

Re: Issues arising from the Social Welfare (Covid-19) (Amendment) Bill 2020

Social Welfare (Covid-19) (Amendment) Bill 2020

1. The Social Welfare (Covid-19) (Amendment) Bill 2020 places the Covid Pandemic Unemployment Payment (the "Covid PUP") on statutory footing. The proposed Bill inserts the provisions in relation to the payment into Part 2 of the Social Welfare Consolidation Act 2005.
2. As noted by FLAC in its recent statement in relation to Departmental policy on eligibility for social welfare and the Department's "Holiday Rules", the Social Welfare Consolidation Act 2005 only empowers the Minister to make regulations around claimant's absences from the State in relation to payments in Part 2 of that Act. Jobseeker's Allowance and Supplementary Welfare Allowance are not prescribed by Part 2 of the Act and a person is only disentitled from eligibility where they take up residence outside the State.
3. Should the Bill be passed, claimants would not be eligible to receive the Covid PUP during absences from the State. In the case of Jobseeker's Benefit (where the same eligibility criteria in relation to absences from the State apply), the Minister has signed a statutory instrument amending the rules in relation to holidays for claimants of that payment which allows them to take holidays abroad for up to two weeks while remaining in receipt of the payment, provided that those holidays comply with the DFA Advice. The Minister has signalled her intention to introduce similar regulations in relation to the Covid PUP.
4. It should be noted that the rules in relation to travelling abroad while in receipt of Jobseeker's Benefit, and the proposed rules in relation for same the Covid PUP, do not prohibit all travel abroad for claimants of the payment. In line with DFA advice, such claimants should still be able to travel abroad while in receipt of the payments for up to two weeks, provided that the travel is essential or that they are travelling to a country on the so-called "green list".
5. It remains the case that, as set out in FLAC's statement of 28 June 2020, the Minister is not empowered to make holiday rules for payments outside of part 2 of the 2005 Act. Accordingly, it remains the case that the Department cannot suspend claims for those other payments in circumstances where claimants travel abroad for a holiday or for other purposes regardless of the duration of same (so long as they cannot be deemed temporarily resident abroad) or whether their travel complies with the DFA Advice.
6. It is notable that the 2020 Bill refers to the Covid PUP as having, since March 2020, been paid pursuant to section 202 of the 2005 Act. This would imply that prior to the enactment of the 2020 Bill, the Covid PUP was paid pursuant to the Supplementary Welfare Allowance scheme. This is notable in that the Minister is not empowered to make regulations as to when a claimant for a payment under that scheme may travel abroad while still receiving the payment. Rather, the relevant rule is that claimants for a payment under the scheme must not be resident outside the State. It is thus the case that suspensions of the Covid PUP to date on the basis that the claimant was absent from the State are without legal basis in circumstances where the claimant travelled abroad but remained a resident of Ireland.

7. The legislative changes do not address the interpretation by the Department that a person who is self-isolating is presumed not to be available for work or genuinely seeking work and so may have their payment cut and the Minister has not clarified this point.

The Covid Pandemic Unemployment Payment and the requirement to be Genuinely Seeking Employment

8. It is also notable that the 2020 Bill creates a requirement that claimants of the Covid PUP must be genuinely seeking work. This does not accord with the previous rules in relation to the scheme which indicated that the payment could be claimed by those who had been temporarily laid off while their workplace was closed due to the pandemic or required to stay at home or who are self-employed but not in receipt of an income.
9. For the purposes of Jobseeker's Allowance and Jobseeker's Benefit, claimants are assessed as being genuinely seeking work by reference to the criteria set out in regulation 16 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Statutory Instrument 142 of 2007). It is unclear as to whether these criteria will also be applied to those in receipt of the Covid PUP or if a separate set of criteria will be set out which take into account the differences between those in receipt of the PUP and those in receipt of Jobseeker's payments.
10. A number of issues arise in relation to the imposition of this criteria on the Covid PUP. The first is that it is materially different to the conditions for payment in place when the payment was introduced. Although, the 2020 Bill does not propose to apply the condition retrospectively, the condition may have an adverse impact on many claimants eligibility for the payment following the Bill's enactment.
11. Many employees and owners of businesses which are currently closed but intend to reopen are currently in receipt of the Covid PUP. It seems unreasonable to expect such claimants to seek alternate work in circumstances where they have every expectation of resuming employment imminently. Further, employees who have been laid off may have to forego statutory redundancy payments from their original employer if they take up other employment elsewhere. The right of an employee to proactively claim a redundancy lump sum where they have been on lay-off for four or more continuous weeks was temporarily removed for the duration of the Covid crisis by section 29 of the Emergency Measures in the Public Interest (Covid 19) Act 2020. Thus, if such a person did find another job, they would have to forego all statutory redundancy as well as minimum notice entitlements.
12. Further, those who have no access to child care services due to the pandemic may be unable to seek work while in receipt of the Covid-PUP and their entitlement to same may therefore be prejudiced.