social and Family Affairs



OFFICE OF THE SECRETARY GENERAL, DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM
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#ExpandingDP

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BOR

9 May, 2006.

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For info — I expect that Steve will contact me : I'll let you know what happens.

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Mr. John Hynes,
Secretary General,
Department of Social and
Family Affairs,
Aras Mhic Dhiarmada,
Store Street,
Dublin 1.

Re: Payments to Asylum Seekers and unaccompanied minors who fail to satisfy the Habitual Residence Condition

Dear John,

I wish to acknowledge receipt of your letter dated 5 May concerning the above.

I am asking Mr. Steve Magner, Assistant Secretary who is in charge of direct provision arrangements to look into this matter and reply to you as soon as possible

Yours sincerely,

Seán Aylward,
Secretary General.



30 May 2006

Mr John Hynes,
Secretary General,
Department of Social
and Family Affairs,
Áras Mhic Dhiarmada,
Store Street,
Dublin 1.

**Re: Payment to asylum seekers and unaccompanied minors who fail to satisfy
the Habitual Residence Condition**

Dear John,

Thank you for your letter to Seán Aylward of 5 May 2006 regarding payments to asylum seekers and unaccompanied minors.

As you are aware, officials of our Departments have met on several occasions to discuss the question of how payments to asylum seekers might best be made having regard to the Government decision to which you refer in your letter. However, as you know, it has not been possible for our Departments to agree on either the arrangements or the resources required to successfully implement a revised payment system.

The position of this Department is as outlined by Minister McDowell in the recent 'Update to Government on Asylum, Immigration and Refugee Matters' from which you quote in your letter. I note that you state that your Department is not suggesting the establishment of a parallel and duplicate welfare system. Instead, you propose that payments be made by accommodation providers as part of their contractual arrangements with the RIA.

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#ExploringDP

The RIA has already considered and rejected such an arrangement for the following reasons:

1. It would give accommodation providers an undue and inappropriate degree of control and power over their clients. The DP allowance is seen as an independent payment provided by the Department of Social, Community and Family Affairs. Any transfer of such a payment to private operators, as suggested, would, in our opinion, be widely perceived as a backward and vindictive step. It would also, in our view, generate enormous resentment and have significant political consequences.
2. The RIA cannot unilaterally alter contracts with operators. All contracts are staggered in order to allow the RIA to opt out or into contracts depending on demand. Some of the larger operators might be in a position to implement such a system. Most operators, however, would not be in such a position and, moreover, would not wish to do so. In addition, they certainly would not assume such an administrative burden without demanding significant compensation from the RIA.
3. The administrative and security logistics involved in such a proposal would be very considerable as would the accounting arrangements and control mechanisms. There are also other essential payments made on a discretionary or once-off basis by the CWO and this Department does not see how these could be effectively provided by commercial operators who lack any expertise in this area.
4. The HSE has statutory responsibility for the unaccompanied minors in their care. This Department is not responsible for the contacts entered into by the HSE to accommodate and care for such minors and would not be in a position to implement such a proposal in relation to unaccompanied minors.

Hence, this Department does not believe that the proposal advanced in your letter is feasible.

The only basis therefore on which this Department can take over the payments to asylum seekers (i.e. DP allowance, reduced full-rate Social Welfare allowance and discretionary payments) would be if we were to establish a system broadly equivalent to that operated at present by the staff of your Department. Ideally, this would require access to your ISTS system (or the establishment of an alternative IT system), and considerable additional staff and financial resources as well as staff training.

It would appear to be very difficult to justify the costs associated with the establishment and running of such a system when the existing system provided by the Department of Social and Family Affairs is widely perceived as both fair and effective. As you know, it is not unusual for Departments to undertake tasks of this nature on an agency basis for other Departments where significant economies of scale or other efficiencies can be achieved. Indeed, this Department undertakes the repatriation of nationals of the former AC10 States on behalf of your Department.

I regret therefore that our Department is not in a position, at present, to bring forward proposals which would achieve the results you desire. However, I am more than happy to keep the matter under review or to arrange a meeting of our senior officials to discuss the matter further if you think that this would be helpful.

Yours sincerely,

Steve Magner,
Assistant Secretary .