

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



4 December 2007

Case document No. 4

International Federation for Human Rights (FIDH) v. Ireland
Complaint No. 42/2007

**SUBMISSIONS FROM THE GOVERNMENT ON THE
MERITS**

Registered at the Secretariat on 30 November 2007

1. Introduction

- 1.1 Pursuant to Article 7 of the Additional Protocol to the European Social Charter, Ireland, the Respondent in these proceedings, submits the following observations in respect of the Complaint of the International Federation of Human Rights (“the IFHR” or “the Applicant”) registered at the Secretariat of the European Social Charter on 26 February 2007 and communicated to the Respondent by the European Committee of Social Rights (“the Committee”) by letter of 5 April 2007.
- 1.2 By a collective complaint of 26 February 2007 (“the Complaint”), the Applicant alleges that Ireland has failed satisfactorily to apply Article 23 of Part II (in conjunction with Article E of Part V) of the Revised European Social Charter of 1996 and that it has failed satisfactorily to apply or implement Article 12, paragraph 4, of Part II of the Revised European Social Charter (“the revised Charter”). Article 23 of the revised Charter deals with the “the right of elderly persons to social protection”, whilst Article E contains a general horizontal provision on “non-discrimination”. Article 12 of the revised Charter, for its part, deals with “the right to social security”.
- 1.3 The Applicant has made the Complaint on behalf of persons who are in receipt of Irish contributory old age pensions but who do not reside permanently in Ireland. It cites, in particular, the case of United Kingdom resident recipients of Irish contributory pensions, including the specific case of Ms Kathleen Waddington. It alleges that the refusal of the Irish authorities to allow access to such persons to the Free Travel Scheme while visiting Ireland on holiday is discriminatory and incompatible with Articles 12, paragraph 4, and/or 23 of the revised Charter.

1.4 By decision of 16 October 2007, the Committee declared the Complaint admissible, and invited the Respondent to make written submissions on its merits. The following are the written submissions of the Respondent on the merits of the Complaint. For the convenience of the Committee, those parts of Ireland's written observations of 15 June 2007 on the admissibility of the Complaint that are also relevant for the Committee's consideration of its merits are repeated in these present submissions, along with further submissions on the merits.

2. Outline of submissions

2.1 Ireland submits that the Complaint should be dismissed on its merits for the following reasons:

- (a) The Complaint does not concern a category of persons who come within the personal scope of the revised Charter;
- (b) Insofar as it relates to an alleged breach of Article 12, paragraph 4, of Part II, the Complaint does not relate to any right guaranteed by the revised Charter and falls outside the material scope of the revised Charter. The same applies to the alleged breach of Article 23 of Part II. Moreover, the obligation of Article 12(4) is one of conduct, not result;
- (c) The Complaint is based on a manifestly erroneous misconception, *i.e.* that the impugned Free Travel Scheme as it applies to people aged 66 or over constitutes a

secondary benefit attaching to qualification for old age pension in Ireland¹;

- (d) There has been no discrimination on the basis of “other status” within the meaning of Article E;
- (e) The Committee should have regard to Ireland’s membership of the European Community.

3 Personal Scope of the Charter

3.1 The complaint made by the IFHR does not fall within the scope *ratione personae* of the revised Charter. The first paragraph of the Appendix to the Charter states (in relevant part):

“Without prejudice to Article 12, paragraph 4, [...] the persons covered by [...] Articles 20 to 23 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned [...].”

3.2 The first paragraph of the Appendix to the revised Charter applies so as to require Ireland to grant the benefit in question to foreigners lawfully resident or working regularly within the territory of Ireland. The fact that the personal scope of the revised Charter requires benefits to be extended to nationals of other Contracting Parties who are lawfully resident or working regularly within

¹ As indicated in the Department of Social and Family Affairs’ Guidelines included in the appendix to these observations, a certain number of other categories of persons who are not necessarily aged 66 or over are entitled on satisfying specified conditions (including residency) to be granted free travel passes. However, as the complaint concerns elderly persons, these written observations focus on those persons alone.

the State clearly implies that benefits under the revised Charter may be limited by each Contracting Party to persons who are resident or working regularly in its territory.

3.3 The benefit in question is one which is granted on evidence of two conditions – age and residence – being met.² The revised Charter does not require a Contracting Party to extend the benefit to all own nationals, wheresoever resident. Similarly, it is not obliged to extend that benefit to all foreigners. Rather, it obliges Contracting Parties to ensure that foreigners who are resident or working regularly on its territory are granted the same benefits as nationals who are also so resident or working. This limitation implicit in the personal scope of the revised Charter particularly applies in this case given the nature of the benefit (*i.e.* the fact that it is dependent upon residence). The Respondent therefore submits that the revised Charter does not oblige Ireland to confer the benefit in question on persons who are not normally resident or working in Ireland, but rather that it simply obliges Ireland to grant that benefit to resident foreigners who fall within the first paragraph of the Appendix.

3.4 It is clear from the Appendix that, apart from a number of specific situations (only that envisaged in Article 12, paragraph 4, having any potential relevance in this case), the Charter does not *oblige* Contracting Parties to extend to persons who are resident in other Contracting Parties the rights and facilities that it requires them to accord to those who are lawfully resident on their own territory. However, this is precisely what the Complaint seeks to achieve. It relates to an Irish national (Ms Waddington and potentially to others in a similar situation) who is resident in a contracting party other than Ireland (*i.e.* in the case of Ms Waddington in the United Kingdom). Such a person is not entitled to invoke Article 23 of the revised Charter against Ireland.

² See Footnote 1 regarding other categories of persons who may be granted a pass under the Free Travel Scheme

- 3.5 Clearly, a State which has become a Contracting Party may choose to extend the benefit of the rights and facilities of the revised Charter to persons who are not resident on its territory. If it does so, this would constitute a voluntary decision of the State concerned and not one that would be obligated by the revised Charter. No such decision as regards the Free Travel Scheme, the subject of the complaint of the Applicant, has been made by the Respondent. Given that it is not a requirement under the revised Charter, the fact that the Irish authorities have consulted with the European Commission regarding consideration of a possible extension of the Scheme not dissimilar to that for which the Applicant contends may not be used by it to further this Complaint. It must in that regard also be noted that any such voluntary extension would be required to be compatible with EC law (on which see section 7 below).
- 3.6 The first paragraph of the Appendix has yet to be interpreted by the Committee. However, the Committee turns to the relevant case law of the European Court of Human Rights in interpreting the provisions of the revised Charter that have parallels in the text of the ECHR. For example, in Complaint No 26/2004 SAGES v. France, of 15 June 2005, the Committee observed as follows (at paragraph 34), with respect to the Article E non-discrimination provision.

“Article E is of a different nature to other provisions of the Convention. Its role is comparable to Article 14 of the European Convention on Human Rights. It has no independent existence and has to be combined with a substantial provision of the Charter. Nevertheless, a measure which in itself is in conformity with the substantial provision concerned may infringe this provision when read in conjunction with Article E for the reason that it is of a discriminatory nature (see, mutatis mutandis, ECourHR, Belgian Linguistics judgment of 23 July 1968, Series A no. 6, para. 9)”.

- 3.7 The text of the relevant ECHR provision (Article 1) is broader than the first paragraph to the Appendix, in that the territorial application of ECHR to all persons (nationals and non-nationals) is satisfied by mere presence on the

territory of a High Contracting Party. Nonetheless – even in that more liberal jurisdictional regime – nationality alone does *not* suffice to bring a person within the jurisdiction of a High Contracting Party and extra-territorial jurisdiction is “exceptional”.³

- 3.8 The text of the revised Charter suggests that it, like the ECHR, is primarily territorial in its jurisdictional ambit [the second preambular paragraph refers expressly to the ECHR, and the desire of the contracting parties “*to secure to their populations*” the rights therein, while the third preambular paragraph refers to the desire to extend to the same “*populations*” the social rights contained in the revised Charter] – but with the added requirements of residence or regular work in that territory.

4. Material Scope

- 4.1 Nor can the fact that the Complaint also cites Article 12, paragraph 4, preclude it from failing on the merits. That provision obliges Contracting Parties to undertake:

“to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

³ See, e.g., *Bankovic v Belgium and Others* ECHR 2001 – X II, paragraph 61.

a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.”

The Appendix qualifies the above by commenting that:

“The words “and subject to the conditions laid down in such agreements” in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.”

- 4.2 It is clear that the obligation contained in Article 12 paragraph 4, is an obligation of *conduct* and not one of *result*. In fact, as is outlined in section 7 below, Ireland has been making strenuous efforts, within the framework of the European Community, to extend the Free Travel Scheme insofar as possible and has, to this end, already entered into an arrangement with the Northern Irish authorities to create an all-island free travel scheme. However, as has already been mentioned, Ireland is *not obliged* by the revised Charter to extend the benefits in question to those persons outside of its territorial jurisdiction. The Irish Government is not precluded from voluntarily extending the benefits to groups who are not entitled to them under the revised Charter. However, the revised Charter lays down a minimum requirement with which Ireland has complied.
- 4.3 Furthermore, as the benefit in question is available independently of any insurance contribution (as explained in more detail in paragraph 5.7 below),

this provision evidently allows a residence condition to be applied in such cases, thereby excluding from the scope of this Paragraph the persons on whose behalf the complaint is being made. Article 12, paragraph 4, does not include an obligation to extend such benefits, *i.e.* those which are available independently of insurance contributions, to residents of other contracting parties.

4.4 The material scope of Article 23 is similarly limited. It provides as follows:

“Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

to enable elderly persons to remain full members of society for as long as possible, by means of:

(a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

(b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

(a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

(b) the health care and the services necessitated by their state;

to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.”

4.5 The Respondent submits that this provision is plainly directed to the “society” in which the elderly are resident. This is reflected in references to “services and facilities”, “familiar surroundings”, and provision of “housing” and “healthcare”. Furthermore, there would plainly be jurisdictional problems in promising to extend the services protected by Article 23 beyond the territory of the Contracting Parties. Article 23 should, therefore, not be construed as implicitly including such a promise.

5. Nature of the Free Travel Scheme

5.1 The Applicant seeks to argue that, as the impugned free travel pass is administered in a manner that takes into account, *inter alia*, whether or not a person is in receipt of a contributory old age pension in Ireland, it falls to be treated as akin to a form of “*secondary benefit attaching to qualification for the pension*” (page 9 of the Complaint), and, hence, falls within the scope of Article 12, paragraph 4 of the revised Charter. Since there is no residence requirement for contributory old age pensions, there should, according to the Applicant, be no residency requirement for access to a pass under the Free Travel Scheme. This submission is based on a manifestly misconceived premise, *i.e.* that the grant of the pass may be equated with a secondary benefit attaching to qualification for the pension.

5.2 However, as the Applicant itself acknowledges, the contributory old age pension is a statutory social security payment the basis for which is provided in a succession of Irish Social Security Acts.⁴ Contrariwise, the Free Travel Scheme is, and has been at all times since its introduction in 1967, a non-

⁴ The principal Act is now the Social Welfare Consolidation Act 2005 (No. 26 of 2005). This has recently been amended by the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006), under which, *inter alia*, the name of the pension was formally changed to State Pension (Contributory) with effect from the 29 September 2006. For the convenience of the Committee, the Respondent will use in these observations the former name as that is the name used by the Applicant.

statutory scheme administered by the Department of Social and Family Affairs. Since 1972, eligibility for a free travel pass under the Scheme has not been linked to receipt of an old age pension, that is, for 35 years of the Free Travel Scheme's 40 year history.⁵ There is therefore a critical difference between the two:

- one is a pension which is available as of right to those who meet the conditions laid down in the relevant legislation (in essence the conditions as to age and as to the making of the requisite number of contributions set out in section 109 of the Social Welfare Consolidation Act 2005, as amended); while
- the other is a discretionary benefit that will be granted if the Minister for Social and Family Affairs is satisfied that the conditions he or she has by administrative decision laid down, but which may at any time be changed by a further administrative decision (subject only to general requirements flowing from the principles of constitutional and natural justice that apply to all administrative decision-making in Ireland under which the Minister would, in particular, be precluded from applying such new conditions with retrospective effect), are met.

5.3 The Applicant, however, erroneously seeks to eschew the obvious difficulty this places in the way of the Complaint regarding the alleged breach of Article 12 of the revised Charter by relying, in essence, upon the manner in which the Free Travel Scheme is administered. Thus, the Applicant argues that, because the Department of Social and Family Affairs assumes that all resident persons who reach the age of 66 and who become entitled to a State pension, whether contributory or non-contributory, will wish to avail of the free travel pass and, accordingly for reasons of administrative

⁵ At present, State pension (transition), which is also a contributory based payment, is payable from the age of 65, subject to the qualifying conditions. Eligibility for a free travel pass, however, only arises on reaching the age of 66.

convenience, issues such resident persons automatically with passes (unless, of course, they indicate that they do not wish to have a pass), *i.e.* such persons do not have to make a formal application for a pass, the Applicant argues this means that the grant of the pass must be regarded as a “*secondary benefit attaching to qualification for the pension*”. This argument is based on a fundamental misconception. The automatic issuance of passes to recipients of contributory and non-contributory pensions resident in Ireland is purely an administrative practice for the convenience both of the Department and of eligible persons. It does not support the conclusion that the Respondent is in breach of Article 12.

5.4 For the convenience of the Committee, a copy of the most-up-to-date “Internal Guidelines Used for Processing Free Travel Applications” is included as an Appendix to these observations.⁶

5.5 As regards elderly persons, in order to qualify for a free travel pass under the Scheme, only two conditions must be satisfied, neither of which has anything intrinsically to do with entitlement to a contributory Irish State pension.⁷ They are (see section 3.2 of the Guidelines on pages 5 and 6) that:

⁶ The Internal Guidelines used for Processing Free Travel Applications are revised regularly. The most up-to-date Guidelines are dated 28 November 2007 (Annex A to the present submission). In addition to *e.g.* alteration of contact details, the Guidelines differ from those of 6 June 2007 in that they specifically refer, at paragraphs 3.2 and 4.1, to the fact that a free travel pass will be issued automatically to persons aged 66 or over only where they are permanently resident in Ireland. This does not represent a change of either practice or policy. Rather, the amendment was made to ensure full clarity and consistency of language as between paragraphs 3.3 and 4.1 of the June 2007 Guidelines and the remainder of the Guidelines (which clearly state that eligibility for a free travel pass is dependent upon residency in Ireland). These up-to-date Guidelines will be available on the website of the Department of Social and Family Affairs from December 2007.

⁷ As the complaint concerns elderly persons, these written observations focus on those persons alone, although a certain number of other categories of persons who are not necessarily aged 66 or over are also entitled on satisfying specified conditions (including residency) to be granted free travel passes (see footnote 1 above).

- The applicant must be living permanently in the State (*i.e.* on an all-year-round basis);
- The applicant must be aged 66 or over.

There is no requirement to be in receipt of a pension (contributory or non contributory) or any other payment or benefit from the Irish State.

5.6 In so far as non-contributory pensions are concerned, the residence requirement is by definition satisfied because the person concerned would not be entitled to the pension if he or she were not resident in Ireland.⁸ As regards the recipients of contributory pensions who may be resident anywhere in the world (and as the Applicant points out on page 5 of the Complaint, approximately 40,271 recipients of such pensions in 2006 were resident outside of Ireland), their place of residence is checked and no pass is issued unless that place of residence is within the territory of Ireland. It is, therefore, clear that it is not an entitlement to a State pension that gives rise to an entitlement to a free travel pass under the Free Travel Scheme as it currently stands.

5.7 It follows that the complaint, in so far as it relates to an alleged breach of Article 12, paragraph 4, of the revised Charter is manifestly unfounded because the benefit is available independently of any insurance contribution, and the Appendix specifically affords the right to impose a residence condition in such cases. The complaint, therefore, in so far as it relates to an alleged breach of Article 12, paragraph 4, does not relate to any right guaranteed by the Charter and, hence, falls outside the material scope,

⁸ Under section 153 of the Social Welfare Consolidation Act 2005, in the version inserted by section 16(1)(a) of the Social Welfare Law Reform and Pensions Act 2006, the conditions for entitlement to a non-contributory pension are, cumulatively, that: “(a) *the person has attained pensionable age, (b) the means of the person as calculated in accordance with the Rules contained in Part 3 of Schedule 3 do not exceed the appropriate highest amount of means at which pension may be paid to that person in accordance with section 156, and (c) the person is habitually resident in the State at the date of the making of the application for State pension (non-contributory).*”

ratione materiae, of the revised Charter.

6. Article E and residence as “other status”

6.1 The Complaint is also misapprehended to the extent that it relies on discrimination on grounds of residence (see page 11 of the Complaint). The Committee has yet to consider whether “other status” for the purposes of the Convention includes “residence”. However, the case-law of the European Court of Human Rights interpreting Article 14 of the ECHR suggests that it does not.

6.2 In *Johnston v Ireland*, the European Court of Human Rights held that there was no breach of Article 14 of the ECHR when Irish residents were not entitled to divorce, yet Irish law recognised foreign divorces.⁹ Furthermore, in the *Sunday Times (No. 2) “Spycatcher”* judgment of 26 November 1991, the European Court of Human Rights held that there could be no breach of Article 14 of the ECHR with regard to foreign newspapers that were outside of UK jurisdiction.¹⁰ Distinctions based on geographical location were also held to be outside the scope of Article 14 in the *Magee* case.¹¹ The European Court of Human Rights has taken a cautious approach with respect to distinctions based on residence, with the result that “residence” is not accepted as “other

⁹ *Johnston v Ireland*, no. 09697/82, judgment of 18 December 1986, Series A no. 112, [1986] 9 EHRR 203. It was argued by the applicant that this permitted better off people to obtain foreign divorces and then re-marry, a right which was denied in effect to those of more modest means. The Court held: “Article 14 safeguards persons who are “placed in analogous situations” against discriminatory differences of treatment in the exercise of the rights and freedoms recognised by the Convention [...]. The Court notes that under the general Irish rules of private international law foreign divorces will be recognised in Ireland only if they have been obtained by persons domiciled abroad (see paragraph 20 above). It does not find it to have been established that these rules are departed from in practice. In its view, the situations of such persons and of the first and second applicants cannot be regarded as analogous” (at paragraph 60).

¹⁰ *Sunday Times v. United Kingdom (No. 2)*, no. 13166/87, judgment of 26 November 1991, Series A no. 217 (at paragraph 58).

¹¹ *Magee v United Kingdom*, no. 28135/95, judgment of 6 June 2000, ECHR 2000-VI, (at paragraph 50)

status". Rather, in order to fall within Article 14, a distinction must be based on "personal characteristics" (see *Magee*, at paragraph 50).¹²

6.3 The Respondent submits that it would be both inappropriate and regrettable if the Committee were to give Article E a wider scope than Article 14 of the ECHR has been given.

7. Membership of the European Community

7.1 The subject matter of the Complaint falls within the scope of Ireland's obligations as a member of the European Community.

7.2 Since the beginning of 2006, Ireland has been in contact with the European Commission concerning the Free Travel Scheme. Complex legal issues arise in connection with any proposed extension of the Scheme to cover all pensioners wherever resident who receive Irish contributory pensions. It has been indicated by the Commission that the form of extension sought by the Applicant would likely fall foul of Community law.

7.3 The Committee should have regard to the benefits of membership of international organisations such as the European Community and should note the "*current trend towards extending and strengthening international cooperation*".¹³

¹² Thus, United Kingdom legislation which had different scope in different parts of the United Kingdom did not constitute an infringement of Article 14 of the ECHR. The difference in that case was "*not to be explained in terms of personal characteristics, such as national origin or association with a national minority, but on the geographical location where the individual is arrested and detained*". The Court concluded from this that: "*This permits legislation to take account of regional differences and characteristics of an objective and reasonable nature. In the present case, such a difference does not amount to discriminatory treatment within the meaning of Article 14 of the Convention*". In the present case, the difference drawn in the impugned rules is based entirely on the physical location of the place of residence of individual elderly people.

¹³ *Beer and Regan v. Germany* [GC], no. 28934/95, § 62, 18 February 1999.

- 7.4 The relationship between the obligations of Member States of the Council of Europe who are party to its human rights instruments and their obligations as members of other international organisations, and in particular the European Community, raises important and complex issues, which have been considered on a number of occasions by the European Court of Human Rights, including in *Bosphorous Hava Yollari Turizmve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland*.¹⁴
- 7.5 Whilst Contracting Parties to the revised Charter are not absolved from responsibility with respect to their obligations thereunder by virtue of their membership of another international organisation, it is submitted that, where that organisation protects fundamental rights in a manner which can be considered equivalent to that for which the Charter provides, the Committee should exercise a presumption that a State has not departed from its Charter obligations by seeking to eschew acting in breach of its obligations of membership of such other international organisations, and in this case of its EC law obligations.¹⁵
- 7.6 The Committee should further take account that Ireland, in its discussion with the European Commission, sought consideration of a pan-EU travel scheme which would avoid any potential for discrimination under Community law. Such a single EU-wide scheme, which would harmonise with the reciprocal principle of Article 12.4, could allow a simpler administrative mechanism overcoming the difficulties (and the economic infeasibility) which would be met in attempting to facilitate a scheme for temporary visitors to Ireland alone.
- 7.7 The Applicant seeks to rely on the fact that there is no express EC legislation

¹⁴ [GC], No. 45036/98, ECHR 2005 –VI

¹⁵ *Bosphorus Airways Case*, §156.

prohibiting an EC Member State from extending a benefit like the free travel pass exclusively (or effectively) to non-resident nationals only. It seeks to rely upon two European Court of Justice authorities (at pages 11 and 15 of the Complaint) in order to suggest that the extension for which it calls of the Free Travel Scheme would not be incompatible with EC law, notwithstanding the complex question of citizenship rights under EU law, free movement, residence, and the web of EU legislation relevant to this question.¹⁶ It is respectfully submitted that it is not incumbent upon the Committee to interpret this complex body of EC law and that these cases are not comparable with the present Complaint.

7.8 Consequently, the Respondent confines its observations on the substance of EC law to observing the following. In its response of 27 July 2007 to the Committee regarding the observations of Ireland on the admissibility of the Complaint, the Applicant submits (at page 4) that Article 12, paragraph 4, of the revised Charter requires Contracting Parties to provide for the retention of benefits “*by their own nationals*” arising from social security legislation. However, rules framed on the basis of seeking to give a preference, directly or indirectly, to Irish nationals to the exclusion of nationals from other Member States (as is sought by the Applicant through the present Complaint) fall squarely within the prohibition of discrimination on grounds of nationality prescribed by EC law; as opposed to rules (such as those impugned by the Applicant) which are grounded on objective criteria, namely residence. Yet, this is precisely the result which the Applicant is seeking, which result would place Ireland in conflict with its obligations under Community law.

¹⁶ Case C-520/04 *Turpeinen* [2006] ECR I-10685 and Case C-224/02 *Pusa* [2004] ECRI-5763.

8. Conclusion

- 8.1 In the light of the foregoing, Ireland respectfully submits that the complaint should be dismissed on its merits.

ANNEX A

DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS

**INTERNAL GUIDELINES USED FOR
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FREE TRAVEL

1. LEGISLATION

The Free Travel Scheme is non-statutory, having been introduced and extended by Ministerial Announcement.

2. ADMINISTRATION

The Free Travel Scheme is administered by the Free Travel Section, in the Social Welfare Services Office, Sligo.

3. DESCRIPTION OF SCHEME/QUALIFYING CONDITIONS:

3.1 WHAT IS FREE TRAVEL?

The Free Travel Scheme operated by the Department of Social and Family Affairs, allows people who are aged 66 years or over and who are permanently residing in the State, to travel free of charge on most CIE public transport services, LUAS, as well as on the public transport services of a large number of private operators in various parts of the country. Certain incapacitated people under age 66 are also entitled to free travel.

CIE services are provided by Iarnrod Eireann, Bus Eireann and Bus Atha Cliath. A list of private operators who participate in the Free Travel Scheme can be obtained from Free Travel Section.

Permanent residents of the Aran Islands and Tory Island may avail of Free Travel on scheduled private air services between the Islands and the mainland. Free Travel on these services, to and from the Aran Islands (only) is available to non resident Free Travel Pass Holders at a reduced rate - See APPENDIX 2 of this Guide for full details.

Free Travel is also available on Cross-Border bus and rail journeys between the Republic of Ireland and Northern Ireland. - Details of the special arrangements which apply to Cross-Border Free Travel are given in APPENDIX 3 of this Guide.

In addition, if you are aged 66 or over, the All Ireland Free Travel Scheme will entitle you to travel for free on transport services operating internally within Northern Ireland, using a Senior Smartpass card. See Appendix 4 for full details.

3.2 ELIGIBILITY FOR FREE TRAVEL?

To avail of Free Travel, a person must first apply for a Free Travel Pass from this Department. The applicant will qualify, if s/he is living permanently in the State (i.e. on an all-year-round basis) and is aged 66 or over.

If the applicant is under age 66, in addition to permanently residing in the State, s/he must satisfy any of the conditions below;

(a) be a recipient of one of the following payments;

- Invalidity Pension
- Blind Person's Pension
- Disability Allowance (DA)
- Carer's Allowance (you may get a single status pass only, if you are aged under 66)
- Incapacity Supplement or Workmen's Compensation Supplement with Disablement Pension, for at least 12 months
- a Social Security Invalidity/Incapacity Pension/Benefit, or an equivalent payment, for at least 12 months, from a country covered by EC Regulations*, or from a country with which Ireland has a bilateral Social Security Agreement*

(b) live in Health Board approved residential care and has previously received either Disability Allowance (from this Department) or Disabled Person's Maintenance Allowance (DPMA - from a Health Board) or would satisfy the medical conditions and means test for Disability Allowance

(c) Be a specified carer for a person getting Constant Attendance Allowance or Prescribed Relatives Allowance from this Department (you may get a single status pass only, if you are under age 66)

(d) s/he is blind or severely visually impaired.

(e) be a widowed person aged between 60 and 65 years

inclusive, whose late spouse held a Free Travel Pass from this Department, and who prior to his/her death, resided with him/her on a permanent basis, and who is now receiving one of the following payments and who satisfies the other conditions of the scheme;

- State Pension (transition),(payable at age 65)
- Widow(er)'s Contributory or Non-Contributory Pension
- Widow(er)'s Pension under the Occupational Injuries Benefits Scheme
- One-Parent-Family Payment
- Widow's or Widower's Pension under the Occupational Injuries Benefit Scheme
- An equivalent Social Security Pension/Benefit from a country covered by EC Regulations, or from a country with which Ireland has a Bilateral Social Security Agreement
- an ORDINARY Garda Widow's Pension from the Department of Justice.

*** [Countries covered by EC Regulations;** Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Norway, Poland, Portugal, Republic of Cyprus (Cyprus South), Romania, Slovakia, Slovenia, Spain, Sweden, the Netherlands, the United Kingdom.

*** [Countries with which Ireland has a Bilateral Social Security Agreement;** Australia, Austria, Canada, New Zealand, the United States of America, Quebec, Switzerland.

3.3 HOW TO OBTAIN A FREE TRAVEL PASS?

A Free Travel Pass will be issued automatically at age 66 if the applicant is getting a Pension from this Department and is living permanently in the State. Likewise, if the applicant is under age 66, a Free Travel Pass will issue, on being awarded an Invalidity Pension, Blind Person's Pension, Disability Allowance, or a Carer's Allowance.

In all other circumstances, a person must apply for a Free Travel Pass by completing an Application Form (FT1) which is available from their local Post Office or their nearest Social Welfare Local Office. The completed form, along with any supporting documentation required, should be forwarded to the following address:

Department of Social and Family Affairs

Free Travel Section
FREEPOST
Social Welfare Services Office
College Road
Sligo

* No stamp is required when posting the application form to the Department.

3.4 FREE TRAVEL FOR THE APPLICANT'S SPOUSE/PARTNER

Where a Free Travel applicant is married, or co-habiting (that is, living with a man or woman as husband and wife), s/he may be entitled to a Free Travel Pass that will allow the spouse/partner to accompany the Pass Holder free of charge when travelling. (This does not apply to persons under age 66 who are in receipt of Carer's Allowance or who are nominated carers for people getting a Constant Attendance Allowance or Prescribed Relatives Allowance from this Department).

3.5 FREE TRAVEL FOR A COMPANION

(where the applicant is unfit to travel alone)

Certain incapacitated people who are medically unfit to travel alone are entitled to a Companion Free Travel Pass. This type of Pass allows any one person, aged 16 years or over (not necessarily the spouse/partner), to accompany the Pass Holder free of charge, when travelling. The conditions for receipt of a Companion Free Travel pass are set out in Appendix 2 of this Guide.

3.6 WHEN CAN A FREE TRAVEL PASS BE USED?

A Free Travel Pass may be used to travel free of charge on the following transport services at anytime on scheduled services:

- Bus Atha Cliath
(NITELINK and Special Airport services are excluded)
- Bus Eireann
- Provincial City Services in Cork and Limerick cities

- Dart
- LUAS
- Participating Private scheduled services
- Participating Cross-Border scheduled Services (Between Republic of Ireland and Northern Ireland - See Appendix 3) "

3.7 WHEN IS FREE TRAVEL NOT AVAILABLE?

Free Travel is not available....

(a) on services which are not listed in the official rail and bus time-tables of Bus Atha Cliath, Bus Eireann or Iarnrod Eireann

(b) on excursion and special bus or rail services

(c) on organised group journeys

(d) on Bus Atha Cliath NITELINK services

(e) on Bus Atha Cliath special Airport Services

(f) on First Class or Super Class travel on any service (unless the appropriate fare supplement is paid)

3.8 HOW TO USE A FREE TRAVEL PASS

If travelling by Bus Atha Cliath, Bus Eireann or on private bus operator services, the Pass Holder must produce their Free Travel Pass to the bus driver on boarding the bus. A bus ticket is not issued, nor required.

Before using Iarnrod Eireann Mainline, DART or Outer Suburban services, the Pass Holder must present his/her Free Travel Pass at the ticket booking desk in the train station of departure, in order to obtain a free rail ticket. If undertaking a day return journey only, the Pass Holder will be issued with a Day Return ticket. In all other cases, a Single

journey ticket will be issued, and a further Single journey ticket must be obtained before making the return journey.

When using Private Ferry services, the Pass Holder should present his/her Free Travel Pass to the Ferry Operator. In some instances, a ticket will be issued.

3.9 EVIDENCE OF IDENTITY

Whenever a person is travelling using their Free Travel Pass, s/he must produce their Pass for inspection to an Inspector of the Transport Operator or to an Official of the Department of Social and Family Affairs, if asked. If considered necessary, the Pass Holder and/or his/her accompanying spouse/partner must also produce evidence of their identity by providing a sample of signature to the officials mentioned above. These officials have the authority to confiscate a Free Travel Pass if there are reasonable grounds for suspecting that the Pass is being misused.

If a passholder lives in Dublin, Cork city, Galway city, Limerick city or Waterford city, they are also required to produce a Free Travel Photo ID, which can be obtained from CIE, free of charge.

3.10 WHAT TO DO IF THE FREE TRAVEL PASS IS LOST?

If a Free Travel pass is lost or stolen, the Pass Holder should complete form FT27 in order to apply for a replacement Free Travel Pass. This form is available on request from the Department's Free Travel Section or can be downloaded from the Department's website at www.welfare.ie.

3.11 IN WHAT CIRCUMSTANCES MUST THE FREE TRAVEL PASS BE RETURNED ?

In the event of any of the following occurring, the Free Travel Pass must be returned to the address given below:

- The Pass Holder does not continue to reside on a permanent basis in the State

- The Pass Holder changes address (Pass must be returned for change of address and renewal)

- The Pass Holder no longer satisfies the criteria applicable to his/her particular Free Travel entitlement (Companion status will be amended as necessary, and appropriate replacement Pass will be issued)

- the pass is worn or illegible

- the passholder is no longer in receipt of a qualifying payment

3.12 FURTHER INFORMATION

Information on the Free Travel Scheme is available from:

Free Travel Section
Department of Social and Family Affairs
Social Welfare Services Office
College Road,
Sligo.

Telephone: Locall 1890 500 000 (from Republic of Ireland) or
00 353 71 9148345 (from Northern Ireland or overseas)

4. APPLICATION GUIDELINES:

4.1 NEED TO APPLY ?

Where a person is receiving a Pension from this Department and is living permanently in the State, a Free Travel Pass will be automatically issued on his/her 66th birthday.

A person aged under 66 years, who is awarded any of the payments listed below, will be automatically issued a Free Travel Pass

- Invalidity Pension

- Blind Person's Pension

- Disability Allowance
- Carer's Allowance

If you are not in receipt of any of the above, you must complete an application form, FT1. This form is available from your local post office or from Free Travel Section at the address given at 3.3.

4.2 READ THE INFORMATION LEAFLET

Before completing Form FT1, the applicant should first read Information Leaflet SW40 for details of the qualifying conditions for a Free Travel Pass.

4.3 COMPLETE THE FORM

Applicants should ensure that the following has been done before

submitting their application form:

- Birth/Marriage Certificates, as required, are enclosed
- Medical Certification, where necessary, is submitted.
- Application form is signed and dated.
- PPS Number (Personal Public Service) is supplied. If you do not know this number, please contact your local Social Welfare Office.

4.4 FREE TRAVEL COMPANION PASS

See Appendix 1 of this Guide

5. FREE TRAVEL ENTITLEMENT MONITORING

5.1 HOW LONG DOES FREE TRAVEL ENTITLEMENT CONTINUE ?

Where the Pass Holder is aged 66 years or over, Free Travel entitlement continues as long as s/he permanently resides in the State.

Where the Pass Holder is aged under 66 years, Free Travel entitlement continues as long as s/he permanently resides in the State, and continues to receive one of the qualifying payments for Free Travel listed in Section 3.2 of this Guide.

5.2 FREE TRAVEL RETENTION

Where a pass holder transfers to another payment from the Department of Social and Family Affairs, or participates in certain types of community work projects:

A Free Travel Pass holder receiving Disability Allowance or Blind Person's Pension who transfers to a Back-to-Work Allowance scheme (BTWA) may retain his/her Free Travel Pass for the duration of the BTWA payment (3 years for most transferees, but 4 years for people in designated Partnership Areas, who take up self employment).

A Free Travel Pass holder who participates in a Community Employment project, an Employee Support Scheme or a Pilot Project for People with Disabilities, is entitled to retain the Free Travel Pass for the duration of the project.

A Free Travel Pass holder who receives Invalidity Pension, Disability Allowance or Blind Person's Pension, may retain his/her Free Travel Pass on transfer to any other Department of Social and Family Affairs payment (excluding Unemployment Benefit/Assistance, Disability Benefit and Pre-Retirement Allowance).

5.3 WHAT HAPPENS IF THE PASS HOLDER DIES ?

In the event of the death of the Pass Holder, the representative(s) of the deceased should return his/her Free Travel Pass to the Free Travel Section, with a covering note stating "deceased".

6. REQUESTS FOR CASE REVIEW

As the Free Travel Scheme is a Non-Statutory Scheme, there is no legislative right of appeal to the Social Welfare services Office. However, a person who is dissatisfied with a decision in relation to his/her application for Free Travel is entitled to a review by another and more senior official of the Department.

Any person who wishes to have a decision reviewed should write to Free Travel Section, Social Welfare Services Office,

College Road, Sligo, stating in detail why s/he thinks the decision is incorrect.

The case will be considered fully and fairly, and the person notified in writing of the outcome, at an early date.

APPENDIX 1

ELIGIBILITY FOR COMPANION FREE TRAVEL:

A Companion Free Travel Pass entitles the Pass Holder to have any one person, aged 16 years or over, to accompany him/her free of charge when travelling.

The following people are eligible to receive a Companion Free Travel Pass:

Free Travel Passholders aged 66 or over:

- You are aged 66 to 69 inclusive and are medically assessed as unfit to travel alone.
- You are aged 70 or over and are medically unfit to travel alone
- You are receiving full-time care and attention from someone who is getting Carers Allowance from this Department.
- You are certified by either the Irish Wheelchair Association or by your GP as being a permanent wheelchair user.
- You are blind or severely visually impaired **and**
 - you satisfy the blindness conditions for the Blind Pension or
 - you are registered as a blind person with either the National Council for the Blind of Ireland or the National League of the Blind of Ireland.

Free Travel Passholders aged under 66:

- You are getting Disability Allowance or Invalidity Pension or Disablement Pension and Incapacity Supplement and are medically assessed as unfit to travel alone.

- You live in Health Service Executive (HSE) - approved residential care, and are medically assessed as unfit to travel alone and you:
 - were previously getting Disability Allowance,
 - or
 - are assessed as being medically suitable for Disability Allowance.

- You are blind or severely visually impaired and you:
 - are getting a Blind Pension
 - or
 - satisfy the blindness condition for the Blind Pension
 - or
 - are registered as a blind person with either the National Council for the Blind of Ireland or the National League of the Blind of Ireland

- You are getting one of the qualifying payments listed below and you are certified by either the Irish Wheelchair Association or by your GP as being a permanent wheelchair user

- You are receiving full-time care and attention from someone who is getting Carers Allowance from this Department. To qualify for a companion pass based on this condition, you must be entitled to a Free Travel Pass in your own right. See conditions for free travel (**Section 3.2**).

Free Travel Companion Pass for a visually-impaired child:

A visually impaired child will qualify for a Free Travel Companion Pass if they are under age 18 and either they:

- satisfy the blindness condition for a Blind Pension,
- or
- are registered with the National Council for the Blind or the National League of the Blind of Ireland.

Parent or Guardian:

You must return the child's Free Travel Companion Pass to Free Travel Section if:

- the child's eyesight improves and they no longer satisfy either of the conditions above,
- the child no longer lives permanently in the State,
- the child changes address (when you return the Free Travel Pass you will get a new pass for the child with the new address).

Each Free Travel Companion Pass shows an expiry date. To get a new Pass you must return the current Pass along with an up-to-date Ophthalmic Medical Certificate.

Only the child named on the Free Travel Companion Pass can use it, they cannot give it to another person to use.

QUALIFYING PAYMENTS

These payments apply if you are under age 66:

- Invalidity Pension,
- Blind Pension,
- Incapacity Supplement or Workmen's Compensation with Disablement Pension for at least 12 months (under the Occupational Injuries Benefit Scheme),
- Disability Allowance,
- an Invalidity Payment or similar payment for at least 12 months from a country covered by EC Regulations or from a country with which Ireland has a Bilateral Social Security Agreement.

APPENDIX 2

SPECIAL FREE TRAVEL ARRANGEMENTS

AIRLINE SERVICE TO/FROM THE ARAN ISLANDS, CO. GALWAY

Free Travel Pass Holders, residing on a permanent basis on any of the Aran Islands (i.e. Inis Mor, Inis Meain, Inisheer), are entitled to travel free of charge on Aer Arann services from the islands to Galway City and vice versa. Aer Arann operates an airline service between the Aran Islands and Aerphort Chonamara at Indreabhan, Co. Galway. The company also provides a shuttle bus service between Aerphort Chonamara and Galway City.

A Pass Holder may undertake up to 12 single journeys (or up to 6 return journeys between the Aran Islands and Galway City each year. Any number of additional journeys may also be made at a special reduced rate. Where the appropriate type of Free Travel Pass is held, the Pass Holder's spouse/partner may accompany him/her free of charge on these trips. If a Companion Free Travel Pass is held, any one person, aged 16 years or over, may accompany the Pass Holder free of charge.

Pass Holders not permanently residing on the Aran Islands may travel on Aer Arann's airline and bus services between Galway City and the Aran Islands at a reduced cost. The Pass Holder's spouse/partner, or a companion may accompany him/her at the reduced rate, where the appropriate type of Pass is held [This concession also applies to Northern Ireland Travel Pass holders undertaking cross-border journeys to and from the Aran Islands (but not to their spouse or companion, unless s/he is a Pass holder in his/her own right - See APPENDIX 3, first paragraph).

HELICOPTER SERVICE TO/FROM TORY ISLAND, CO DONEGAL

Free Travel Pass Holders residing on a permanent basis on Tory Island, Co. Donegal, are entitled to travel free of charge on the helicopter service, which is operated during the Winter period only, between the island and Falcarragh on the mainland. A Pass holder may undertake up to 8 single journeys (or up to 4 return journeys) each year. The spouse/partner or companion of the Pass Holder may accompany you him/her free of charge, where the appropriate type of Free Travel Pass is

held.

APPENDIX 3

CROSS-BORDER FREE TRAVEL

CROSS-BORDER FREE TRAVEL

A Free Travel Pass may be used to travel free of charge on cross-border journeys between the Republic of Ireland and Northern Ireland and vice versa. The Pass Holder's spouse/partner person may accompany him/her free of charge where the appropriate type of Pass is held. Alternatively, if the Pass Holder holds a Companion Free Travel Pass, any one companion aged 16 years or over may accompany him/her free of charge.

Residents of Northern Ireland who hold a Northern Ireland Concessionary Travel Pass may also travel free on cross-border journeys. However, the spouse/partners or companions of Northern Ireland Pass Holders are not entitled to Free Travel on such journeys unless they also hold a Concession Travel Pass in their own right.

EXTENT OF FREE CROSS-BORDER JOURNEYS AVAILABLE

A Cross-Border Free Travel journey must originate in one jurisdiction and terminate in the other jurisdiction.

The Cross-Border journey may be undertaken using one mode of transport only i.e. bus or train. It is not possible to use a combination of both modes of transport.

The journey must be undertaken on the basis of one through-ticket. This means, for example, that the Pass Holder can travel free by train from say, Cork to Belfast, provided that the free ticket which s/he obtained in the Cork railway station clearly denotes Belfast as the final destination. The same principle applies when travelling by bus on Cross-Border journeys.

TRANSPORT OPERATORS WHO PROVIDE FREE CROSS-BORDER TRAVEL

The following Transport Operators provide Cross-Border Free Travel services for both Republic of Ireland and Northern Ireland Pass Holders:

Bus Eireann

Ulsterbus

Iarnrod Eireann

Northern Ireland Railway

Lough Swilly Bus Company, Letterkenny, Co. Donegal

Halpenny Transport Ltd., Blackrock, Dundalk, Co. Louth

Patrick Gallagher, Brinalack, Letterkenny, Co. Donegal

Foyle Coaches, Clar, Redcastle, Co. Donegal

TRAVELLING BY BUS

When travelling by bus, the Free Travel Pass should be presented to the bus driver, on boarding the bus, before departure.

On Bus Eireann, Ulsterbus and Lough Swilly Bus Company services, the bus driver will issue the Pass Holder with a single journey ticket. This ticket is valid on the date of issue only. If the Pass Holder wishes to undertake a return Cross-Border bus journey, s/he should get a single journey ticket for the outward part of the journey, and later, a further single journey ticket for the homeward journey.

If travelling with any of the other bus operators mentioned in paragraph 3 above, the Pass Holder will be issued with either a single or a return journey ticket as required.

TRAVEL BY RAIL

To undertake a Cross-Border journey by train, the Pass Holder must first complete a Travel Warrant. Warrants are available in most train stations in Northern Ireland, and the Republic of Ireland, in Information Offices of the Department of Social and Family Affairs (Republic of Ireland) and in Offices of the Department of Social Security (Northern Ireland). The Pass Holder should present the completed warrant and his/her Travel Pass at the ticket desk in the train station of departure. S/he will then be issued with either a free single or a free return Standard Class ticket as required.

The Free Travel entitlement is Standard Class travel.

If the Pass Holder wishes to travel "First Plus" class, s/he may do so on payment of the appropriate fare supplement.

To avoid unnecessary delay at the ticket desk, the Pass Holder should complete the Warrant well in advance of undertaking the rail journey and obtain a free rail ticket at least 15 minutes before the train is due to depart.

BREAKS IN CROSS-BORDER RAIL JOURNEYS

It is not necessary to complete a Cross-Border Free Travel train journey in one day. For example, if travelling from Cork to Belfast, the Pass Holder may spend up to 2 nights in Dublin as part of his/her journey. However, the outward part of the journey must be fully completed within 3 days of the date of issue of the ticket.

TRANSFER BETWEEN CONNOLLY AND HEUSTON RAILWAY STATIONS

If, as part of a Cross-Border Free Travel rail journey, the Pass Holder has to transfer between Connolly and Heuston stations in Dublin, s/he may travel free of charge on Bus Atha Cliath's route no. 90 bus.

REFUNDS/DISCOUNTS

No monetary refunds or discounts will be given for late train departures, or for any other delays experienced while undertaking a Cross-Border Free Travel journey.

APPENDIX 4

ALL-IRELAND FREE TRAVEL SCHEME (AIFT)

What is it?

The AIFT scheme allows a Free Travel Passholder (FTPH) to travel for free on the various travel services operating within Northern Ireland.

Similarly Northern Ireland Senior Smartpass holders will be entitled to travel for Free on the various services within the Republic of Ireland using their existing Senior Smartpass.

The scheme is effective from the 2nd April 2007.

Who can travel?

- To qualify for free travel within Northern Ireland, you must be **aged 66 or over** and satisfy the conditions of the Free Travel Scheme.
- Under the terms of the concessionary fares scheme in Northern Ireland, only Free Travel Passholders over age 66 are entitled to travel free of charge in Northern Ireland. The spouse/partner or companion is not eligible to accompany the Passholder for free in Northern Ireland under this scheme.
- Similarly only the NI passholder is eligible for Free Travel in ROI i.e. no spouse/companion
- A spouse/partner or companion may continue to travel with the Free Travel Passholder for free on cross-border journeys (i.e. journeys starting in the Republic of Ireland and ending in Northern Ireland or vice versa).
- Free Travel Passholders wishing to avail of AIFT within Northern Ireland must first obtain a Senior SmartPass card.
- A DSFA Free Travel Pass cannot be used for free travel within Northern Ireland, the customer must have a Senior SmartPass. In addition, the Senior SmartPass card cannot be used for free travel within the Republic of Ireland, the

customer must use their existing Free Travel Pass.

How can a customer get a Senior Smartpass?

- An application form (FTNI1) must be completed (using black pen or biro). As these forms are individually bar coded, photo copies cannot be used.

- This application must be brought to the customers nearest Social Welfare Local Office* along with:

- A recent passport standard colour photograph
and
- Evidence of identity (driving licence/passport/any other form of photo id, if available)
and
- Evidence of address (a recent utility bill, e.g. electricity/gas/phone/waste charges bill or a bank/building society/credit union statement)
and
- Current Free Travel Pass and Pension book (if available)

- Following processing of the application a Senior SmartPass card, together with instructions for use, will be posted direct to the customer's home address by post. It may take up to six weeks to process the application.

- As it may take up to six weeks to process applications, customers wishing to avail of the scheme should be encouraged to make their applications as soon as possible.

* Details of Local Offices are listed in the SW4, on the green pages of the phone directory and also on the Department's website www.welfare.ie/contact/index

How will AIFTS impact on the current Cross Border Scheme?

- Free Travel Passholders, both under and over age 66, with their spouse/partner or companion will continue to be eligible for Cross Border travel on the basis of their existing Free Travel Pass. (Cross Border travel means journeys which commence in the Republic of Ireland and ends in Northern Ireland or vice versa).

