

**Mandate of the Special Rapporteur on extreme poverty and human rights**

REFERENCE:  
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolution 35/19.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the Public Services Card (PSC), especially its impact on the human rights of beneficiaries of social welfare payments and other government benefits.**

Some of the issues raised in this letter are related to my report to the UN General Assembly on digital welfare states and human rights of October 2019 (A/74/493). The PSC was also addressed in written submissions received as input for that report, including a submission by your Excellency's Government.<sup>1</sup> I would furthermore like to refer to public remarks I made about the PSC in Dublin in July 2019 and a subsequent letter I received from the Deputy Secretary General of the Department of Employment Affairs and Social Protection (DEASP) in August 2019.

Since 1996, successive Irish Governments have invoked a mix of objectives such as innovation, efficiency, improved service delivery, and fraud control to justify major reforms in identity verification and online service delivery systems in Ireland. As a result, the Public Services Card (PSC) is now required (subject only to exceptional Covid-19 arrangements) in order to access welfare benefits and services and to obtain a verified MyGovID account, which is necessary to enable individuals to interact with government authorities online. But the system has evolved in piecemeal fashion, without a consistent or shared vision of the overall goals, and with very little attention to documenting the costs and benefits of different alternatives. I am concerned that one of the results of this unwieldy process, spread out over more than two decades, and of the lack of flexibility and consultation that has been one of its hallmarks, is that low-income individuals and otherwise marginalized communities, must now contend with formidable barriers to accessing their human right to social protection in Ireland. The resulting situation amounts to a form of de facto discrimination against these groups and individuals on grounds prohibited by international law and by treaties to which Ireland is a State Party, including on the basis of their 'social origin, property, birth or other status'.

In late March 2020, the Government waived the requirement to obtain a PSC for people applying for the COVID-19 Pandemic Unemployment Payment (as well as for other welfare benefits it appears). This measure effectively acknowledged that the way in which the identity verification requirements had been applied previously was unduly burdensome

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<sup>1</sup> <https://www.ohchr.org/Documents/Issues/Poverty/DigitalTechnology/Ireland.pdf>

and not conducive to facilitating needed access to governmental support.<sup>2</sup> All indications are, however, that this waiver is essentially a temporary crisis-related measure, rather than representing a change in the underlying approach.

Some of the human rights-related problems of the PSC project appear to have been facilitated by the legislative process which has relied on a steady accumulation of complicated amendments to the basic legislation rather than any systematic overhaul of the system. As a result, the current legal framework reflects major shortcomings in terms of accessibility, foreseeability, precision and clarity. It also remains unclear, at best, whether the requirement to have a PSC to apply for and continue to receive welfare benefits and assistance is grounded in and justified by the existing legal framework.

Because some of the key debates in the Oireachtas have been highly truncated, democratic debate and parliamentary oversight of the PSC and MyGovID project have been minimal, with members of the Dáil regularly complaining over the years about the way in which the Government has introduced complex and lengthy legislative amendments on short notice and with little time for debate. Only in recent years, after the PSC project was broadened beyond the remit of the Department of Employment Affairs and Social Protection (DEASP) and thus affected other parts of society, did more vigorous democratic debate ensue.

A key question in terms of ensuring respect for human rights is whether the PSC requirement is reasonable and proportionate. Making such an assessment is complicated by the shifting objectives relied on by the Government over the years as well as its reluctance to acknowledge the scope of the ambitions implicit in the overall project. It is clear, however, that the goal of reducing fraud and error in the welfare system has been a consistently and prominently invoked ground for moving forward with this project. The Great Recession, loans from the ‘troika’, and a related emphasis on austerity measures, formed the backdrop to an increasing emphasis on the PSC as an anti-fraud measure. This dimension was reinforced by being promoted at the same time as campaigns like “Welfare Cheats Cheat Us All” which sought to encourage neighbors and others to report suspected ‘cheats’ to the authorities. While there is no question that welfare fraud must be minimized, the PSC itself only reduces fraud and error insofar as it results from the incorrect identification of claimants. According to government statistics, identity fraud represents only about 2% of total welfare fraud in Ireland, equaling about €13 million per year out of a total welfare budget of more than €20 billion. Based on the Government’s own claims, the PSC has so far only led to €1.44 million in *estimated* fraud savings per year, equaling only a fraction of the yearly welfare budget. That figure should be compared with the total expenditure on the PSC project, which the Government estimates at €37 million but seems likely to be closer to €68 million by the end of 2019. Thus, in purely financial terms, and in the absence of a detailed cost-benefit analysis by the Government, it is difficult to maintain that the PSC is necessary and proportionate to the goal of reducing welfare fraud.

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<sup>2</sup> “You should apply online for the COVID-19 Pandemic Unemployment Payment on MyWelfare.ie. This is the quickest way to apply. You need: A basic MyGovId account (all you need is an e-mail address and password); Your personal details; Your bank details (payment can only be made to an Irish bank account).” [https://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/unemployed\\_people/covid19\\_pandemic\\_unemployment\\_payment.html](https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/covid19_pandemic_unemployment_payment.html) (accessed on 3 April 2019).

The proportionality of the PSC project is also problematic in terms of its non-financial costs. Privacy and data protection concerns relating to the cards have been raised by leading civil liberties organizations as well as by the Data Protection Commissioner, and these issues are especially concerning in relation to low-income and other disadvantaged groups. They are the ones who are most dependent on access to government assistance, and have no realistic alternative but to subject themselves to being photographed and having their photo processed by facial recognition tools. They are also required to undergo a process, including an interview, in which they have to reveal sensitive personal information such as whether or not they were adopted as children, which in Ireland can raise especially painful concerns. While Government officials have sought to deny these concerns by claiming that the PSC is ‘not compulsory, but mandatory’, the reality is that those individuals who are reliant on government benefits and assistance have no choice but to give up on their privacy and dignity in order to get help.

In addition, despite repeated claims by the Government to the contrary, the PSC has many of the characteristics of, and can readily be turned into, a de facto national biometric ID system. The introduction of such a far-reaching scheme, with the potential to be employed for a wide range of purposes, would need to be accompanied by a variety of procedural and institutional protections which have not yet been put in place in Ireland. In light of the fact that Ireland already has a well-functioning passport and driving license system in place, it must be questioned whether such an approach amounts to the ‘least restrictive alternative’ available.

None of this is to imply bad faith on the part of the Government. The idea of a card that makes access to government services easier and that enables digital access is clearly a welcome development in principle. It may also well be that the capture of certain information, including biometric information, is necessary for such a system to work. But rather than seeking to ensure compliance with international human rights standards, the Government appears to have stumbled into the thick of things without addressing many of the key issues that arise. What is required, and seems consistent with much of the rhetoric but less of the actual practice, is to ensure that the terms on which such a system operates are subject to a comprehensive and open democratic debate, both with those affected and in the Oireachtas. For that to happen, detailed information needs to be made available and to be easily accessible, and should include a comprehensive cost-benefit analysis of different options that also identifies the potential human rights and other impacts on poor, marginalized and discriminated against groups. Provision should also be made to evaluate the impact of the scheme once implementation has begun.

According to the information received:

## **I. HISTORY AND FACTS ABOUT THE PSC PROJECT**

### **A. History of the PSC and MyGovID project**

In order to understand the objectives behind the PSC project and its scope, as well as to highlight the various changes it has undergone over the course of more than two



decades, it is necessary to recall its history. In summary, the following analysis highlights the democratic deficit involved, the lack of clarity as to the principal objectives of the scheme as well as the changes over time, and the somewhat Byzantine legislative framework that has evolved and that fails to meet important rule of law standards.

In its Final Investigation Report in August 2019, the Irish Data Protection Commission (DPC) traces the history back to a 1996 Interdepartmental report on an Integrated Social Services System.<sup>3</sup> Part of that report focused on expanding the scope of the then Social Services Card, which was a standard plastic card with a magnetic stripe and a signature strip that recorded the holder's name, primary account number, Revenue and Social Insurance number, and a card number.<sup>4</sup> What subsequently became known as project REACH, aimed to "achieve improved customer service delivery through a greater integration of social services delivered by different departments and agencies, aided by information technology."<sup>5</sup> A key feature of project REACH was a proposal to "develop a Public Services Card which will act as a common gateway to government services" and to ensure that "information which is sent to one government agency will be shared between agencies in a central database, thus minimising duplication and delays for the customer."<sup>6</sup> The Public Services Card was part of a broader initiative, which also looked at "means by which IT can be used to enhance service delivery, for example through a greater use of the internet and other informational sources."<sup>7</sup> Thus, from the outset, the PSC emerged from and became a key part of a broader strategy by the Irish Government to digitize access to the welfare system and other government services, and the interactions among them.

The Social Welfare Act 1998 subsequently introduced a 'Public Service Card' (singular). It allowed the Minister to issue a card with a person's name, personal public service number, primary account number and date of issue physically inscribed, while the person's date of birth, gender, primary account number, expiry date of the card and card service code could be electronically encoded. Other information could also be inscribed on the card or electronically encoded on the card. Section 14 also allowed for the sharing of information between 'specified bodies' (a range of authorities) in the context of 'transactions' (from benefit claims to payments). And it introduced a provision stating that a "person shall produce his or her public service card at the request of a specified body for the purposes of a transaction."

During the debate leading to the adoption of that Act, one member of Parliament noted that "[w]e have heard very little today from Government Deputies about the proposal to introduce a public service card", indicating that the card received relatively little

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<sup>3</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 26, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>4</sup> Ibid., footnote 50.

<sup>5</sup> Committee for Public Management Research, 'Improving Public Services in Ireland: A Case-Study Approach', CPMR Discussion Paper 11 (1999), p. 27, available from:

<https://pdfs.semanticscholar.org/7386/a9156cd597693fff2ffd6414a30a7b8ce693.pdf>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.



attention amidst exchanges on other aspects of the bill.<sup>8</sup> Later in the same debate, the Minister of State at the Department of Finance commented, however, that “[a]mong the more radical provisions of the Bill is the introduction of a platform for the development of information technology across the public service.”<sup>9</sup> Among these ‘more radical provisions’ was the new Public Service Card, which, the Minister underlined, has “no provision for a visible photograph on the card and it will not be an identity card *per se*.”<sup>10</sup> Rather, an individual “will only be obliged to use the card in the transaction of personal business with specified bodies.” The idea was that the card would assist those bodies “by ensuring the identity of a customer, particularly if, as is anticipated, the card will contain more information about the person in future” and “may assist the provision of services, such as remote claim registration.” The Minister for Social, Community and Family Affairs subsequently observed that the “the public service card is not and will not operate as an identity card.”<sup>11</sup> It was only “a simple and convenient way of communicating the [new public service] number to the individual and for the individual to communicate the number when accessing public services.”<sup>12</sup> The Minister furthermore said that the card would not be “confined to welfare recipients but will extend to all people who have contact with a range of public services, for example, taxpayers.”<sup>13</sup>

Thus many of the key elements in the current debate on the PSC were already present in the late 1990s, including (i) the integration of the PSC into broader efforts at government digitization, including the possibility of remote authentication for online government services; (ii) the general lack of parliamentary debate on and related oversight of a project viewed as technical, yet described by government insiders as ‘radical’; (iii) the government’s emphasis on the PSC’s potential to improve access to government services for citizens; (iv) a lack of clarity on the boundaries between the use of the card for interaction with welfare authorities and its wider use within government; and (v) questions about whether the card would become a *de facto* national ID card.

Despite its legislative anchoring in the Social Welfare Act 1998, the PSC was not actually introduced until 2011. It is not entirely clear to me what caused this 13-year delay, although it appears related to efforts within government to set relevant standards, challenges of coordination between different government departments and agencies, as well as the Great Recession and subsequent pressures on government finances. It is clear, however, that planning around the PSC continued during that 13-year hiatus, even though the approach changed over time.

In June 2004, the Government approved the setting up of the Standard Authentication Framework Environment (SAFE) program.<sup>14</sup> This program was initiated to develop a framework for establishing and authenticating the identity of card users.<sup>15</sup> One

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<sup>8</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/230/>

<sup>9</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/233/>

<sup>10</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/233/>

<sup>11</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/239/>

<sup>12</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/239/>

<sup>13</sup> <https://www.oireachtas.ie/en/debates/debate/dail/1998-02-25/speech/239/>

<sup>14</sup> Government Decision, S290/05/25/0025, 29 June 2004.

<sup>15</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, page 111, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>

year later,<sup>16</sup> noting substantial progress by the SAFE program, the Government made the following decisions: (i) approving the development by the then Department of Social and Family Affairs of a Public Service Card to replace the existing Social Welfare Card; (ii) authorizing the use of the Public Service Card for all existing and new card-based schemes in government; (iii) requesting each Department, Office or Agency operating or planning to operate card-based schemes to either use the Public Service Card or to ensure compliance with SAFE standards if use of the Public Service Card were not possible; (iv) authorizing the development of a comprehensive national identity management and privacy protection policy and requiring the Public Service Card to comply with those standards; (v) authorizing the development of a technical specification required for the procurement of cards.

The Social Welfare Consolidation Act 2005 (SWCA 2005) did not change the relevant language related to the Public Service Card. Two years later, however, an important change was made through the Social Welfare and Pensions Act 2007, although it occurred without meaningful legislative or public debate. Section 263 of the SWCA 2005 was amended to allow the Minister to include a photograph and the signature of the card-holder on the physical Public Service Card, and to include this information (as well as additional information such as all former surnames of the card-holder's mother) on the card electronically. Further amendments were made to this provision via the Social Welfare and Pensions Act 2010, which allowed for even more information to be inscribed on the card physically and electronically, including (electronically) the nationality and all former surnames of that person. The 2010 Act also changed the name of the card to Public Services Card (plural). The amendment was described by the Minister as 'technical',<sup>17</sup> and the public record again shows only very limited legislative debate about this amendment. One Deputy expressed the hope that the PSC would also collect biometric information, because "[p]eople who defraud the social welfare system are the enemies of those who genuinely depend on it."<sup>18</sup> Another Deputy commented, after understanding the Minister's comments as stating that a photograph and signature would only be collected in a small number of cases, that there "was a time when I thought the public services card represented big brother looming in on us and requiring too much information. Carrying one's card and zapping it in to gain access to many services now has a very modern connotation and would be a very good thing, in itself."<sup>19</sup>

In the meantime, the actual development of the PSC had been significantly delayed by the onset of the Great Recession, which seriously affected Ireland. Attempts at selecting a provider for the cards were suspended in 2008 and only in December 2009 did the Department sign a contract with a service provider.<sup>20</sup> The production of the cards was then further delayed until the second half of 2011.

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<sup>16</sup> Government Decision, S/290/05/0025, 6 July 2005.

<sup>17</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2010-11-24/speech/297/>

<sup>18</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2010-11-24/speech/315/>

<sup>19</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2010-11-24/speech/417/>

<sup>20</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, page 118, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>

At that time, several events coincided to give momentum to the PSC project. They included, in addition to the Great Recession, loans from the ‘troika’ (European Commission, International Monetary Fund and European Central Bank), a related emphasis on austerity measures to curb the crisis, and the election of a new government in early 2011. In September 2011, a newly appointed Minister presented the then Department for Social Protection Fraud Initiative 2011-2013.<sup>21</sup> The ministerial foreword begins by reference to the loans received by the troika and the stringent conditions attached to those loans, including requirements to reduce government spending. The Minister continued by stating that, in light of these circumstances, she had asked her Department “to step up its efforts to combat fraudulent activity.” This was in line with an earlier letter from the new government to the troika of 28 April 2011, in which the then Irish Government, in a section on possible fiscal policies and fiscal consolidation to curb the crisis, mentioned that there was “also evidence that some welfare schemes are susceptible to abuse.”<sup>22</sup>

The 38-page Fraud Initiative 2011-2013 contains a separate section on ‘Identity Fraud and Public Services Card’, now framing the PSC squarely in the context of anti-fraud measures by the new government in order to reduce welfare expenditure. In this section, the Department announced the phased introduction of the PSC in the autumn of 2011. It also indicated that the introduction of the card and the registration process was already being piloted in a number of local offices of the Department, including Tullamore, Sligo and King’s Inn in Dublin. It is unclear from the available materials why these specific areas were chosen for the pilot.

While earlier statements by the Government had underlined that the PSC would ‘not operate as an identity card’, the narrative and objectives around the PSC began to shift. In the Fraud Initiative 2011-2013, the Department underlined that the project “includes the introduction of enhanced facilities for the registration of an individual’s identity. The card will provide public service providers with verification of an individual’s identity [...]”<sup>23</sup> It was also made clear that the PSC would incorporate “identification features including a biometric photograph and signature [...]”<sup>24</sup> It was noted that the “card will act as a key for access to public services in general, identifying and authenticating individuals as appropriate and where required.”<sup>25</sup> This was explained as a measure to reduce “fraud and error which result from the incorrect identification of benefit claimants.”<sup>26</sup> In addition to reducing fraud through better identification and authentication of welfare recipients, the stated objective of the PSC was to replace the existing Social Services Card and Free Travel

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<sup>21</sup> Department of Social Protection Fraud Initiative 2011-2013, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>

<sup>22</sup> International Monetary Fund, ‘Ireland: First and Second Reviews Under the Extended Arrangement and Request for Rephasing of the Arrangement’, 2 May 2011, p. 53, available from: <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Ireland-First-and-Second-Reviews-Under-the-Extended-Arrangement-and-Request-for-Rephasing-of-24863>

<sup>23</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>

<sup>24</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>

<sup>25</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>

<sup>26</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>



Card with a card that could “facilitate payment processing through the current Post Office network” and, in time, could be utilized to “provide even more secure payment provision” through “chip and PIN technology.”<sup>27</sup>

Production of the PSC did not start until the second half of 2011, and 4,000 cards were produced by the end of that year.<sup>28</sup> By May 2012, 7,000 cards had been issued.<sup>29</sup> But while the production and issuing of the PSC had already started, the Government introduced another major legislative change in the Social Welfare and Pensions Act of 1 May 2012. The origins of this legislation are very relevant for the purposes of this letter.

On 18 April 2012, the Government introduced the Social Welfare and Pensions Bill.<sup>30</sup> The original draft did not include any relevant amendments related to the PSC. On the same day, however, the then Minister for Social Protection announced in the lower house of the legislature, the Dáil, that she would be proposing a change in the law “to provide for the introduction of a new condition for any new claim for social welfare payment that the claimant must satisfy the Department as to his or her identity including allowing for electronic capture of photograph and signature.”<sup>31</sup> This announced amendment was put in the context of reducing welfare fraud: “One of the advantages of the public services card is that it will help to reduce fraud and error which result from the incorrect identification of claimants. Under the existing legislative provisions there is no mandatory requirement for a person to allow for his or her photograph and signature to be captured and reproduced in electronic format for purposes of a PPSN allocation, public services card and claims for social welfare benefits.”<sup>32</sup> The Minister repeated these claims to the Dáil on 24 April 2012, stating that the “existing legislation is being amended to make it a condition that a claimant's identity is appropriately authenticated. This provision also allows for a photograph and electronic signature to be taken, retained and reproduced where required.”<sup>33</sup> Later in the debate, she said that each card “will contain a biometric-style photograph, be encrypted and carry a signature.”<sup>34</sup> One legislator urged the Minister to go further and use such techniques as retinal scanning, claiming that “[i]f one has nothing to hide, one should have no worries about this.”<sup>35</sup> Another legislator commended her and claimed that ‘some commentators’ had estimated social welfare costing the Exchequer over €700 million each year and that it was therefore “right and prudent” that new measures like the PSC would be used to authenticate the identity of individuals.<sup>36</sup>

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<sup>27</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27 and 28, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>

<sup>28</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, page 118, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>

<sup>29</sup> <https://www.thejournal.ie/what-is-the-public-services-card-443305-May2012/>

<sup>30</sup> <https://data.oireachtas.ie/ie/oireachtas/bill/2012/26/eng/initiated/b2612d.pdf>

<sup>31</sup> Minister for Social Protection (Deputy Joan Burton), 18 April 2012, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-18/speech/623/>

<sup>32</sup> Minister for Social Protection (Deputy Joan Burton), 18 April 2012, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-18/speech/623/>

<sup>33</sup> Minister for Social Protection (Deputy Joan Burton), 24 April 2012, available from: [https://www.oireachtas.ie/en/debates/debate/dail/2012-04-24/39/#spk\\_346](https://www.oireachtas.ie/en/debates/debate/dail/2012-04-24/39/#spk_346)

<sup>34</sup> Minister for Social Protection (Deputy Joan Burton), 25 April 2012, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-25/speech/199/>

<sup>35</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-19/speech/426/>

<sup>36</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-24/speech/326/>

On 25 April 2012, the bill was moved to the committee stage in the Dáil where significant amendments were introduced by the Minister, including to the PSC. One legislator complained at the start of the debate that he and other legislators had only received the 23 pages of amendments close to midnight on 24 April 2012, the night before the debate.<sup>37</sup> Despite the publication of the bill in early April and its introduction on 18 April, the legislator complained, the decision was made to share these amendments with legislators only at the last minute. He commented: “The fact previous social welfare Bills were guillotined is no excuse to continue what was a bad practice. [...] Essentially, we will not have the opportunity to table amendments to most of the Bill because it will be guillotined tomorrow. [...] That has to result in bad legislation.”<sup>38</sup> Another legislator commented on 25 April 2012 that the way the government was handling the introduction of the amendments was unfair: “To come into the House with 23 pages of amendments is unfair and wrong.”<sup>39</sup>

The last-minute amendments contained important provisions relating to the PSC.<sup>40</sup> Importantly, Section 241 of the SWCA 2005 was amended to state that anyone’s right to a social welfare benefit would be made conditional on satisfying the Minister “as to his or her identity.” A subsection (1C) was added to Section 241 of the SCWA 2005, stating that “for the purposes of satisfying himself or herself as to the identity of a person who makes a claim for benefit, the Minister may, without prejudice to any other method of authenticating the identity of that person, request that person:

- (a) to attend at an office of the Minister or such other place as the Minister may designate as appropriate,
- (b) to provide to the Minister, at that office or other designated place, such information and to produce any document to the Minister as the Minister may reasonably require for the purposes of authenticating the identity of that person,
- (c) to allow a photograph or other record of an image of that person to be taken, at that office or other designated place, in electronic form, for the purposes of the authentication, by the Minister, at any time, of the identity of that person, and
- (d) to provide, at that office or other designated place, a sample of his or her signature in electronic form for the purposes of the authentication, by the Minister, at any time, of the identity of that person.”

A new subsection (1D) indicated that the Minister shall retain in electronic form any photograph or other record of an image of a person taken and any signature provided pursuant to subsection (1C). Similar language was introduced in Section 263 of the SWCA 2005 under a new subsection 263B. And a new subsection (1C) of the same provision stated that the Minister “shall not issue a public services card to a person unless the Minister is satisfied as to the identity of the person to whom such card is to be issued.” The bill passed the lower house one day later, on 26 April 2012. The above amendments passed unchanged. The Social Welfare and Pensions Act 2012 was enacted on 1 May 2012.

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<sup>37</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-25/speech/188/>

<sup>38</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-25/speech/188/>

<sup>39</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-25/speech/194/>

<sup>40</sup> <https://data.oireachtas.ie/ie/oireachtas/bill/2012/26/dail/3/amendment/numberedList/eng/b2612d-dcn.pdf>

The Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 subsequently inserted section 247C into the SWCA 2005, which allows the Minister to disqualify an individual from receiving social welfare benefits where their identity is not authenticated to the Minister's satisfaction. Once again, debate on the inclusion of this amendment was very limited, apart from expressions of general approval from legislators, of which the following is a good example: "From now on, a recipient's photograph and signature will be recorded electronically on the system to check against in the future. Obviously, this is necessary. If recipients fail to comply with this new regulation, they will put themselves at risk of not receiving further payments or of their payments being stopped."<sup>41</sup> Also typically, a Senator asked whether the measure went far enough: "A photo and an electronic signature will be required. Is that better than fingerprinting, which applies in other jurisdictions?"<sup>42</sup> A further amendment to the SWCA 2005 was made in the Social Welfare (Miscellaneous Provisions) Act 2015, which amended Section 242 of the SWCA 2005 to include a provision which stated that a person presenting for payment of benefit shall satisfy the Minister (or officer of the Minister or payment service provider) as to his or her identity by furnishing his or her PSC or payment card.

In the meantime, the roll-out of the PSC began on a nationwide basis in June 2012, and by the end of that year around 100,000 individuals had completed the SAFE registration process necessary for obtaining the card.<sup>43</sup> A differentiation was made from the start of the roll-out between the registration of 'regular' individuals and "low risk customers." The Department indicated in its 2012 Annual Report that a "reduced registration process" would be available to "a significant proportion of the Department's customers when the Free Travel Variant of the PSC becomes available in 2013."<sup>44</sup> In other words: exceptions to the registration process via SAFE were made from the start of the roll-out of the PSC for certain groups, especially older people. This was confirmed in the Department's 2013 Annual Report, which mentioned that over 117,000 passport holders over 66 years of age were contacted in writing in the second half of 2013, "requesting consent to use the photograph already supplied in connection with their respective applications for a passport, for the purposes of issuing a PSC."<sup>45</sup> It also noted that "over 100,000 people had consented which facilitated the issue of in excess of 100,000 PSC FTs."<sup>46</sup> In its 2014 annual report, the Department divided these 'low risk customers' into two groups. First, "[s]elected customers have been invited to avail of a 'postal' registration process which involves utilisation, with consent, of information already provided to other Government agencies, for example, a photograph supplied in connection with an application for a passport." Second, "selected pensioners over 66 who collect their payments at a Post Office are being invited to register by post."<sup>47</sup> According to the 2014

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<sup>41</sup> <https://www.oireachtas.ie/en/debates/debate/dail/2013-05-30/speech/180/>

<sup>42</sup> <https://www.oireachtas.ie/en/debates/debate/seanad/2013-06-13/6/>

<sup>43</sup> Department of Social Protection, Annual Report 2012, p. 30-31, available from: <https://www.dsfa.ie/en/downloads/ar2012.pdf>

<sup>44</sup> Department of Social Protection, Annual Report 2012, p. 31, available from: <https://www.dsfa.ie/en/downloads/ar2012.pdf>

<sup>45</sup> Department of Social Protection, Annual Report 2013, p. 34, available from: <http://www.dsfa.ie/en/downloads/ar2013.pdf>

<sup>46</sup> Department of Social Protection, Annual Report 2013, p. 35, available from: <http://www.dsfa.ie/en/downloads/ar2013.pdf>

<sup>47</sup> Department of Social Protection, Annual Report 2014, p. 42, available from: <http://www.dsfa.ie/en/downloads/ar2014.pdf>



annual report, the ‘low risk customer’ postal registration process had been offered to some 350,000 people by the end of that year. The same report noted that by the end of 2014, 1.12 million PSCs had been issued, meaning that in about one-third of all cases at that time, the Department did not follow the SAFE process in relation to ‘low-risk customers’.

In its 2013 annual report, the Department announced that it used facial image matching software to help detect and deter duplicate registrations. In its 2014 annual report, the Department clarified that this software had been in use since March 2013. It also provided more information about how it worked: “During the course of the SAFE registration process, the software performs a search of the captured or imported customer photograph against existing photographs on the Department’s database to ensure that the individual has not already been registered for a PSC using a different Personal Public Service number or a different identity dataset. Where a match or a potential match for the probe photograph is discovered the relevant records are referred to officers in the Department’s Client Identity Services for further examination and resolution.”<sup>48</sup>

2013 was also the year in which the Government decided to broaden the scope of the PSC beyond the Department, although that possibility had been on the table since the PSC was first discussed in government in the 1990s. In September 2013, the interdepartmental SAFE committee was re-constituted with the aim of ensuring the use of the PSC for all appropriate services by 2016.<sup>49</sup> In the 2014 annual report of the Department, it was noted that the Department together with the Department of Public Expenditure and Reform was engaged with multiple public bodies on the program of registration and issue of the PSC. The Department’s Compliance and Anti-Fraud Strategy 2014-2018 of April 2014 also advocated further expansion of the PSC across a broader range of public services.<sup>50</sup>

In July 2015, the Department launched [www.mygovid.ie](http://www.mygovid.ie), which allowed citizens to register for access to Department and other government online services, for example making an appointment to register for a PSC.<sup>51</sup> The Department also announced the extension of the MyGovID service in 2016 to provide online accounts built on the SAFE registration process and control mechanisms to allow for online identity verification for use by the Department as well as other departments and agencies.<sup>52</sup> The MyGovID project, initiated with assistance from Microsoft and Deloitte,<sup>53</sup> received no mention in the government’s January 2015 Public Service ICT Strategy. Yet, in December 2016, in its Open Government Partnership National Action Plan 2016-2018, the government indicated that the Office of the Government Chief Information Officer would continue to work with

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<sup>48</sup> Department of Social Protection, Annual Report 2014, p. 42, available from: <http://www.dsfa.ie/en/downloads/ar2014.pdf>

<sup>49</sup> Government Decision, S180/20/10/1789, 18 September 2013.

<sup>50</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 33, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>51</sup> Department of Social Protection, Annual Report 2015, p. 58, available from: <http://www.dsfa.ie/en/downloads/Annual%20Report%202015.pdf>

<sup>52</sup> Department of Social Protection, Annual Report 2015, p. 58, available from: <http://www.dsfa.ie/en/downloads/Annual%20Report%202015.pdf>

<sup>53</sup> [https://www.ipa.ie/\\_fileupload/HIS%20Conference%202018/MyGovID-Ambrose-Dunne-6-to-a-Page.pdf](https://www.ipa.ie/_fileupload/HIS%20Conference%202018/MyGovID-Ambrose-Dunne-6-to-a-Page.pdf)

the Department to promote the uptake of MyGovID and the Public Services card.<sup>54</sup> The June 2017 eGovernment Strategy 2017-2020 confirmed the linkage between MyGovID and the PSC, claiming that the “widespread adoption of the PSC infrastructure, *including its online counterpart MyGovID*, to underpin access to public services by citizens is critical to the successful delivery of the eGovernment strategy” (emphasis added).<sup>55</sup>

As was the case since the PSC had first appeared in the 1990s, its further roll-out was again linked to digital government transformation. The PSC, and its underlying SAFE standards and processes, were presented as essential elements in further efforts at government digitization. These efforts, including MyGovID, also became the catalyst for expanding the PSC beyond the remit of the Department. While first-time passport applicants (and a few other groups) had already been urged to apply for a PSC since March 2016,<sup>56</sup> the eGovernment Strategy 2017 of June 2017 contained a timeline for the adoption of the PSC and MyGovID ‘infrastructures’ by other departments and agencies between June 2017 and September 2018.<sup>57</sup> Services such as adult passport applications (new and renewals), driver’s license applications, school transport appeals and so on, would require SAFE registration and would allow online interaction via MyGovID.

From 2017 onwards, the PSC and MyGovID projects have been inseparable. In March 2017, the then Minister for Public Expenditure and Reform and then Minister for Social Protection (and later Prime Minister) officially launched the MyGovID platform.<sup>58</sup> The accompanying press release stated that MyGovID was “built on the Public Services Card, linking a ‘real word’ identity to an online identity.”<sup>59</sup> The then Minister for Social Protection underlined that MyGovID was making “life easier for all our citizens” and indicated that it was already possible to apply for maternity and paternity benefits online via MyGovID. The Minister also encouraged people to apply for a PSC, since it was “becoming ever more important as, over time, many government services in Ireland will require you to hold a Public Services Card.” At the time of writing of this letter, a PSC is required to verify a basic MyGovID account in Ireland.<sup>60</sup>

Around the same time the PSC became a more controversial public issue, most likely as a result of increased roll-out of the card, wider application beyond the Department, as well as critical reports by oversight bodies and in the media about its adverse impact on certain groups. In September 2016, the Office of the Comptroller and Auditor General released its annual report on the Accounts of the Public Services for 2015, which included a chapter on the roll-out of the PSC.<sup>61</sup> The report concluded that the PSC project failed to

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<sup>54</sup> Department of Public Expenditure and Reform, Open Government Partnership National Action Plan 2016-2018, December 2016, p. 22, available from: <http://www.ogpireland.ie/wp-content/uploads/2013/06/Final-National-Action-Plan-2016-2018.pdf>

<sup>55</sup> eGovernment Strategy 2017-2020 <https://egovstrategy.gov.ie/wp-content/uploads/2017/07/eGovernment-Strategy-2017-2020.pdf>, p. 12.

<sup>56</sup> Available from: <https://www.newstalk.com/news/what-is-a-public-services-card-and-do-i-need-one-581773>

<sup>57</sup> eGovernment Strategy 2017-2020 <https://egovstrategy.gov.ie/wp-content/uploads/2017/07/eGovernment-Strategy-2017-2020.pdf>, p. 12-13, available from:

<sup>58</sup> <https://www.gov.ie/ga/preasraitis/7970f6-government-launches-mygovid-a-safe-secure-online-identity-for-govern/>

<sup>59</sup> <https://www.gov.ie/ga/preasraitis/7970f6-government-launches-mygovid-a-safe-secure-online-identity-for-govern/>

<sup>60</sup> <https://www.mygovid.ie/en-IE/HowDoISignUp>

<sup>61</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, chapter 10, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>

develop a business case when the Government undertook steps in 2004 and 2005 to roll it out; that the Government did not undertake a proper, quantified cost-benefit analysis, including of the savings expected from reductions in re-verifying someone's identity and from reductions in identity fraud; that far fewer cards had been produced by that time than originally envisioned; and that expenditure on the project was higher than originally forecasted.

In August 2017, not long after the launch of the Government information campaign on the PSC and MyGovID, stories started emerging of individuals who had had difficulties accessing welfare benefits and services related to the PSC. On 22 August 2017, the Irish Times published a story of a pensioner in her 70s, whose non-contributory pension had been stopped after she refused to register for the PSC.<sup>62</sup> The Department owed the woman €13,000 but refused payment to her even though she had offered to identify herself by other means. On 24 August 2017, The Journal published a story of a 29-year old man with Down Syndrome who received a letter to register for the PSC. An interview with his mother revealed her anxiety that her son's disability payment and free travel pass would be affected by his inability to register for the PSC.<sup>63</sup> The next day, the Minister for Employment Social Protection claimed that the PSC was 'not compulsory but is mandatory' to claim social welfare benefits.<sup>64</sup>

Also on 25 August 2017, the Department issued a press statement which gave additional information about the PSC.<sup>65</sup> The statement made clear that the PSC was "currently a requirement" for access to social welfare services, first time adult passport applicants, replacement of passports issued before 2005, citizenship applications, driver theory test applications and access to 'high value or personal online public services' via MyGovID. The Department underlined that it "makes it clear to customers in receipt of social welfare payments that they do need to register to SAFE 2 to access, or continue to access, a social welfare entitlement." It furthermore added that the SAFE 2 process only takes about 15 minutes ("once all required documents are presented") and that the "majority of our customers accept the importance of [...] SAFE 2." It furthermore added that where "a customer does not 'satisfy the Minister in relation to identity' as per the legislative requirements outlined below, a payment can be stopped or suspended." According to the Department, the relevant legislation (referring to Section 247 C of the SWCA 2005) "requires a person to satisfy the Minister as to their identity and allows disqualification from receipt of a benefit in the event that it is not done. It is not possible for a person to satisfy the Minister as to his or her identity without being SAFE 2 registered."

On 30 August 2017, the Data Protection Commissioner issued a public statement on the controversy around the PSC. She claimed that a framework to authenticate the identity of individuals availing of state services "is an entirely legitimate government

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<sup>62</sup> <https://www.irishtimes.com/news/social-affairs/woman-s-pension-cut-after-she-refuses-to-get-public-services-card-1.3194216?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fsocial-affairs%2Fwoman-s-pension-cut-after-she-refuses-to-get-public-services-card-1.3194216>

<sup>63</sup> <https://www.thejournal.ie/disabilities-public-services-card-carol-brady-3561359-Aug2017/>

<sup>64</sup> <https://www.thejournal.ie/regina-doherty-public-services-card-3564489-Aug2017/>

<sup>65</sup> <https://www.gov.ie/en/press-release/22f6db-statement-on-public-services-card-25th-august-2017/>



policy choice”, but said that “there is a pressing need for updated, clearer and more detailed information to be communicated to the public and services users regarding the mandatory use of the Public Services Card for accessing public services.”<sup>66</sup> The Commissioner asked that the Department publish a comprehensive FAQ, which was subsequently published in October 2017.<sup>67</sup> In October 2017, she also launched a formal inquiry into the PSC.

A February 2018 parliamentary hearing before the Joint Committee on Employment Affairs and Social Protection was the first time there was a focused, specific and widely publicized debate in the legislature on the PSC project.<sup>68</sup> On 8 February 2018, representatives of the Irish Council for Civil Liberties (ICCL) provided evidence on the PSC to the Joint Committee. Their remarks came “primarily from the perspective of the right to privacy as is provided under the Irish Constitution, under the European Convention on Human Rights and under international law.”<sup>69</sup> According to these expert witnesses, there was reason to believe the PSC failed to meet relevant tests under the right to privacy with regard to its legal basis and with regard to its necessity and proportionality. In addition to concerns about the lack of transparency surrounding the PSC project and a particular lack of clarity about the relevant legal framework which had changed so many times in the previous decade, ICCL commented on the fact that the range of public services for which the PSC was the only acceptable form of identity had been dramatically expanded since 2005 without proper legislative debate. ICCL furthermore commented that the PSC scheme “disproportionately affects those members of our population who are dependent on social protection payments, pensions and so on and noted that “ordinary members of the public, who are dependent on social protection payments or pensions, have asked the Government to clarify what the legal basis for the system is before they were happy to progress and we know of cases where people have been cut off from pension payments by simply asking questions.”

On 22 February 2018, representatives of the Department of Employment Affairs and Social Protection (DEASP) and Department of Department of Public Expenditure and Reform gave testimony before the Joint Committee and responded to several allegations made.<sup>70</sup> A DEASP representative lamented that much of the public debate about the PSC since 2017 had “not been entirely correct and it has led to some degree of confusion.”<sup>71</sup> According to DEASP, the “SAFE public services card programme is simply about verifying the identity of people engaging with public services. It is no more or less than that.” Such identity verification, it was claimed by DEASP, was necessary to avoid error and fraud related to someone’s identity. What is more, DEASP underlined that an “an identity verification process is critical to being able to platform services digitally.” DEASP

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<sup>66</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 35, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>67</sup> <https://psc.gov.ie/questions/>

<sup>68</sup> <https://www.thejournal.ie/public-services-card-oireachtas-committee-3840426-Feb2018/>

<sup>69</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-08/speech/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-08/speech/3/)

<sup>70</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/3/)

<sup>71</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/5/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/5/)

claimed that one reason for changing identification requirements through the PSC project, was because of significant changes in the Irish population: “In the past, identity was relatively easy to verify as most people were known in their local communities and their identities could be testified to by other local individuals, such as doctors, teachers, gardaí, clergy, etc. However, given the remarkable changes the country has experienced in the past few decades, when we have seen considerable immigration, significant population growth and greater urbanisation, we are now a much more diverse and cosmopolitan society.” In addition, DEASP claimed that it had set out “in the comprehensive guide the various legal bases for SAFE identity validation for the PSI and for PSI data sharing and we are fully satisfied that these provisions provide a robust legal basis for the approach we have taken to identity verification.” At the same time, in light of criticism that the relevant legal framework was confusing and that there was no consolidated legal framework available, DEASP had since made publicly available “an administrative consolidation of the Social Welfare Consolidation Act 2005, in which we have endeavoured to encompass all Acts since 2005 up to and including the Social Welfare Act 2017.”

On 15 August 2019, the DPC presented its final report on its investigation to DEASP, together with a letter requiring DEASP to take a number of measures. The DPC stated to DEASP that it did not have the legal powers to publish its report, but it did issue a press release with its key findings and the measures it required DEASP to take.<sup>72</sup> The DPC requested DEASP to publish the report of its own volition. DEASP subsequently did so, along with its own response, on 17 September 2019.<sup>73</sup>

The DPC report is lengthy (172 pages) and it includes a detailed analysis of the PSC project, with a specific focus on concerns surrounding this project from the perspective of data protection law. For the purpose of this letter, it should be underlined that the focus of the DPC report is limited to examining “whether there is a legal basis for such processing of personal data by DEASP in connection with the issuing of the PSC and the accompanying SAFE registration process” as well as the “transparency of information provided to data subjects in relation to such processing.”<sup>74</sup> While data protection concerns are of major importance in relation to the PSC project and the DPC report has played an instrumental role in informing debate about this project in Ireland and providing more transparency about it to the public, I would underline that there are other human rights concerns related to the PSC project which are not the primary focus of the DPC report and which are of particular relevance to this letter.

The key finding in the DPC report is “that there is no legal basis under the Acts for DEASP to process personal data for the purposes of identity authentication of persons conducting transactions with public bodies other than DEASP. However the DPC has found that there is a legal basis under the Acts for DEASP to process the personal data of

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<sup>72</sup> <https://www.dataprotection.ie/en/dpc-statement-matters-pertaining-public-services-card-0> , 16 August 2019.

<sup>73</sup> <https://www.gov.ie/en/news/c45851-report-of-the-data-protection-commission-on-the-public-services-card/>

<sup>74</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 17, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

people who are claiming benefits from DEASP.”<sup>75</sup> Another key finding in the DPC report is “that the indefinite, blanket retention by DEASP of certain documentation and information collected during the SAFE registration process contravenes the principle that personal data shall not be kept longer than is necessary.”<sup>76</sup> Finally, the DPC found that “contrary to DEASP’s obligations under the Acts, there is a serious deficit of information provided to the public concerning the processing in question.”<sup>77</sup> In December 2019, the DPC issued the DEASP with an enforcement notice in order to force DEASP to comply with the findings in its report.<sup>78</sup> DEASP has since appealed the enforcement notice in court<sup>79</sup> and this appeal is currently pending before the Circuit Civil Court.<sup>80</sup>

The PSC and related MyGovID have also assumed even greater importance as a result of the recent introduction of a new National Childcare Scheme (NCS) in Ireland, launched in November 2019. The NCS provides financial support to help parents meet the costs of childcare.<sup>81</sup> It provides a universal subsidy for children under 3 and a means-tested subsidy for children up to 15. The NCS will replace existing targeted childcare support programs and the current universal childcare subsidy by 2021. The Department of Children and Youth Affairs (DCYA) is responsible for NCS policy, legislation and oversight while day-to-day management of the scheme is carried out by the scheme administrator Pobal. For the mean-tested subsidy, PPS numbers will be used by DCYA to gather data from the Revenue Commissioners and the Department of Employment Affairs and Social Protection as part of the assessment and verification of income.<sup>82</sup>

Following the introduction of the NCS in November 2019, it was only possible to apply for the NCS online.<sup>83</sup> In order to do so, it was necessary to have a verified MyGovID account, and to obtain the latter it was necessary to have a PSC. On 11 March 2020, while this communication was in the process of being drafted, the Minister for Children and Youth Affairs announced the introduction of a postal application process for the NCS, an option that had been promised in 2019, but not acted upon.<sup>84</sup> The information on the dedicated website ([ncs.gov.ie](https://ncs.gov.ie)) about the postal application process is limited, other than the brief remark that those who would like to apply by post should contact the Parent Support Centre. It is unclear from the webpage whether those parents who apply for the

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<sup>75</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 17, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>76</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 17, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>77</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 18, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>78</sup> <https://www.irishtimes.com/breakingnews/ireland/data-commissioner-issues-enforcement-notice-in-respect-of-public-services-card-968977.html>

<sup>79</sup> <https://www.irishlegal.com/article/department-lodges-formal-appeal-against-public-services-card-enforcement-notice>

<sup>80</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/minister-claims-data-protection-commission-erred-in-findings-on-public-services-card-1.4190424?mode=amp>

<sup>81</sup>

[https://www.citizensinformation.ie/en/education/pre\\_school\\_education\\_and\\_childcare/national\\_childcare\\_scheme.html](https://www.citizensinformation.ie/en/education/pre_school_education_and_childcare/national_childcare_scheme.html)

<sup>82</sup> National Childcare Scheme, Policy Guidelines, p. 14-15, available from: <https://dlrccc.ie/wp-content/uploads/2019/11/NCS-Policy-Guidelines-1.pdf>

<sup>83</sup> <https://ncs.gov.ie/en/>

<sup>84</sup> <https://www.gov.ie/en/press-release/2488ad-minister-zappone-welcomes-launch-of-the-postal-application-process-f/>



NCS by postal application need to obtain a PSC first. Based on earlier public comments by a DCYA official to the Irish Times, it appears that a PSC is not (currently) required for postal applications.<sup>85</sup>

It was also announced in the press release by the Minister for Children and Youth Affairs that applications for 39,572 children had been received (via MyGovID exclusively) since 20 November 2019. In the absence of additional information, it is unclear how to interpret that number. There also appears to be no information in the public domain about the number of parents who did not apply in the period 20 November 2019-11 March 2020 because of the requirement to get a PSC and to apply online. Given the obstacles put in place, including obtaining a PSC and being able to navigate the online process, it is quite likely that certain groups of parents have not been able to apply for the NCS in the intervening 4 months. It is not clear if any research was done in advance to ascertain the wishes and needs of parents who did not want to apply for a PSC or did not want to apply via the online route. Earlier comments by DCYA that “our experience where we have engaged with parents is they use online all the time, they want online” and that “a lot have the public service card already” does not appear to point in the direction of serious, evidence-based, decision-making in this regard.<sup>86</sup>

Most recently, the COVID-19 crisis has led to a flood of claimants seeking unemployment assistance and other forms of welfare benefits and assistance. On 20 March 2020 DEASP announced that it had temporarily suspended the SAFE registration process for new applicants. It is unclear whether this means that new applicants without a PSC cannot access relevant welfare benefits or whether the PSC requirement is simply waived for the time being for new applicants.<sup>87</sup> Those applying for the COVID-19 Pandemic Unemployment Payment are urged to apply online, but only need a basic MyGovID account and are therefore not required to have a PSC.<sup>88</sup> While the PSC requirement appears to have been made optional, at least in part, because of the inability to complete the SAFE process at this time, it also seems to acknowledge the fact that this identity verification tool is an unnecessarily burdensome barrier for those seeking to access their right to government assistance. This exception reinforces the unequal application of the PSC requirement throughout its history: at various points in time certain groups have been explicitly exempted from this administrative burden, as was shown above.

## **B. The SAFE standard and registration process, including facial recognition**

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<sup>85</sup> <https://www.irishtimes.com/news/social-affairs/public-services-card-requirement-for-childcare-payments-illegal-1.4088711>

<sup>86</sup> <https://www.irishtimes.com/news/social-affairs/public-services-card-requirement-for-childcare-payments-illegal-1.4088711>

<sup>87</sup> <https://www.gov.ie/en/press-release/c303a0-special-arrangements-in-place-for-scheduled-appointments-at-intreo-c/>

<sup>88</sup> “You should apply online for the COVID-19 Pandemic Unemployment Payment on MyWelfare.ie. This is the quickest way to apply. You need: A basic MyGovId account (all you need is an e-mail address and password); Your personal details; Your bank details (payment can only be made to an Irish bank account).” [https://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/unemployed\\_people/covid19\\_pandemic\\_unemployment\\_payment.html](https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/covid19_pandemic_unemployment_payment.html) (accessed on 3 April 2019).

At least until 11 March 2020, an individual in Ireland seeking to access social protection benefits and assistance provided by DEASP or the benefits of the National Childcare Scheme provided by DCYA (until 11 March 2020 at least) was required to obtain a PSC, which in turn required registering through the SAFE process. The Government has confirmed this in its letter of 7 August 2019 , which indicates clearly that all clients of DEASP “regardless of background, are required to validate their identity to the SAFE standard [...]” Similarly, those individuals who needed to access the benefits of the National Childcare Scheme could, until 11 March 2020, only apply online via a verified MyGovID account, for which an individual needs a PSC.<sup>89</sup>

The DPC Report provides a good summary of the SAFE standard and the process for obtaining a PSC:

“In reality, the backbone of the project is a form of citizen registration system. That system is based on a nationally developed standard called the “Standard Authentication Framework Environment (SAFE).” When registering an individual for the purpose of issuing a PSC, DEASP applies the “SAFE 2” standard to authenticate a person’s identity to a “substantial level of assurance.” DEASP requires any individual who is to be issued with a PSC to present themselves in person at specified government offices, to bring a range of supporting identity and other documentation with them, to submit to a face-to-face interview, and to have a high-quality photo taken on-site and a recording of their signature stored. Re-registration is required every seven years. A facial recognition system has been implemented to match new photographs of individuals taken against the population of photographs already stored in order to ensure an individual is not attempting to fraudulently register twice. [...]

Currently, the position is that the DEASP, and only the DEASP, registers individuals to the SAFE 2 standard in the State. In that connection, the Department has acknowledged to the DPC that it discourages any other public body from implementing a parallel system of SAFE 2 registration. Equally, a PSC -which the DEASP describes as a mere “token” of SAFE 2 registration -can only be issued by the Minister for Employment Affairs and Social Protection.”<sup>90</sup>

Information on how to apply for a PSC can also be found on government websites,<sup>91</sup> which indicate the following steps:

1. Booking a face-to-face registration appointment by dropping in at a local Intreo Centre or Social Welfare Branch Office or by booking an appointment online via MyWelfare.ie.

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<sup>89</sup> <https://www.irishexaminer.com/breakingnews/ireland/childcare-schemes-psc-requirement-highly-discriminatory-965346.html>

<sup>90</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 6-7 available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>91</sup> <https://psc.gov.ie/how-to-apply/>

2. Undergoing a face-to-face meeting at an Intreo centre or a dedicated SAFE registration centre, which may involve to “an in-depth interview” in certain circumstances.<sup>92</sup>

3. Bringing certain documents to the face-to-face appointment, including (a) evidence of identity (depending on someone’s nationality and where one is born this requires the examination/validation/verification of at least two documents supporting identity<sup>93</sup>); (b) evidence of address (utility bill, property lease etc.); (c) ‘additional helpful documents’ (including Free Travel Pass, Medical Card, European Health Insurance Card, Credit/debit card, student card: applicants should bring these to their interview “as they may also help to confirm your identity”<sup>94</sup>)

4. Bringing your mobile phone to the face-to-face appointment. The Government website states that you “should also bring your mobile phone to the appointment although this is not required”. Such ambiguous language may create confusion about the mandatory or voluntary nature of this requirement. This requirement would “enable an easier method of initially verifying your MyGovID for online services”, in an attempt at further tying the PSC project to the MyGovID project.

5. Answering ‘some security questions’.<sup>95</sup>

6. Having your photograph taken and your signature recorded. According to the government website on the PSC, the digital version of that photo will be “run through software to check against other photos that have already been taken during other SAFE registrations.”<sup>96</sup> According to the government this is done to detect and/or prevent duplicate registrations.

A written submission from the Irish government in May 2019,<sup>97</sup> provided to me in the context of his report to UN General Assembly, describes the process as follows:

“The Department of Employment Affairs and Social Protection (DEASP) has developed, in conjunction with a number of other Government Departments, a rules based standard for establishing and authenticating an individual’s identity for the purposes of access to public services. This programme of work, which is known as Standard Authentication Framework Environment or SAFE for short, also provided for the introduction of a Public Services Card (PSC) to enable individuals to gain access to public services more efficiently. The introduction of the PSC provided for a card with key security features such as a photograph and signature which should minimise the rate of fraud and error arising from incorrectly identified and authenticated individuals.

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<sup>92</sup> <https://psc.gov.ie/questions/>

<sup>93</sup> <https://psc.gov.ie/questions/>

<sup>94</sup> <https://psc.gov.ie/questions/>

<sup>95</sup> <https://psc.gov.ie/questions/>

<sup>96</sup> <https://psc.gov.ie/questions/>

<sup>97</sup> <https://www.ohchr.org/Documents/Issues/Poverty/DigitalTechnology/Ireland.pdf>



Facial Image Matching software is used as a tool to further strengthen the SAFE registration process and to help detect and deter duplicate SAFE registrations. This software has been operational on the DEASP IT systems since 13th March 2013. The normal digital photograph (in JPEG format) captured during the SAFE registration process is input into and stored in this facial image matching software. It is then modelled and searched against the Department's photo database to ensure that the person in the photograph has not already been registered using a different Personal Public Services Number or a different identity dataset.

The software compares photographs by converting the image into an arithmetic template based on the individual's facial characteristics, e.g., distance between their eyes, height of cheekbones etc., and checking it against the other image templates already held in that software's database from other SAFE registrations. It is important to be clear while DEASP is not collecting or sharing biometric data, the processing of the photographic image through these arithmetic templates and models produces biometric data.

Furthermore, DEASP does not ask for nor collect biometric data from its customers (e.g., fingerprints, retinal scans, etc.) nor does it use advanced facial mapping cameras when taking the photo as part of the SAFE registration process.

The primary and overriding rationale for the application of facial recognition software by the Department is to prevent identity fraud entering the Social Welfare system and indeed other public services. The deployment of the SAFE registration process and the legal requirement that all identities must be established to the satisfaction of DEASP before an entitlement is awarded and payments made is a significant protection against fraudulent exploitation of the social welfare system. DEASP is satisfied that its use of facial imaging software is compliant with the law and is covered by the current legislative framework including the GDPR, the Social Welfare Consolidation Act, and the Data Protection Act 2018."

In its May 2019 statement, the Government states that "DEASP does not ask for nor collect biometric data from its customers" and that "DEASP is not collecting or sharing biometric data." It acknowledged, however, that "the processing of the photographic image through these arithmetic templates and models produces biometric data." This position was also publicly defended by the Minister in 2017, when she said in an interview: "We're not holding biometric data. And I can categorically say that that's true, because the only thing we hold is your photograph."<sup>98</sup> That statement is problematic, since most experts would consider that taking a picture of someone amounts to collecting biometric data.<sup>99</sup>

The DPC report explicitly excluded from its remit "processing by DEASP involving facial matching in relation to SAFE registration and the issuing of PSCs", a topic that will be included in a second report.<sup>100</sup> The report did conclude, however, that DEASP's

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<sup>98</sup> <https://www.irishtimes.com/news/ireland/irish-news/facial-recognition-used-in-public-services-card-programme-department-says-1.4170870>

<sup>99</sup> [https://edps.europa.eu/sites/edp/files/publication/18-08-10\\_opinion\\_eid\\_summary\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-08-10_opinion_eid_summary_en.pdf)

<sup>100</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 68, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

Privacy Statement was inconsistent with the government's transparency obligations.<sup>101</sup> In apparent response to this criticism, the DEASP changed its Privacy Statement in February 2020<sup>102</sup> So that Article 12.4 now reads:

“Another example is the biometric processing of photographs provided as part of the SAFE identity authentication process/issuing of PSCs. This biometric processing of the photograph produces an arithmetic template which allows precise comparison of the photograph in question with others held by the Department. This in turn helps to identify cases where the same person has sought to register twice or more under different names. It also helps to identify cases where a person seeks to assume the identity of another person, so protecting against identity theft. This biometric processing is performed by the Department and the arithmetic template produced is not shared with any other specified body nor is it stored on the PSC.”

While the Government acknowledges biometric processing of the photograph, it continues to insist that “this photograph is not biometric.”<sup>103</sup> Sensitivity about the appropriate terminology would seem to have lead to a change in name of the company producing the PSC. Around the time the company was awarded the contract to print up to 2 million PSCs, its name was changed from Biometric Card Services Ltd to Security Card Concepts Ltd.<sup>104</sup>

The above description reflects the ‘normal’ procedure for obtaining a PSC. But there have been many exceptions to this standard, especially those between regular applicants and ‘low risk customers’. According to the DEASP’s 2014 annual report, it divides the latter into two groups: (i) “[s]elected customers ... invited to avail of a ‘postal’ registration process which involves utilisation, with consent, of information already provided to other Government agencies, for example, a photograph supplied in connection with an application for a passport”; and (ii) “selected pensioners over 66 who collect their payments at a Post Office”, who are also allowed to register by post. By the end of 2014, about 350,000 of the then 1.12 million PSCs had been issued via this more relaxed process. This distinction between ‘normal’ and ‘low risk customers’ was confirmed by DEASP representatives before the Joint Committee on Social Protection and Employment on 22 February 2018,<sup>105</sup> and reflected on the PSC Q&A webpage.<sup>106</sup> The DPC report concluded

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<sup>101</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 130-133, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>102</sup> <https://www.irishtimes.com/news/ireland/irish-news/facial-recognition-used-in-public-services-card-programme-department-says-1.4170870>

<sup>103</sup> <https://www.irishtimes.com/news/ireland/irish-news/facial-recognition-used-in-public-services-card-programme-department-says-1.4170870>

<sup>104</sup> <https://www.irishtimes.com/news/ireland/irish-news/augmented-identity-firm-gets-9m-contract-for-public-services-cards-1.3555710>

<sup>105</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/40/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/40/)

<sup>106</sup> “In some cases, where a customer authenticates their identity in another face-to-face engagement, the Department may collect elements of the PSI data by post and, with the consent of the customer, utilise existing photographs to complete the SAFE 2 process. This eliminates the need to attend at an Intreo centre or a dedicated SAFE Registration centre specifically for the purpose of registering to SAFE 2.” <https://psc.gov.ie/questions/>

that this differentiation in procedure indicates that the Minister undertakes a form of risk analysis to distinguish between different classes of PSC applicants, but noted that there is lack of transparency about how this risk analysis was being conducted.<sup>107</sup>

Another exception to the ‘normal’ procedure is made for those who do not reside in Ireland.<sup>108</sup>

In contrast, the Government appears to be much less willing to make comparable exceptions for individuals in particularly vulnerable situations. The PSC Q&A webpage states that “some exceptions [to the registration process] may be made for example in respect of people with profound disabilities.”<sup>109</sup>

*“At present the Department’s databases do not include details on the nature and degree of disability, hence the need to write to customers to establish if they have particular requirements to enable them to register for the PSC. Where customers are unable to attend in person, other methods for registration are available. A mobile registration facility is available to register customers who face substantial challenges in presenting at a Department location but still want to continue to avail of their free travel entitlement. Group registration at community venues is the preferred mode of utilising these mobile registration facilities but in very exceptional circumstances, single individuals may be registered at their place of residence. Where a customer is incapacitated to the extent that they may not be able to understand what is entailed in SAFE registration the Department would reasonably expect that their agent (if an agent is appointed) or carer would assist them in making contact with the Department.” (emphasis added)*

### **C. Evidence of the impact of imposing the PSC requirement on poor and marginalized groups**

In the following analysis we draw attention to the available evidence relating to the impact of the PSC requirement and related procedures on welfare beneficiaries, and especially on the poorest and most vulnerable among them.

At the outset, it should be observed that such evidence is difficult to come by. The Government collects a minimum of relevant information. A letter from the Secretary General of DEASP to the Committee of Public Accounts of 12 December 2019, following up on his testimony to the Committee on 7 November 2019, sheds some light on this issue, however.

According to the letter, one of two ways in which the PSC leads to savings for DEASP is “[f]ailure of a person to complete the SAFE registration process

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<sup>107</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 8 & 25, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>108</sup> The PSC Q&A webpage states, without further explanation, that “[p]eople living abroad and in receipt of Irish public services are not being requested to be registered to SAFE Level 2 at this time.” <https://psc.gov.ie/questions/>

<sup>109</sup> <https://psc.gov.ie/questions/>



satisfactorily.”<sup>110</sup> From 2013 to the end of September 2019, such failures led to ‘control savings’ of €4.64 million in respect of 473 cases. These are “cases where payments were suspended or withdrawn where customers on various schemes were requested to attend for a PSC but failed to do so. In some cases, the customers failed to provide the necessary documentation to allow the SAFE registration process to be completed.” By characterizing these 473 cases, between 2013 and late 2019, as ‘control savings’, it appears that DEASP considers them to be positive developments that save the government money, rather than situations in which individuals are unable to successfully apply for a PSC and are therefore excluded from their human right to access social protection measures. No further information on these 473 cases appears to be available in the public domain.

In an earlier debate before the Joint Committee on Employment Affairs and Social Protection on 22 February 2018, a representative of DEASP was asked by a Deputy about the number of “individuals who have had their payment suspended, curtailed or cut because of their legitimate refusal to get one, due to legal concerns about the card.”<sup>111</sup> The DEASP representative said in response that this is “very difficult to answer that because it is an incredibly fluid situation.” He did mention that “almost 4,300 free travel customers have failed to register to SAFE 2 and have had the travel pass withdrawn.” Further details about these 4,300 cases are not available, including whether these are predominantly older individuals, or younger individuals with disabilities.

In the same debate, the representative mentioned that DEASP “had approximately 450 cases suspended.” This figure seems likely to be part of the 473 cases noted in December 2019. Without providing any evidence to substantiate his claim, the representative said that “the vast majority of those [450 cases] do not engage and essentially disappear from our system. We *believe* the vast majority of those have gone abroad, so we have *few or no cases* where people have definitively objected and refused to engage with the SAFE process.” (emphasis added).<sup>112</sup>

In the absence of any more evidence collected and published by DEASP, basic questions about the impact of the PSC remain unanswered. This includes information on the number of people who refuse to register for a PSC, the number who due to error or personal circumstances never apply for a PSC, and the number who attempt to apply but fail for whatever reason. In the absence of available government evidence about how people have experienced the PSC or SAFE 2 processes, I have to rely on mostly anecdotal evidence collected by civil society organizations and Irish media. The relevant evidence paints a disturbing, yet no doubt only partial, picture of the impact of the introduction of the PSC on welfare recipients, especially on the most vulnerable and marginalized among them.

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<sup>110</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee\\_of\\_public\\_accounts/submissions/2019/2019-12-31\\_correspondence-john-mckeon-secretary-general-department-of-employment-affairs-and-social-protection-32r002603-pac\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-12-31_correspondence-john-mckeon-secretary-general-department-of-employment-affairs-and-social-protection-32r002603-pac_en.pdf)

<sup>111</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/88/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/88/)

<sup>112</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/90/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/90/)

(i) One case, mentioned earlier, involved a pensioner whose non-contributory pension was stopped after she refused to register for the PSC.<sup>113</sup> The Department owed the woman €13,000 but refused to pay, even though she had offered to identify herself by other means. In October 2017, the Irish Times reported that this woman's payments would be restored, including arrears of over €15,000.<sup>114</sup>

(ii) On 24 August 2017, TheJournal.ie published a story of a 29-year old man with Down Syndrome who received a letter telling him to register for the PSC. An interview with his mother revealed her anxiety that her son's disability payment and free travel pass would be affected by her son's inability to register for the PSC.<sup>115</sup>

(iii) Based on freedom of information requests, TheJournal.ie published a story in October 2017 about queries and complaints from the public in response to the PSC. The article mentions that one "piece of correspondence received comprises a letter of legal action against the [DEASP] with regard to a citizen who had their non-contributory pension stopped 'because she refused to be issued with a Public Services Card'." It is unclear whether this is the same case as (i) above.

(iv) In February 2018, TheJournal.ie published a story about a man from Venezuela who was unable to obtain a PSC. The man was living in Ireland legally, but had a Venezuelan passport that had expired. Many Venezuelan emigrants around the world have an expired passport due to printing shortages in Venezuela. The man sought a PSC to apply for a driving license, which he needed for a job.<sup>116</sup> After his PSC was denied, the man said he "felt totally lost and I didn't know what to do." After DEASP was contacted by TheJournal.ie, he was issued a PSC. When the same media outlet subsequently asked DEASP to confirm that all Venezuelans without passports could secure a PSC, DEASP responded it had "a separate arrangement for considering the exceptional cases of people who cannot complete the normal process to verify their identity to a substantial level of assurance."

(v) In April 2018, TheJournal.ie published the story of a man who had been issued his PSC after an 8-month battle with DEASP. The man made an appointment to obtain a PSC in July 2017 and presented his short-form birth certificate as proof of identification. When he was informed that his details did not appear on the list of births of the General Register Office, he told the officials that he was adopted. He subsequently refused to get an adoption certificate, which DEASP apparently requires as a prerequisite for obtaining a PSC for adopted persons. Earlier, he had spoken to TheJournal.ie about the impact this saga had had on him: "And why have I had to tell more people in the last few months that

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<sup>113</sup> <https://www.irishtimes.com/news/social-affairs/woman-s-pension-cut-after-she-refuses-to-get-public-services-card-1.3194216?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fsocial-affairs%2Fwoman-s-pension-cut-after-she-refuses-to-get-public-services-card-1.3194216>

<sup>114</sup> <https://www.irishtimes.com/news/ireland/irish-news/woman-s-pension-to-be-restored-in-public-services-card-row-1.3256965?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fireland%2Firish-news%2Fwoman-s-pension-to-be-restored-in-public-services-card-row-1.3256965>

<sup>115</sup> <https://www.thejournal.ie/disabilities-public-services-card-carol-brady-3561359-Aug2017/>

<sup>116</sup> <https://www.thejournal.ie/venezuela-public-services-card-3859900-Feb2018/>

I'm adopted than I had to do in my entire life up to this point? I'm a private person, I pay my bills, this is a personal decision that they shouldn't be allowed force on someone."<sup>117</sup> The article mentions that TheJournal.ie spoke to seven other Irish citizens who had experienced a similar situation.<sup>118</sup> One such story, which was about an adopted woman who was also refused a PSC, described the impact of having to prove one's adopted status as follows: "At the end of the day it was just pure humiliation, having your adoption aired in public like that [...]. The whole thing has brought back a lot of emotions I haven't had to deal with in a long time. I really think this is the highest form of discrimination – they make an appointment for someone and they then drag up a whole grave's worth of stuff. [...] I just burst out crying. The girl was very official but there wasn't any empathy for the situation."<sup>119</sup> In January 2018, TheJournal.ie wrote that it had requested DEASP to indicate the number of adopted people who had registered for a PSC with an adoption certificate, together with the number of such people who had been denied a card due to their refusal to produce or obtain such a certificate, but DEASP replied that such statistics "are not available."<sup>120</sup>

(vi) In May 2019, an Irish law firm published a press release stating that DEASP had agreed to pay social welfare benefits to a client of that firm who had refused to register for the PSC. The statement read that the law firm wrote to DEASP "pointing out that there was no requirement under social welfare law for an applicant to register for the PSC and that the payment had been unlawfully suspended and that our client had been grossly misinformed as to their rights by officials." The firm subsequently "received confirmation that payments have been released confirming our assertion that a PSC registration is neither mandatory nor compulsory for the purposes of accessing social welfare benefits."<sup>121</sup>

(vii) In November 2019, the Irish Examiner published a story about a teacher in rural Ireland who broke her ankle and was subsequently denied welfare benefits by DEASP because she refused to get a PSC. The woman suffered the injury and subsequently applied for supplementary welfare benefits because she was unable to work for several weeks. She presented for an interview with her driving license, passport and an old-style social services card, but was told she would have to get a PSC to confirm her identity and to access this benefit. The woman cited "the legal uncertainty over the card as her objection, together with the fact that repeated interviews at an Intreo centre some distance from her rural home, were logistically impractical given she was incapable of driving and could not afford taxis."<sup>122</sup>

The above information strongly suggests that the requirement to register for a PSC in order to receive social protection benefits from DEASP poses a range of obstacles which are likely to negatively impact some of the poorest and most marginalized individuals in Ireland. This is likely to include the elderly, those with intellectual or physical disabilities,

<sup>117</sup> <https://www.thejournal.ie/public-services-card-adoption-3675914-Nov2017/>

<sup>118</sup> [https://www.thejournal.ie/psc-adoption-card-issued-3929475-Apr2018/?jml\\_lg=1](https://www.thejournal.ie/psc-adoption-card-issued-3929475-Apr2018/?jml_lg=1)

<sup>119</sup> <https://www.thejournal.ie/psc-adoption-refusal-adoption-cert-3806998-Jan2018/>

<sup>120</sup> <https://www.thejournal.ie/psc-adoption-refusal-adoption-cert-3806998-Jan2018/>

<sup>121</sup> <https://www.fplogue.com/fp-logue-secures-social-welfare-payments-for-client-who-refused-to-apply-for-public-services-card/>

<sup>122</sup> <https://www.irishexaminer.com/breakingnews/ireland/teacher-denied-access-to-social-welfare-after-breaking-her-ankle-and-refusing-to-get-psc-964845.html>



those with a migrant background, and those who were adopted. It seems likely that the examples above are indicative of a much larger number of similar cases, which raises the question of whether the Covenant rights relating to social protection can be exercised without discrimination on the basis of age, disability, national origin, or birth. In addition, it appears that discrimination has also occurred because of reasons related to socio-economic status,<sup>123</sup> because those in lower-income brackets are likely to face more difficulties and financial barriers related to travel to registration offices and the obtaining of relevant documentation. It is also less likely that this group will be able to access legal assistance in order to challenge decisions related to the PSC. These issues of discrimination will be further dealt with below.

Two other important considerations relate to internet access and digital skills.

As to the first of these, there is a clear “digital divide” in Ireland. The PSC is integrally linked to the SAFE registration process. Obtaining the card is a prerequisite to acquiring a verified MyGovID account, which is required to interact with the Irish government online for high-value services. This accords with the fact that the PSC has consistently been seen by the Government as a stepping stone towards a ‘digital transformation’ in government. As noted above applications for the National Childcare Scheme were only possible online via MyGovID until 11 March 2020, and in order to get a verified MyGovID, a PSC was needed. While DEASP’s welfare benefits can still be applied for on the basis of paper and in-person routes, Irish policymakers are clearly pushing for a ‘digital first’ approach that may well transform into ‘digital only’ before too long.<sup>124</sup> In December 2019, the Irish government announced further acceleration of this ‘digital transformation’.<sup>125</sup>

But while those plans are moving ahead rapidly, reality presents a very different picture. According to the latest figures by the Irish Central Statistics Office (CSO), 9% of Irish households did not have internet access in 2019.<sup>126</sup> According to the European Commission, 27% of Irish households had not taken up fixed broadband in 2018, and Ireland ranked only 17<sup>th</sup> in the EU.<sup>127</sup>

Disaggregating the CSO figures provides a clearer picture of the impact of an increasingly digital state on the poorest and most vulnerable. Of the most affluent (top 20%), 95% had a fixed broadband connection, while that figure is only 80% for those in the bottom quintile (bottom 20%). The poor more often rely on mobile internet access, although only 56% of the bottom quintile have such access. This makes it more difficult to fill out forms and makes the process more expensive and less reliable than when fixed

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<sup>123</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009), E/C.12/GC/20, para. 35.

<sup>124</sup> Although this is denied in policy papers, see for example: Department of Public Expenditure and Reform, ‘Our Public Service 2020’ (December 2017), p. 15, available from: <https://ops2020.gov.ie/app/uploads/2019/08/Our-Public-Service-2020-WEB.pdf>

<sup>125</sup> <https://www.gov.ie/en/press-release/cd7882-government-makes-digital-transformation-a-priority-for-the-public-se/>

<sup>126</sup> <https://www.cso.ie/en/releasesandpublications/ep/p-issbh/informationssocietystatistics-households2019/householdinternetconnectivity/>

<sup>127</sup> European Commission, ‘Digital Economy and Society Index: 2019 Country Report Ireland’, p. 5, available from: [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=59900](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=59900)

broadband is available, as experience in other countries shows.<sup>128</sup> There is also a problematic rural-urban divide with regard to internet access: in the Dublin region 92% have a fixed broadband connection, while this figure stands at only 69% in the Midland region and 71% in the Border region. Almost all households with dependent children have internet access, a figure that is much lower for individuals without dependent children. But within the group of parents with dependent children, single parents have lower levels of internet access than those in households with two parents.

The Irish Government presented an ambitious National Broadband Plan in May 2019,<sup>129</sup> and in November 2019 announced that it might take at least another 7 years before every home in Ireland is covered by a high-speed broadband network (which also does not automatically translate in actual take-up). It is expected that there will be many hurdles on the way towards realizing this plan.<sup>130</sup>

And access is only one part of the picture. In order for NSC and other social protection services applicants to interact with the Irish Government via MyGovID, they have to have sufficient digital skills. According to the European Commission 2019 Digital Economy and Society Index, “only 48 % [of people in Ireland] have at least basic digital skills, well below the EU average of 57 %.”<sup>131</sup> According to the same survey, 16% of the Irish population have still never used the internet.<sup>132</sup> The European Commission survey does not disaggregate these statistics based on income, gender, disability, age or other relevant factors, but it is likely that for certain marginalized groups digital skills levels are (much) lower than the average.

The need for NSC applicants, prior to 11 March 2020, to have a MyGovID (and therefore a PSC), as well as access the internet and sufficient skills to set up an account and go through an online application process, is likely to have excluded certain individuals from this scheme for months and to have had more severe implications for groups that are poorer or otherwise more vulnerable than average. While DEASP still offers paper and in-person applications and communication for welfare recipients, all indications from the Government suggest that the PSC is clearly part of a broader project of going ‘digital first’ and maybe even ‘digital only’ and the challenges noted above are therefore relevant for DEASP’s ‘customers’ as well.

## **II. HUMAN RIGHTS ANALYSIS OF THE PSC PROJECT**

Without prejudging the accuracy of these allegations, I would like to express my concern about the impact of the PSC project on the human rights of individuals in Ireland,

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<sup>128</sup> <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>

<sup>129</sup> <https://www.dccae.gov.ie/documents/Delivering%20the%20National%20Broadband%20Plan.pdf>

<sup>130</sup> <https://www.irishexaminer.com/breakingnews/ireland/3bn-rural-broadband-plan-could-face-legal-challenge-965260.html>

<sup>131</sup> European Commission, ‘Digital Economy and Society Index: 2019 Country Report Ireland’, p. 3, available from: [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=59900](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=59900)

<sup>132</sup> European Commission, ‘Digital Economy and Society Index: 2019 Country Report Ireland’, p. 9, available from: [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=59900](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=59900)

and especially low-income and marginalized persons reliant on social protection benefits provided by DEASP and DCYA.

#### **A. The human right to social protection**

Ireland is a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and is thus required to “take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized” in the Covenant (article 2 (1)). Ireland has also undertaken to guarantee that the rights enunciated in the Covenant “will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (article 2 (2)).

The ICESCR contains several substantive human rights related to social protection. Article 9 recognizes the right of everyone to social security, including social insurance. According to the Committee on Economic, Social and Cultural Rights, this right “encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; [and] (c) insufficient family support, particularly for children and adult dependents.”<sup>133</sup> The Committee has furthermore noted that conditions for receiving benefits must be reasonable, proportionate and transparent and that the withdrawal or reduction of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.<sup>134</sup> It has also concluded that a system of social protection should be established under national law and should ensure “the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.”<sup>135</sup>

The right to social security in article 9 ICESCR, is also related to other social rights in the Covenant that deal with social protection. By virtue of Article 10 State Parties to the Covenant recognize that the “widest possible protection and assistance should be accorded to the family” and that “[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.” Article 11 recognizes the right of everyone to an adequate standard of living.

Other international human rights treaties ratified by Ireland also include provisions related to social protection, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), article 5 (e) (iv); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), articles 11, para.

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<sup>133</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 19 (The right to social security) (2008), para. 2.

<sup>134</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 19 (The right to social security) (2008), para. 24.

<sup>135</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 19 (The right to social security) (2008), para. 26.



1 (e) and 14, para. 2 (c); and the Convention on the Rights of the Child (CRC), article 26 and 27. The European Social Charter recognizes the right to social security and to social assistance (article 12 and 13). While the European Convention on Human Rights ('Convention') does not recognize a separate right to social security as such, because it deals primarily with civil and political rights, it is nevertheless relevant to the enjoyment of the right to social security in a variety of ways.<sup>136</sup>

The Irish Constitution recognizes the right to an adequate means of livelihood (article 45 (2) (i)), the rights of children (article 42A), and the obligation "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" (article 45 (4) (1)).

## **B. Impact of the PSC project and MyGovID project on the human right to social protection**

In line with the provisions of the Covenant, and as consistently stated by the Committee on Economic, Social and Cultural Rights, restrictions on access to the rights to social protection must meet certain criteria. In addition to being (i) non-discriminatory in law and in fact, they include being (ii) established by law, and being (iii) reasonable, (iv) transparent and (v) proportionate.<sup>137</sup> These criteria are in many respects comparable to those laid down in Article 4 of the Covenant in relation to the imposition of limitations on the rights recognized in the Covenant, according to which such measures must be "determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."

### **(i) Non-discriminatory**

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<sup>136</sup> The right to a fair trial in article 6 (1) ECHR has been applied to disputes involving the right to social security by the European Court of Human Rights. The right to social security has, in certain circumstances, been considered a 'possession' by the Court under article 1 of Protocol No. 1 to the ECHR. The Court has furthermore considered article 2 (right to life), 3 (prohibition of torture), 8 (right to privacy) and 14 (prohibition of discrimination) in relation to social security rights. For a good overview, see: Council of Europe, 'Social security as a human right' (2007), available from: [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-23\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-23(2007).pdf); See also: Ingrid Leijten, 'Social Security as a Human Rights Issue in Europe – Ramaer and Van Willigen and the Development of Property Protection and Non-Discrimination under the ECHR', *ZaöRV* 73 (2013), p. 177-208

<sup>137</sup> See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 19 (2008), E/C.12/GC/19: "The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination [...]. States parties should also remove de facto discrimination on prohibited grounds, where individuals are unable to access adequate social security. States parties should ensure that legislation, policies, programmes and the allocation of resources facilitate access to social security for all members of society in accordance with Part III. Restrictions on access to social security schemes should also be reviewed to ensure that they do not discriminate in law or in fact. [...] The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies. [...] Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law. [...] Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner."

Legislation and practice that affects the rights to social protection must not discriminate on the basis of various prohibited grounds already identified above. Both the claim by the government that the SWCA 2005 requires welfare recipients to obtain and use a PSC as well as the practice of requiring claimants to go through the SAFE registration process appears to discriminate on prohibited grounds however.

To begin with, the SAFE standard itself appears arbitrary since it is a purely domestic standard that is not based on any international standard and that was drawn up within the Irish government without any public consultation. It is furthermore unclear why alternative standards would not be sufficient to authenticate the identity of welfare claimants.

More importantly, the claim that welfare recipients are required to obtain and use a PSC in combination with the actual practice of applying the SAFE standard and registration process indicate the existence of *de facto* prohibited discrimination. As illustrated above, DEASP has made many exceptions to the PSC requirement and SAFE registration process:

- By the Government's own acknowledgment, the SAFE standard and registration process was not applied to 'low-risk' individuals and by the end of 2014 one third of all PSCs had been issued without applying this standard. More current statistics on the number of PSCs issued without going through the full SAFE process are not in the public domain and the government has never sought to explain the rationale for this differentiation or made available the grounds upon which 'low risk' individuals are distinguished from what it presumably considers to be 'medium and high risk' individuals.
- Another distinction is made between those who reside in Ireland and those who do not, but again it is not clear on what principled basis this distinction is made.
- In a few cases which have received media attention or in which an attorney was involved, DEASP has waived the requirement to obtain a PSC for welfare beneficiaries, as shown above.
- It is furthermore unclear why a PSC is required to receive benefits and services offered by DEASP, but why other welfare benefits, like the NSC operated by DCYA, at least from 11 March 2020 onwards, do not require a PSC.

Since the Government has not provided an explicit justification for these different requirements, the question that arises is whether the approach adopted has actually been intended to discriminate on the basis of "social origin, property, birth or other status", as proscribed by article 2(2) of the ICESCR. It would appear that those who are well-off, those living overseas, and those who are over a certain age are given a 'free pass', while those who are especially disadvantaged and vulnerable are subjected to the full force of the law.

In addition, by claiming that the PSC is a requirement for recipients of DEASP benefits, and making the PSC a *de facto* requirement for parents who wanted to sign up for the NSC with DCYA between November 2019 and 11 March 2020, the PSC has become a *de facto* barrier between individuals and their human right to social protection. From the

evidence set out above, the PSC requirement has likely excluded individuals from access to social benefits because they could not overcome the obstacles imposed by having to obtain and collect relevant documentation, making an appointment, traveling to an office, taking time off from work, facing an interview and potential follow-up requests, and so forth. While such obstacles can already be a hindrance for most people, this is more likely so for groups specifically protected from discrimination by international human rights law, including older people, people with disabilities, people who are living in poverty, those in irregular employment, those who are adopted, people facing language barriers, those with care responsibilities and so on. DEASP has sought to downplay the burden that can be involved in applying for the PSC. It states on its Q&A webpage that the SAFE 2 process “takes about 15 minutes to complete, once all required documents are presented.”<sup>138</sup> As noted, this is not at all the case for certain groups.

Relatedly, providing an online route to apply for benefits exclusively, as was done with the NSC until 11 March 2020, should have taken into account the impact of the digital divide in Ireland, which is likely to have made it more likely that these same groups were excluded or faced additional difficulties to access the NSC benefit.

While the Government may respond to the above claims of discrimination by stating that there is little evidence other than stories in the media and from attorneys and civil society organizations, I would like to highlight that the first responsibility lies with the government to investigate the impact of its policies and share those with the public.

## **(ii) Established by law**

As noted above, the PSC project was first reflected in social welfare legislation in 1998 and since 2005 the key legislative instrument has been the Social Welfare Consolidation Act 2005 (SWCA 2005). The question, however, is whether the law has provided a comprehensive foundation for subsequent policies and whether it has been sufficiently accessible, foreseeable, clear and precise to relevant stakeholders. In other words, international human rights law requires that relevant legislation meets the basic requirements of the rule of law.

The SWCA 2005 suffers from fatal defects with regard to accessibility. Not only has the Act been updated at least once a year, but PSC-related provisions have been amended 28 times since 2005.<sup>139</sup> In addition, an informal consolidated version of the legislation was not made publicly available until February 2018, following a debate in the legislature in which this problem of accessibility was raised.<sup>140</sup> Until that time an individual wishing to understand the various requirements to be met would have had to consult the

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<sup>138</sup> <https://psc.gov.ie/questions/>

<sup>139</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 8-9, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>140</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 127, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>



SWCA 2005, as well as five different primary enactments, and multiple amendment acts.<sup>141</sup> The current, *informal*, consolidated version of the SWCA 2005, published by DEASP in 2018, is 568 pages long and contains 2673 footnotes, making it, even for a lawyer, a particularly dense and complex piece of legislation.<sup>142</sup>

In addition to accessibility, the application of the law must be reasonably foreseeable, clear and precise. If, as DEASP claims, obtaining a PSC is a legal requirement in order for an individual to claim his or her human right to social protection, it is of the essence that such a crucial condition has a clear legal basis. Based on a careful reading of the *informal* consolidated version of the SWCA 2005, it is not clear to me what exactly the law requires of individuals claiming and receiving benefits from DEASP in terms of verifying and authenticating their identity. It can be concluded on the basis of sections 241, 242, 247C and 263 of the SWCA 2005, that, in order to claim and receive welfare benefits, an individual has to satisfy the Minister as to his or her identity. It does not necessarily follow, however, that there is a *legal requirement* to have a PSC in order to apply for and continue to receive welfare benefits.

- **Section 241 (1C)** of the SWCA 2005 states that, in order for the Minister to satisfy himself or herself as to the identity of a person making a *claim* for benefit, the “Minister *may, without prejudice* to any other method of authenticating the identity of that person, *request* that person” (emphasis added) to come to an office, provide the Minister with relevant information and documents reasonably required to authenticate that person’s identity, to have their photo taken and provide their signature. In other words, the Minister has *discretion* as to the methods to be used to authenticate identity, and thus can opt for *alternative methods* of authentication.<sup>143</sup> This conclusion is reinforced by the fact that the SAFE 2 procedure is not mentioned at all in the legislation.
- **Section 242 (4)** of SWCA 2005, which deals with *benefit payments*, provides that a person presenting for payment of benefit shall satisfy the Minister as to his or her identity by furnishing either “(a) his or her public services card” or “(b) a card that has been issued to the person by the Minister under section 264 and such other information or documentation as the Minister, an officer of the Minister or a payment service provider, as the case may be, may reasonably require.” This provision only deals with the situation in which someone is “presenting for payment of benefit”, which seems irrelevant in cases in which someone receives their benefit payment electronically.<sup>144</sup> What is more, the provision gives two alternatives for satisfying the Minister as to his or her identity. The language is also written in such

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<sup>141</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 127, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>142</sup> <https://www.gov.ie/en/policy-information/81fdad-social-welfare-consolidation-act-2005/>

<sup>143</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 74, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>144</sup>

[https://www.citizensinformation.ie/en/social\\_welfare/irish\\_social\\_welfare\\_system/claiming\\_a\\_social\\_welfare\\_payment/replacing\\_a\\_social\\_welfare\\_payment\\_book\\_or\\_social\\_services\\_card.html](https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/claiming_a_social_welfare_payment/replacing_a_social_welfare_payment_book_or_social_services_card.html)

- a way that it only seems to apply to someone who already has a public services card (“his or her public services card”).
- **Section 263 (1)** of the SWCA 2005 states that the Minister ‘may’ issue a PSC, again underlining the discretionary nature of such a possibility. Section 263 (1C) clarifies when the Minister shall *not* issue a PSC, which reaffirms the need for the Minister, if he or she does choose to issue a PSC, to be satisfied as to the identity of the person to whom such a card is to be issued. Again, this provision does not specify that SAFE 2 is the only means by which the Minister could be satisfied.
  - **Section 247C** of the SWCA 2005, finally, only provides that someone *may* be disqualified from benefits if they fail to satisfy the Minister as to their identity. Section 247C (3) provides that the Minister *may* require a person on benefits to do a number of things to prove their identity, but those are options (“[...]may require the person to whom it is given to do one or more than one of the following[...]”) and there is no direct reference in this provision to either the PSC or the SAFE 2 procedure.

In sum, the text of the SWCA 2005 thus fails to meet the standard of foreseeability, precision and clarity required of legislation restricting access to the rights to social protection.

It would appear that the DPC report may also have added to the confusion in relation to the PSC’s legal basis, at least in the way it has been interpreted in the public debate. DEASP has not helped in this regard by claiming in the Dáil that there is no difference of opinion between the DPC and DEASP “on the core issue of whether the Department has the function and right to require people to authenticate their identity and to produce a public services card, PSC, when accessing its services.”<sup>145</sup> This is incorrect. The DPC report claims that there is a legal basis in the SWCA 2005 “*to process certain personal data [...] by way of SAFE 2 registration and the issuing of a PSC.*” This conclusion explicitly excludes the processing of personal data in the context of facial recognition by DEASP and, more importantly, limits itself to the question of data processing.<sup>146</sup> But the DPC report does not appear to claim, and nor would it be the DPC’s role to do so, that there is a legal basis in the SWCA 2005 to *require welfare claimants to obtain a PSC*. I have suggested above that such a legal basis seems to be lacking.

As regards services and benefits offered by public bodies other than DEASP, the DPC report concludes that “it is not satisfied that there is [a] legal basis [...] under the SWCA 2005 [...] for processing carried out by DEASP for SAFE 2 registration and the issuing of PSCs in circumstances where the specified body has sought to compel the production of a PSC [...]”<sup>147</sup> In light of the above, I agree that other public bodies, like DEASP, do not have a sufficient legal basis to require individuals to obtain or use a PSC

<sup>145</sup> [https://www.oireachtas.ie/en/debates/debate/committee\\_of\\_public\\_accounts/2019-11-07/speech/230/](https://www.oireachtas.ie/en/debates/debate/committee_of_public_accounts/2019-11-07/speech/230/)

<sup>146</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 87, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>147</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 98, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

in order to receive services or benefits either. This therefore also applies for individuals claiming benefits under the National Childcare Scheme from DCYA.

### **(iii) Transparent**

The objectives of the PSC have changed significantly over time. As is clear from the lengthy history of the PSC - and MyGovID project - above, the Government has, over time, offered a diverse range of quite different objectives in order to justify the PSC project. These include aims to: (i) make interactions with government easier and less time-consuming; (ii) reduce the costs of providing government services; (iii) enable data-sharing between different arms of government; (iv) reduce welfare spending; (v) reduce welfare fraud and error; (vi) enable access to digital government services; (vii) communicate the public service number to individuals; (viii) verify and authenticate the identity of individuals interacting with government authorities. The scope of the project has furthermore broadened from DEASP to all government services over time.

These shifting objectives reveal a significant lack of transparency surrounding the PSC and MyGovID project. As show above, the original plans for the PSC were developed inside government ministries without any democratic oversight or public participation and were seen within government as rather ‘technical’ initiatives. Perhaps as a result of this, neither a detailed rationale for the project nor a detailed and comprehensive assessment of its costs and benefits has ever been undertaken.<sup>148</sup> Instead, the government appears to have stumbled into the current situation after more than two decades of shifted goalposts. In the process, democratic debate and oversight of the PSC and MyGovID project has been minimal, with individual legislators complaining at key moments in the PSC’s history that the Government’s approach towards introducing relevant legislation was “unfair and wrong”. Only in recent years, after the PSC project was broadened beyond the remit of the Department of Employment Affairs and Social Protection (DEASP) and affected other parts of society, did more vigorous democratic debate ensue.

None of this is to imply bad faith on the part of the Government. The idea of a card that makes access to government services easier and that enables access to government services digitally is clearly a welcome development in principle. But in order for such a major initiative to comply with the international human rights obligations of the Government, much greater emphasis needs to be placed on transparency, including democratic debate and oversight as well as public participation.

### **(iv) Reasonable and proportionate**

Despite the broad range of reasons offered to justify the PSC, one in particular stands out. It is the reduction of welfare fraud. As noted below, this has always featured prominently in the Government’s comments about the card and it seems reasonable to take these many statements at face value. In addition, fraud detection and prevention would appear to be the most compelling justification for not making the system more flexible and

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<sup>148</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, chapter 10, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>



better tailored to meet the needs of groups that are otherwise severely disadvantaged by a one-size-fits-all approach. The argument is that if there are gaps created for some groups in the otherwise comprehensive and uniform system, loopholes are thus created through which fraudulent claims can more readily be pursued.

Given that fraud detection and prevention is an important and legitimate concern in any social protection system, as in all government programs, the question that then arises is whether the measures that have been taken and especially treating the PSC as being mandatory in practice if not also in theory are reasonable and proportionate to the goal sought. In particular, this raises the question as to whether alternative approaches might succeed in achieving almost all of the Government's other objectives, but without having the significantly exclusionary impact documented above on some of the most vulnerable groups.

From very early on, the PSC project was explicitly framed as an anti-fraud measure, and even more emphasis was placed on this dimension after the Great Recession and subsequent emphasis on austerity in the Irish social protection system. That part of the card's history has been traced in the early part of this communication.

More recently, in April 2017 the then Minister for Employment and Social Protection, and current Prime Minister, launched a campaign titled 'Welfare Cheats Cheat Us All'.<sup>149</sup> The public campaign sought to encourage neighbors to report on neighbors.<sup>150</sup> It focused on those without sufficient income, single parents and the unemployed who relied on such schemes as the Supplementary Welfare Allowance, One Parent Family Payments and Jobseekers Schemes. At the end of the year, after the Minister for Employment and Social Protection had become Prime Minister, the Secretary-General of DEASP suggested that "the wording of the campaign" had been a mistake.<sup>151</sup> Nonetheless, in September 2019, DEASP launched the Compliance and Anti-Fraud Strategy 2019-2023 which included strategies such as "publicising the hotline and encouraging members of the public to report cases of suspected fraud" and "further investment in Predictive Analytics technology to improve our capacity to detect non-compliant cases."<sup>152</sup>

And during a debate before the Joint Committee on Employment Affairs and Social Protection in February 2018, a senior representative of DEASP focused heavily on fraud when explaining the objectives behind the PSC:

*"The SAFE public services card programme is simply about verifying the identity of people engaging with public services. It is no more or less than that. Everyone accepts that the public service has an obligation to know who it is dealing with and to whom it is providing services, entitlements and payments. There are a number of really good reasons that is important. Public bodies need to ensure they are providing services to the right person and ensure that somebody else is not*

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<sup>149</sup> <https://www.gov.ie/en/press-release/218fcc-welfare-cheats-cheat-us-all/>

<sup>150</sup> "That's why we are launching a new campaign to encourage members of the public to report suspected or known cases of welfare fraud." <https://www.gov.ie/en/press-release/218fcc-welfare-cheats-cheat-us-all/>

<sup>151</sup> <https://www.rte.ie/news/politics/2017/1207/925784-welfare-cheats/>

<sup>152</sup> <https://www.gov.ie/en/press-release/3653c1-minister-doherty-publishes-compliance-and-anti-fraud-strategy-2019-2/>

pretending to be that person, as well as to ensure the person is not claiming to be somebody else, either with a real or false identity. That is needed to safeguard public services and public moneys, so as to ensure they are not incorrectly or mistakenly delivered or to ensure they are not fraudulently achieved by someone.<sup>153</sup> (emphasis added)

The starting point in assessing the reasonableness and proportionality of the anti-fraud measures from a human rights perspective is to understand the magnitude of the problem which the PSC seeks to address. In other words, how extensive is fraud within the system?

DEASP's Compliance and Anti-Fraud Strategy 2019-2023 of August 2019 observes that the department spends about €20 billion per year.<sup>154</sup> That figure corresponds with DEASP's budget for 2020 of about €21 billion per year.<sup>155</sup> That includes administration costs of €659 million. Of the programmatic costs, €8.4 billion goes to pension programs, €4.7 billion to programs related to illness, disability and carers, €3.2 billion to working age income support programs, €2.7 billion for programs related to children, about €800 million for supplementary payment programs, and €659 million to working age employment supports.

According to the Strategy document, DEASP had €556 million in 'control savings' in 2018, the most recent year for which figures are given.<sup>156</sup> €108 million consisted of 'overpayments raised', of which €81 million was recovered. There were 32 'suspected identity fraud cases', and 175 'cases for prosecution'. In other words, at most, 2.78% of the total (programmatic) welfare budget of about €20 billion per year consists of 'control savings' (€556 million on a total budget of about €20 billion).

This is assuming that 'control savings' give an accurate picture of total yearly fraud in the Irish system. 'Control savings' are not defined in the Strategy, but DEASP has defined them elsewhere as "an estimate of the value of the various control activities across the schemes in payment."<sup>157</sup> These savings "refer to future expenditure that would have been incurred but for this control work." According to a November 2011 report by the Oireachtas Library & Research Service,<sup>158</sup> 'control savings' are in fact an internal estimate by DEASP of "the amount of payments which are saved through fraud and error control measures." These estimates are based on case reviews of a selection of claims to see if payments are accurate or too high or too low. The value of payments terminated or reduced in the sample of case reviews is then quantified by multiplying it with a set of 'multiplying factors'. The same report states that control savings "*are not actual savings* but estimations

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<sup>153</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/5/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/5/)

<sup>154</sup> DEASP, Compliance and Anti-Fraud Strategy 2019-2023 (August 2019), p. 5.

<sup>155</sup> Government of Ireland, Budget 2020: Expenditure Report, available from: [http://budget.gov.ie/Budgets/2020/Documents/Budget/Parts%20I-III%20Expenditure%20Report%202020%20\(A\).pdf](http://budget.gov.ie/Budgets/2020/Documents/Budget/Parts%20I-III%20Expenditure%20Report%202020%20(A).pdf)

<sup>156</sup> DEASP, Compliance and Anti-Fraud Strategy 2019-2023 (August 2019), p. 14.

<sup>157</sup> <https://www.gov.ie/en/press-release/637600-468-million-savings-from-combating-welfare-fraud-in-year-to-november/>

<sup>158</sup> [https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2011/2011-10-13\\_spotlight-tackling-social-welfare-fraud\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2011/2011-10-13_spotlight-tackling-social-welfare-fraud_en.pdf)

of what has been saved due to the outcome of the particular case review”. The report also concludes that “the figures from the control reviews *provide little information [on] the size of fraud and error in the welfare system.*” (emphasis added) In sum, ‘control savings’ are only an estimate and include both an estimate of fraud as well as error (which is not intentional and can be the result of mistakes by either DEASP or individual claimants).

The sum of €556 million per year is therefore not very precise and may overestimate the actual amount of fraud and error in the welfare system. An alternative method is to look at surveys on fraud and error in individual programs. The above-mentioned report notes that DEASP has been conducting surveys since 2003 to determine the levels of fraud and error in particular benefit schemes. Those surveys involve inspectors reviewing a random selection of claims to assess underlying levels of fraud and error. These surveys show that the level of fraud and error ranges from 0.4% (Illness Benefit) to 7.3% (One Parent Family Payment) of total expenditure on the program. These figures are higher for means-tested than for more universal programs. This is understandable given “that a larger proportion of social welfare funding tends to be lost to administrative and customer error than fraud.” With means testing, additional administrative procedures are introduced which obviously increases the likelihood of error. In terms of the overpayments which were identified for recovery (the only measurement in Ireland which distinguishes between fraud and error), 69% were due to error in 2009 and 2010. The report also mentions research showing that a larger proportion of social welfare funding tends to be lost to administrative and customer error than fraud.

In the 2017 ‘Welfare Cheats Cheat Us All’ campaign, the then Minister singled out “Jobseekers Schemes, Supplementary Welfare Allowance and One Parent Family Payments” as the hotbeds of welfare fraud.<sup>159</sup> In 2019, Jobseekers Schemes (JA and JB payments) accounted for a little less than €2 billion in spending.<sup>160</sup> Supplementary Welfare Allowance accounted for €800 million or less in 2020.<sup>161</sup> In 2018, €511 million was spent on the One Parent Family Payment.<sup>162</sup> While this is a rough figure, these three programs targeted as especially prone to welfare fraud, represent about €3.3 billion in spending in total. This is roughly 16% of total spending by DEASP (excluding administration costs). If we take the suggested ‘hotbeds’ of welfare fraud and the fraud and error levels mentioned in the Oireachtas Library & Research Service report (table 3 of the report<sup>163</sup>), we can make the following - rough - calculation:

Program	Spending/year	Est. Fraud and Error Rate	Est. Fraud and error
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<sup>159</sup> <https://www.gov.ie/en/press-release/218fcc-welfare-cheats-cheat-us-all/>

<sup>160</sup> <http://www.budget.gov.ie/Budgets/2020/Documents/Budget/Analysis%20of%20Live%20Register%20Expenditure.pdf>

<sup>161</sup> The figure of €800 million is from the 2020 budget, but the Special Rapporteur is not certain this completely overlaps with the Supplementary Welfare Allowance program. Government of Ireland, Budget 2020: Expenditure Report, available from: [http://budget.gov.ie/Budgets/2020/Documents/Budget/Parts%20I-III%20Expenditure%20Report%202020%20\(A\).pdf](http://budget.gov.ie/Budgets/2020/Documents/Budget/Parts%20I-III%20Expenditure%20Report%202020%20(A).pdf);

<sup>162</sup> <https://assets.gov.ie/25436/71dc33f15a2f4223bea5bc6d5744f33e.pdf>

<sup>163</sup> [https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2011/2011-10-13\\_spotlight-tackling-social-welfare-fraud\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2011/2011-10-13_spotlight-tackling-social-welfare-fraud_en.pdf)



Jobseekers Schemes	€2 billion in spending	4.1% (figure for Jobseekers Allowance)	€82 million
Suppl. Welfare Allowance	€800 million in spending	3.3% (using figure for Family Income Supplement)	€26.4 million
One Parent Family Payment	€511 million in spending	7.3%	€37.3 million
TOTAL			€145.7 million

The above figure of about €145.7 million in total fraud and error per year in the three programs where welfare fraud is supposedly most prevalent may give a better indication of the size of the problem of welfare fraud in the Irish welfare system. As indicated above, it is likely that only a certain proportion of this amount, about 1/3 most likely, is due to actual fraud, while the remaining 2/3 is related to unintentional error by DEASP or the claimant. That would mean that the yearly size of benefit fraud in Ireland is somewhere around €50 million at most.

Based on the above calculations, which are admittedly mere estimations, total welfare fraud in Ireland per year ranges anywhere from €50 million to €556 million per year, or, roughly, between 0.25% and 3% of the total annual expenditure on welfare of around €20 billion per year. While those are sizeable amounts, a pertinent comparison is with tax fraud in Ireland. The European Commission estimates that between 2004 and 2016 *individual* tax evasion in Ireland averaged about €620 million per year, with individual tax evasion of more than €1 billion in 2016.<sup>164</sup> Ireland is also frequently classified as a major corporate tax haven.<sup>165</sup> The Irish Government has become increasingly reliant on corporation tax to fund spending, with almost 20% of total tax revenues coming from corporation tax.<sup>166</sup> It has been estimated that in 2015 about \$100 billion in multinational profits were ‘shifted’ to Ireland.<sup>167</sup> In November, Ireland voted against a proposed EU directive that would have forced multinational companies to reveal how much profit they make and how much tax they pay in each EU country.<sup>168</sup> While the Irish Government would contest some of these assessments, the bottom line is that tax fraud is a major concern and that the amounts involved are enormous compared to welfare fraud.

But the reasonableness and proportionality of the PSC should not only be compared to the total size of the problem of welfare fraud and error, it should also be assessed whether the PSC is actually able to assist in reducing the size of this problem. Here, we should underline that the PSC is not claimed to be a tool to reduce *all* welfare fraud and error, but merely fraud and error “*which result from the incorrect identification of claimants.*”<sup>169</sup> According to statements made by DEASP officials, the PSC will help it and other public bodies to “ensure they are providing services to the right person and ensure that somebody else is not pretending to be that person, as well as to ensure the person is not claiming to

<sup>164</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2019-taxation-papers-76.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2019-taxation-papers-76.pdf)

<sup>165</sup> <https://gabriel-zucman.eu/files/TWZ2018.pdf>

<sup>166</sup> <https://static.rasset.ie/documents/news/2019/11/fiscal-assessment-report-november-2019-website.pdf>

<sup>167</sup> <https://gabriel-zucman.eu/files/TWZ2018.pdf>

<sup>168</sup> <https://www.theguardian.com/business/2019/nov/28/12-eu-states-reject-move-to-expose-companies-tax-avoidance>

<sup>169</sup> Department of Social Protection Fraud Initiative 2011-2013 (September 2011), p. 27, available from: <https://assets.gov.ie/42599/e70fce5bbd8b4556a18e76a9c355e1fc.pdf>; Minister for Social Protection (Deputy Joan Burton), 18 April 2012, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2012-04-18/speech/623/>

be somebody else, either with a real or false identity.”<sup>170</sup> The size of welfare fraud and error *resulting from the incorrect identification of claimants* is however only a fraction of overall fraud and error. According to the DPC report, identity fraud represented only 2.3% of all detected fraud overpayments recorded in 2017.<sup>171</sup> If we take the, admittedly high and *estimated* value of €556 million in ‘control savings’ in 2018, only €12.8 million (2.3%) of that amount would relate to identity fraud, representing only 0.064% of the yearly welfare budget of about €20 billion.

As noted above the Secretary General of DEASP commented on 12 December 2019 that one of two ways in which the PSC leads to savings for DEASP is through the “[f]ailure of a person to complete the SAFE registration process satisfactorily.”<sup>172</sup> From 2013 to the end of September 2019, such failures led to ‘control savings’ of €4.64 million in respect of 473 cases. These are “cases where payments were suspended or withdrawn where customers on various schemes were requested to attend for a PSC but failed to do so. In some cases, the customers failed to provide the necessary documentation to allow the SAFE registration process to be completed.”<sup>173</sup> It should be emphasized that these are *estimates* since no fraud or error has been proven, but it has been assumed on the grounds that people failed to complete their registration. The Secretary-General also mentioned 220 cases of *suspected* fraud that were recorded by the PSC’s facial recognition tool between its introduction in 2013 and late September 2019. The *estimated* control savings in that context were €4.74 million over the period (I assume that the similarities between this figure and the figure of €4.64 million above is coincidental). It is unclear whether these savings can be aggregated or whether they overlap, but the maximum savings over this period of 6.5 years is €9.38 million based on the above source, equaling €1.44 million per year. That appears to be higher than the actual yearly savings, which the letter put at about €0.7 million for 2018. In any case, €1.44 million per year in savings represents only a fraction of the estimated yearly identity fraud of €12.8 million and is a negligible amount compared to the yearly spending on welfare programs of €20 billion.

Even if we assume that the supposed savings of €1.44 million per year are a meaningful reduction of identity fraud and overall welfare fraud in Ireland, we still need to assess the proportionality of the measure when compared to its costs. A first step is purely to look at financial costs. The 2016 report by the Comptroller and Auditor General concluded that the estimated cost of the PSC project would be around €60 million euro by the end of 2017.<sup>174</sup> This includes the costs of buying the actual cards, but also costs for staff, consultants, software development, hardware and maintenance, and software support

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<sup>170</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_employment\\_affairs\\_and\\_social\\_protection/2018-02-22/speech/5/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/speech/5/)

<sup>171</sup> Irish Data Protection Commission, Final Investigation Report in relation to the Public Services Card (August 2019), p. 111, available from:

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69774/6d71ed5820ad42258ccfacfc9727297f.pdf#page=1>

<sup>172</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee\\_of\\_public\\_accounts/submissions/2019/2019-12-31\\_correspondence-john-mckeeon-secretary-general-department-of-employment-affairs-and-social-protection-32r002603-pac\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-12-31_correspondence-john-mckeeon-secretary-general-department-of-employment-affairs-and-social-protection-32r002603-pac_en.pdf)

<sup>173</sup> This corresponds with earlier figures made public through a freedom of information request:

<https://www.irishtimes.com/news/ireland/irish-news/average-fraud-saving-of-1-16-for-each-public-services-card-issued-1.3173443>

<sup>174</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, page 113, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>

and maintenance. Some of those costs are one-off, but other costs are ongoing. According to the Secretary General of DEASP, the “total fully allocated costs of the project” by late September 2019 had increased to €67.7 million.<sup>175</sup> He claimed that a large proportion of these costs would have been incurred anyway, even without the introduction of the SAFE process. According to this reasoning, DEASP would have authenticated the identity of its ‘customers’ anyway, and now it is simply doing it through a different method. Without providing an explanation of the figure, the Secretary General estimated the additional costs at of the SAFE-PSC project at ‘only’ €37 million.

Based on the information used above and provided in the letter from the Secretary-General, the financial benefits of the PSC project were €9.38 million since 2013. But in November 2019 the Secretary General stated to the Dáil: “I conservatively estimate that the direct savings attributable to reduced payment leakage and administrative efficiencies within the Department already amount to more than €20 million. [...] These figures are estimates only and I acknowledge that we will need a fuller cost-benefit analysis. Therefore, I intend, early in 2020, when full-year costs for 2019 are finalised, to commission a full cost-benefit analysis of the project.” I have not yet seen this cost-benefit analysis.

It would appear, therefore, that in financial terms, the total costs of the PSC are much higher than its benefits. Total costs have been anywhere between €37 million and €67.7 million, while the total benefits range somewhere between €9.38 million and €20 million. Earlier, the DEASP had claimed that the full benefits of the PSC would only be realized when other public bodies also started using the PSC.<sup>176</sup> But in light of the problems identified in the DPC report and the challenges being confronted by especially disadvantaged groups, it is not clear what the future course of action will be, or what sort of additional savings the Government anticipates, including from requiring the use of the PSC for obtaining passports, driving licenses and other official documentation.

But beyond a simple comparison of financial costs and benefits, the proportionality of the PSC project also depends on the other costs it imposes. As indicated above, available evidence strongly suggests that the PSC requirements have imposed de facto barriers for poorer and marginalized groups wishing to claim their rights to social protection and may have amounted to de facto discrimination on prohibited grounds.

In addition, the same groups have had to face infringements of their rights to privacy and data protection in order to obtain their social rights. The claim that the PSC is ‘not compulsory, but mandatory’ is of little consolation to those who rely on the government for their survival. The infringement on privacy and data protection rights consists of the requirement in the course of the SAFE registration process to hand over additional personal and sensitive information to the government and subject oneself to having one’s photo taken and accepting that this photo is run through a government facial recognition tool. But groups who are especially reliant on welfare benefits and assistance

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<sup>175</sup> [https://www.oireachtas.ie/en/debates/debate/committee\\_of\\_public\\_accounts/2019-11-07/speech/230/](https://www.oireachtas.ie/en/debates/debate/committee_of_public_accounts/2019-11-07/speech/230/)

<sup>176</sup> Office of the Comptroller and Auditor General, Report on the Accounts of the Public Services 2015, page 117, available from: <https://www.audit.gov.ie/en/Find-Report/Publications/2016/Roll-out-of-the-Public-Services-Card.pdf>



face other privacy-related concerns in the context of the PSC as well. In a recent groundbreaking judgment by a District Court in the Netherlands, the court ordered that a digital welfare fraud detection tool targeted at poor neighborhoods and groups should be halted because it violated the right to privacy in Article 8 ECHR.<sup>177</sup> The District Court, invoking jurisprudence by the European Court of Human Rights, underlined that “the right to respect for private life in the context of data processing concerns the right to equal treatment in equal cases, and the right to protection against discrimination, stereotyping and stigmatisation.” This is a highly relevant decision for the PSC project as well. Since the PSC especially affects poorer and more vulnerable groups reliant on welfare benefits, especially those considered ‘high-risk’ and exposes those individuals especially to the indignities of having once photo analyzed by a facial recognition tool or having to explain to a stranger that you are adopted, it is more likely to affect the right to privacy and data protection of these groups differently and more seriously and contribute to discrimination, stereotyping and stigmatization of these groups.

Taking all of the above together, it is difficult to maintain that the PSC is reasonable and proportionate in light of its purported objective of reducing welfare fraud and error. Leaving aside the goal of detecting and preventing fraud, however, many of the other goals of the PSC identified by the Government are consistent with the aim of moving towards a single national biometric identity card to be used in all forms of interaction between the individual and the Government and perhaps more broadly as well. There would no doubt be various efficiencies and other security-related objectives that might be promoted if such a comprehensive national biometric ID system were to be introduced. In that regard, however, it is necessary to apply the test used under international human rights law according to which “the least restrictive alternative must be adopted where several types of limitations are available.”<sup>178</sup> It thus becomes unclear why ‘satisfying’ the Minister as to one’s identity has to be done exclusively through obtaining and showing a PSC, even in the case of those individuals for whom this represents a real hardship and leads to significant disadvantage in obtaining access to their right to social protection. To the extent that another stated goal of the PSC is to make access to government services easier, it would seem more reasonable and proportionate to ensure that alternatives, such as reliance on a passport or a driving license, are also acceptable for those who are unable to obtain a PSC without incurring a disproportionate cost. What is more, I am doubtful whether it is wise to move towards a de facto national biometric ID card without a much more comprehensive, transparent and democratic debate in Ireland.

### **III. Questions for the Irish Government**

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify cases brought to my attention. I would therefore be grateful for your observations on the following matters:

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<sup>177</sup> District Court of The Hague, 5 February 2020, NJCM et al. vs the Dutch State, available (English translation) from: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2020:1878&showbutton=true&keyword=syri>

<sup>178</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 (The right to the highest attainable standard of health) (2000), para. 28.

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide any information on the number of individuals who have not applied for a PSC, have refused to apply for a PSC, or have applied for a PSC but have not finalized the SAFE 2 process. Relatedly, please provide information on the number of individuals whose DEASP benefit payments were delayed, suspended, or stopped because they failed to obtain or show a PSC.
3. Please provide information, including any available surveys, on how individuals perceive the PSC, including how they experienced the SAFE 2 process.
4. Please provide further information on the amount of welfare fraud and error that has been prevented or detected through the PSC project since its roll-out. Please distinguish fraud from error and official error from 'customer' error. Please distinguish between prevention and detection of fraud.
5. Please provide further, detailed, information on the expenditure on the PSC project since its roll-out. Please distinguish between running/operational costs and one-time investments.
6. Please provide information on the total number of PSCs issued since its roll-out and how many of those were registered through the 'normal' SAFE 2 procedure versus procedures for 'low-risk customers'.
7. Please provide information on how DEASP distinguishes between 'low-risk customers' and those who have to undergo the full SAFE 2 process.
8. Please provide information on the number of people who have not registered for the NCS with DCYA between November 2019 and 11 March 2020, including internal estimates of that number.
9. Please provide any surveys undertaken by DCYA about internet access and digital literacy among its target 'customers' for the NCS.

This communication, as a comment on legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the measures discussed above. The press release will

indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Please accept, Excellency, the assurances of my highest consideration.

Philip Alston  
Special Rapporteur on extreme poverty and human rights