



The Irish Council for Civil Liberties (ICCL) would like to thank the United Nations Special Rapporteur on extreme poverty and human rights for the [opportunity](#) to provide input towards his thematic report to the UN General Assembly on digital technology, social protection and human rights and also in relation to his 28 July visit to Ireland in his academic capacity. We provide here a specific case study regarding the government roll out in Ireland of the Public Services Card, a digital identity system with an unclear legal basis, which is compulsory for access to essential social protection services.

24 May 2019 draft

Elizabeth Farries, Surveillance and Human Rights Program Manager

The Irish PSC: Enforced digital identities for social protection services and beyond

I Forcing the PSC into Ireland's social protection system

The Public Services Card is a domestic digital identity scheme (collectively, the PSC) initiated by the Department of Employment Affairs and Social Protection (Department) to establish and verify a person's identity in Ireland. The PSC is now required by the Department and other government bodies for a wide range of services within Ireland's social protection systems.¹ These include social welfare services,² passport services,³ citizenship applications,⁴ drivers licence online renewal,⁵ student grant applications,⁶ and certain revenue services, amongst other services. The Department is

¹ Agencies require either the card itself or Verified MyGovID, an online registration system which itself requires a PSC. See more in section II of these submissions.

² Services under the remit of the Department include Jobseekers Benefit claims, Maternity Benefit claims, Paternity Benefit claims, Child Benefit claims, requesting PRSI contribution statement, applying for PRSI refund, appointments, submit Works and Skills information, Treatment Benefit Eligibility Assessment, Benefit of Work Estimator – Disability Customer, and free travel passes. See 'Public Services Card Free Travel (PSCFT)' (Department of Employment Affairs and Social Protection, 13 August 2016)

<http://www.welfare.ie/en/Pages/Public-Services-Card-Free-Travel.aspx> Accessed 12 May 2019

³ The Department of Foreign Affairs and Trade requires the PSC for first time adult passport applicants in the state, for replacement of lost, stolen or damaged passports issued prior to January 2005, where the person is resident in the State. See Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

⁴ This is deemed 'as required' by the Department of Justice and Equality.

⁵ Via the Road Safety Authority, for Driver Licence Online Renewal and Learner Permit Online Renewal .

⁶ Via Student Universal Support Ireland.

implementing the PSC on phased basis. They intend expansive roll-out, beyond the field of social protection into other public service fields.⁷

The PSC is controversial.⁸ It represents an additional digital checkpoint that includes the collection, processing, examination, pooling, and distribution amongst numerous bodies of personal and biometric data of people living in Ireland. It requires people to trade their personal data for access to essential services which they are already legally entitled to. There have been a number of high profile cases in which people have had social protection payments halted because they did not register for the PSC.⁹ Concerned citizens regularly contact the ICCL because they would rather experience economic precarity than subject their personal data to the collection scheme under the PSC.¹⁰ Others simply have no other economic choice than to submit to the regime.

By virtue of the social protection services they are reliant on, these individuals tend to be poor and economically marginalised. Inequality is pronounced in Ireland, and austerity has had a significant impact in recent years.¹¹ The PSC exacerbates the socioeconomic needs of individuals by adding an additional technical barrier that they must cross in order to access essential services. This barrier is not necessary however, given more traditional forms of identity verification are available.¹² It also raises significant privacy, legality and data protection concerns.

⁷ Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), pp8, 20-21, 35 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

⁸ Given the controversy, certain government social protection agencies are now stepping back from PSC in apparent response to controversies regarding the PSC's role out. The most notable example is the Road Safety Authority's step back from requiring the PSC for the Driving Theory Test by the summer of 2018 despite its February 2018 public campaign celebrating the PSC role out.

⁹ In one high profile case the Department halted pension payments over an 18 month period because the pensioner would not accept the PSC. The pensioner was fortunate to have access to a solicitor who assisted restored payments. However, those living in poverty tend to have limited access to legal advice or representation and have not been so fortunate. See Elaine Edwards 'Woman's pension to be restored in public services card row', *The Irish Times* (16 October, 2017) Available at: <https://www.irishtimes.com/news/ireland/irish-news/woman-s-pension-to-be-restored-in-public-services-card-row-1.3256965>

¹⁰ @StephenJudge, 2019. I am currently unemployed and struggling with bills, rent and food. Living off credit cards and loans. I'm entitled to Job Seekers Allowance but I won't apply because I don't want to be forced to get the #PSC. I used to work in Cyber Security. I don't trust our government or...or some third party contracted agent to secure the massive amount of personal data being collected for #PSC. This database will get breached some day and all our information will be out the for identity theft, as it happened in India. I'd rather accumulate debt than #PSC' [Twitter]. 17 April. Available from: <https://twitter.com/StephenJudge/status/1118536112472035328>

¹¹ 'Since 2008 the Irish economy suffered a massive fall, with one in every seven jobs being lost'. Rory O'Farrell, 'How did Austerity Affect Ireland?' (Nevin Economic Research Institute, 8 November 2013) <https://www.nerininstitute.net/research/how-did-austerity-affect-ireland/>

¹² Further, the means of verifying identity for PSC purposes are not being generally accepted in the social protection system; instead, people are forced to get the PSC.

II Digital technologies rolled out by the PSC

The PSC introduces a variety of digital technologies, in both the registration process and in the card itself.

A. PSC digital registration processes

SAFE Level 2 registration (SAFE2)

SAFE2 is a personal data collection process that the Department gathers prior to issuing a PSC.¹³ While SAFE stands for 'Standard Authentication Framework Environment', it does not appear to be standardised at all but is rather an internal bespoke identify verification process developed by an Irish interdepartmental group in 2005.

Public Services Identity set (PSI data set)

The PSI data set represents the data collected during the SAFE2 registration, including names, birthdate, Personal Public Service Number (PPSN),¹⁴ and a facial image scan.¹⁵ The Department may share the PSI data set with a lengthy list of 'specified bodies' in Schedule 5 to Ireland's Social Welfare Consolidation Act 2005 and has already shared the PSI data set with a significant number of bodies.¹⁶

The Single Customer View (SCV)

The SCV appears to be the data storage repository for PSI Data set. While the Department says that the SCV is a 'read only' device for specified bodies, it has also said that specified bodies can update the PSI data set too.¹⁷ It is unclear how many data controllers access or maintain the SCV. While the Department says Department of Public Expenditure and Reform (DPER) is the data controller for the SCV,¹⁸ the Department also says that each body accessing the SCV or PSI data set may be a data

¹³ Save certain excepted categories which may include persons with profound disabilities and those resident abroad to register. Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p36 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

¹⁴ The PPSN is a unique individual social security number. Its use is strictly controlled by legislation.

¹⁵ Full data may include one's PPS N surname, forename, birth date, birth place, sex, all former surnames, all former mother surnames, address, nationality, signature, photographic image, date of death, certificate of death, any, very broadly, any other information which may be required for authentication purposes that is uniquely linked to or is capable of identifying that person. Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017) https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

¹⁶ Those bodies include but are not limited to the Department of Agriculture, Food & the Marine, Department of Children & Youth Affairs, Department of Education & Skills, Department of Foreign Affairs (Passport Service), Department of Justice (Citizenship section), Central Statistics Office, Revenue Commissioners, Tusla - Child and Family Agency, Student Universal Support Ireland, Office of the Refugee Applications Commissioner, etc Local Authorities. Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p72-23 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

¹⁷ Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p49 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

¹⁸ Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p51 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

controller in respect of the PSI data elements it holds.¹⁹ The Department says that the SCV is held ‘electronically on secure systems owned by the State in a secure Government Data Centre on the private Government Network in Ireland’; however, it does not provide further details about this system or the methods used by the various government bodies who access it.²⁰

Biometrics

One particularly controversial SAFE2 element is the biometric jpeg facial image, which the Department collects from each individual as part of the registration process.²¹ The Department applies a facial recognition process to that image by extracting an analytical model which it stores on separate database within the Department.²² The original facial image is also added to the PSI data set. Perplexingly, the Department has denied that the facial image or processing of the facial image constitutes biometric data.²³

MyGovID

This system creates online access to various government services, subject to SAFE2 identity verification and receipt of the PSC, including the Departments’ MyWelfare and Revenue’s MyAccount services.

Infosy

Infosys has been identified as a ‘technical component’ of the PSC system.²⁴ This is a private and corporate system whose role in relation to the PSC is unclear. It was announced in 2015 as ‘next-generation services’, intended to create jobs in Ireland to develop new technologies and support

¹⁹ Department of Employment Affairs and Social Protection, ‘Comprehensive Guide to Safe Registration and the Public Services Card’ (October 2017), p24 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

²⁰ Department of Employment Affairs and Social Protection, ‘Comprehensive Guide to Safe Registration and the Public Services Card’ (October 2017), p48 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

²¹ Department of Employment Affairs and Social Protection, ‘Comprehensive Guide to Safe Registration and the Public Services Card’ (October 2017), p43 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

²² The Department states that it does not store or share the biometric or arithmetic template of the facial image. Rather, it compares the photograph to its database of photographs. Department of Employment Affairs and Social Protection, ‘Comprehensive Guide to Safe Registration and the Public Services Card’ (October 2017), p43 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

²³ Department of Employment Affairs and Social Protection, Public Services Card Authentication, Written answers (Regina Doherty, 12 March 2019) <https://www.kildarestreet.com/wrans/?id=2019-03-12a.1777&s=public+services+card> ‘My Department’s position is, therefore, that the SAFE2/PSC photo is not itself biometric in nature – it is simply a photograph. My Department is also clear that it does not collect or share biometric data but that it does create such data for its own use, to enable it to carry out its functions in relation to the PSC, as set out in the Social Welfare Consolidation Act 2005. In this context, the Department also acts in accordance with the Data Protection Act 2018 and Article 9 of the GDPR.’

²⁴ Joint Committee on Employment Affairs and Social Protection debate, *Public Services Card: Discussion (Resumed)* (22 February 2018) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/3/ Accessed 4 May 2019

innovation in global financial institutions'.²⁵ The Department also allows other agencies unrelated to the PSC to have access to the INFOSYS application of the Department.²⁶

B. The Card itself

Card properties

This physical card represents the completion of the SAFE2 registration process required for the PSC. It includes: (1) a facial image; (2) a contact chip, which also holds a copy of the facial image, together with other PSI data. The Department says that all specified bodies may, in law, read the contact chip if they use a card reader specifically programmed to accept the PSC;²⁷ (3) a magnetic stripe, which contains elements of the PSI data set. According to the Department, An Post can act as an agent of the Department and the only organisation that reads the magnetic stripe for the purposes of accessing the PPSN; and (4) a free travel variant. This variant also contains (5) a contactless chip, which is designed to only interact with a ticketing system reader deployed by the National Transport Authority for the purposes of enabling free access to public transportation.²⁸

Private contractor involvement

The Department has recruited the private sector for the production of the physical card. Formerly called Biometric Card Services, but renamed Security Card Concepts after controversy arose over the use of biometric data in SAFE2, the Department transfers data to this private company via a 'private Government Network'.²⁹ The Department says data protection processes are implemented using strong cryptography according to international and industry standards, but does not disclose these standards. We also don't know what the 'government network' is or how it functions.

²⁵ 'Infosys Banks on Ireland for FinTech Expertise' (7 December 2015) <https://www.infosys.com/newsroom/press-releases/Pages/fintech-research-development.aspx> Accessed 20 May 2019.

²⁶ 'Government Departments authorised to use the Personal Public Service Number under Social Welfare law (Department, 18 April 2019) <https://www.welfare.ie/en/Pages/Register-of-users-Government-Departments.aspx> Accessed 20 May 2019.

²⁷ As of 2017, no specified body has implemented that technology. Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p45 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

²⁸ The ICCL received a report from a member of the public in May 2019 that the National Transport Authority has now begun to require the free travel variant.

²⁹ Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p32 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

III Objectives cited by the government for the PSC

The primary objectives cited by the Department for the PSC include fraud prevention and administrative efficiency.

Fraud

The PSC is backed by and further reproduces the stereotype that poor people will cheat the system.³⁰ The Department has argued that the threat of fraud and forgery is significant enough to warrant investment into an identity registration scheme like the PSC³¹ and that this will in turn help to reduce fraud and forgery.³² The Department's Assistant Secretary has very recently spoken of this perceived threat in Oireachtas debates, saying that the PSC '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'.³³ By operating on a presumption of guilt, the PSC further entrenches discrimination and stigmatization at the expense of population that the Department is mandated to assist.

The Department also presumes that a digital identity system like the PSC will effectively reduce the financial burden of fraudulent claims in a manner that justifies the revenues they have invested. It has reasoned that 'the PSC incorporates identification features including a biometric photograph and signature thus making it harder for people to use false identities'.³⁴ However, arguments favouring the financial benefits of fraud detection by the PSC regime are also not robust. Official anti-fraud savings up to October 2017 were recorded at €2.58 million³⁵ and the Department has since said it was unable to say how much money had been saved through its welfare fraud activities in 2018.³⁶ Conversely, the Department reported the total PSC costs were €55.7 million by the end of 2017.³⁷

³⁰ Privacy International, 'Understanding Identity Systems Part 1: Why ID?' (Privacy International) <https://privacyinternational.org/explainer/2669/understanding-identity-systems-part-1-why-id> Accessed 12 May 2019. 'In the context of an ID scheme, there are other motivations for its introduction that are less tangible, but are no less powerful. These may be explicitly expressed or not, and can be positive or negative in outlook'.

³¹ The then Minister for Social Protection wrote that Ireland's recession-burdened social protection systems require diligent fraud targeting measures to ensure that 'vast majority of people are receiving the entitlement due to them'. 'Department of Social Protection Fraud Initiative 2011 - 2013' (Department for Social Protection) p1 <http://www.welfare.ie/en/downloads/fraudinitiative2011.pdf> Accessed 12 May 2019.

³² These reasons were stated specifically in relation to the free travel version of the PSC. See 'Public Services Card Free Travel (PSCFT)' (Department of Employment Affairs and Social Protection, 13 August 2016) <http://www.welfare.ie/en/Pages/Public-Services-Card-Free-Travel.aspx> Accessed 12 May 2019'.

³³ Joint Committee on Employment Affairs and Social Protection debate, *Public Services Card: Discussion (Resumed)* (22 February 2018) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/3/ Accessed 4 May 2019.

³⁴ 'Department of Social Protection Fraud Initiative 2011 - 2013' (Department for Social Protection) p27 <http://www.welfare.ie/en/downloads/fraudinitiative2011.pdf> Accessed 12 May 2019.

³⁵ Elaine Edwards 'Average fraud saving of €1.16 for each public services card issued' *The Irish Times* (2017). 'Woman's pension to be restored in public services card row', *The Irish Times* (1 August 2017) <https://www.irishtimes.com/news/ireland/irish-news/average-fraud-saving-of-1-16-for-each-public-services-card-issued-1.3173443>

³⁶ Noel Baker, 'Over 170 cases of welfare fraud brought to court', *Irish Examiner* (4 February 2019) <https://www.irishexaminer.com/breakingnews/ireland/over-170-cases-of-welfare-fraud-brought-to-court-902036.html>

³⁷ Elaine Edwards, 'Cost of public services card project hits €54.6m', *The Irish Times* (30 November 2017) <https://www.irishtimes.com/news/social-affairs/cost-of-public-services-card-project-hits-54-6m-1.3311325>;

Administrative efficiency

The Department has also defended the PSC on grounds that it will create administrative efficiency for social protection services delivery.³⁸ The Department asserts that the PSC will save time because individuals won't need to provide any additional proof of their identity when dealing with other government departments.³⁹ However, this argument seems ineffective given that the PSC's additional virtual checkpoint arguably further delays access to resources, thereby increasing the precarity of populations already struggling with deprivation and poverty. The PSC is therefore not an 'optimised citizen experience'⁴⁰ for those who were effectively threatened and, in many cases, had their payments cut off if they refused to agree to their personal data being included in shared database. Rather, it represents an additional technical layer that may 'exacerbate existing biases, discrimination, or power imbalances'.⁴¹

IV Exclusionary effects of the PSC

There is evidence elsewhere that the effects of socioeconomic disparity and poverty have been worsened by the roll out of digital identity schemes.⁴² Here in Ireland, over 450 people have had welfare payments suspended for not registering for the public services card.⁴³ A further 4000 people have had their free travel entitlement withdrawn.⁴⁴ The ICCL has also received multiple anecdotal accounts of exclusion from callers to our offices. We have heard for example that contractual employment services providers are being instructed to tell their clients that they must have the PSC in order to register for Jobs Ireland, a national employment vacancy website. Those who refuse to submit to the PSC are automatically excluded from employment searches on the website.

The ICCL is also hearing reports of demeaning behaviour related to SAFE2 registration, and inconsistent requirements for people with access to legal advice. These accounts highlight the potential danger of this treatment being disproportionately applied to those most in need. In this

³⁸ Department of Employment Affairs and Social Protection, 'Comprehensive Guide to Safe Registration and the Public Services Card' (October 2017), p18 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

³⁹ 'Public Services Card Free Travel (PSCFT)' (Department of Employment Affairs and Social Protection, 13 August 2016) <http://www.welfare.ie/en/Pages/Public-Services-Card-Free-Travel.aspx> Accessed 12 May 2019

⁴⁰ Joint Committee on Employment Affairs and Social Protection debate, *Public Services Card: Discussion (Resumed)* (22 February 2018) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-22/3/ Accessed 4 May 2019.

⁴¹ This wording has been used to describe digital identity schemes in migration contexts. Mark Latonero et al. 'Digital Identity in the Migration & Refugee Context', *Data & Society* (4 April 2019) <https://datasociety.net/output/digital-identity-in-the-migration-refugee-context/>

⁴² Access Now points to the requirement for Aadhaar for increasing numbers of welfare schemes has caused significant harm and exclusion for India's poor, particularly for food distribution, leading to starvation in extreme instances and harming particularly the elderly and disabled. 'National Digital Identity Programmes: What's Next?' (20 March 2018) p16 <https://www.accessnow.org/cms/assets/uploads/2018/03/Digital-Identity-Paper-digital-version-Mar20.pdf>

⁴³ Elaine Edwards, 'Over 450 have welfare suspended for not registering for public services card' *The Irish Times* (22 February 2018) <https://www.irishtimes.com/news/politics/over-450-have-welfare-suspended-for-not-registering-for-public-services-card-1.3401945>

⁴⁴ Though some of these numbers might relate to people who might no longer be using their entitlement to free public transport. Elaine Edwards, 'Over 450 have welfare suspended for not registering for public services card' *The Irish Times* (22 February 2018) <https://www.irishtimes.com/news/politics/over-450-have-welfare-suspended-for-not-registering-for-public-services-card-1.3401945>

context, it is important to reference discriminatory and fearful motivations factoring into digital identity systems roll out in other jurisdictions. For example, Privacy International has noted findings where people of ‘Haitian descent were discriminated against in the Dominican Republic by the agency who issued identity documents, meaning that they had difficulty getting the documents required for them to establish their citizenship and remain in the country’.⁴⁵ See also Privacy International’s description of intangible motivations for ID schemes based in fear of the ‘other’, including the fear of marginalised groups, to supplant other forms of identification.⁴⁶

The exclusionary effects or potential of digital identity systems appear to outweigh arguments in favour of administrative efficiency and fraud detection. As Access Now has previously written:

Individuals should not be compelled to put their personal, unchangeable, biometric data at great risk of privacy intrusions for the sole purpose of ‘proving’ legal identity, which can be verified in a variety of different ways. Avoiding this risk is even more important given that national digital identity programmes are often first introduced in communities where people have less reason to trust public authorities, including rural communities and those of marginalised people, such as refugees or other minority groups.⁴⁷

In Ireland, groups who share the common characteristics of poverty and socioeconomic disadvantage may indeed have no reason to trust the PSC. Given the PSC’s potential for technological exclusion, it is proving likely to amplify risks and harms in lives of marginalized populations in a manner that administrative convenience does not justify.

V The legal basis for the PSC is unclear

As we detail below, local experts note that the legal basis for the introduction of and use of the PSC is thus far unclear. The Department says the legal provisions associated with the PSC lie primarily in certain sections of the Social Welfare Consolidation Act 2005 (as amended) and to a limited degree certain other legislative provisions.⁴⁸ However, in so far as consideration of fair, transparent and lawful data processing by the PSC must be considered, legality must also be assessed in reference to the Constitution and the Data Protection Act, the European Convention of Human rights Act 2003, the EU General Data Protection Regulation (‘GDPR’), and the European Charter of Fundamental Rights of the EU.

⁴⁵ Privacy International, ‘Understanding Identity Systems Part 2: Discrimination and Identity’ (Privacy International) <https://privacyinternational.org/explainer/2670/understanding-identity-systems-part-2-discrimination-and-identity> Accessed 12 May

⁴⁶ Privacy International, ‘Understanding Identity Systems Part 1: Why ID?’ (Privacy International) <https://privacyinternational.org/explainer/2669/understanding-identity-systems-part-1-why-id> Accessed 12 May 2019

⁴⁷ ‘National Digital Identity Programmes: What’s Next?’ (20 March 2018) p16 <https://www.accessnow.org/cms/assets/uploads/2018/03/Digital-Identity-Paper-digital-version-Mar20.pdf>

⁴⁸ Department of Employment Affairs and Social Protection, ‘Comprehensive Guide to Safe Registration and the Public Services Card’ (October 2017), Appendix 1 https://www.welfare.ie/en/downloads/DEASP_Comprehensive_Guide_to_SAFE_Registration_and_the_PSC.pdf

ICCL analysis

The ICCL has previously submitted their opposition to the public services card in the Oireachtas.⁴⁹ We have noted that given its legislative basis is unclear, and, even if there was primary legislation backing the roll out, the PSC is not a necessary or proportionate system for achieving Department aims including administrative efficiency or fraud detection. We also raised concern that there is no dedicated independent mechanism tasked with overseeing the PSC beyond the very busy Irish Data Protection Commissioner with its broad function of overseeing compliance with data protection law in general.

Significant legislative amendments

Other experts have concurred that the legal basis for the Public Services Card is unclear. Irish barrister and academic David Fennelly says of Ireland's Social Welfare Consolidation Act 2005 (as amended) that:

the relevant provisions of the Act on which the Department has placed reliance in this regard are Sections 241, 247C, 262, 263 to 263D, all of which are found in Part 9 of the Act dealing with general provisions concerning social insurance, social assistance and insurability. This part of the Act has since been amended very significantly by various other pieces of legislation over more than a decade. In order to understand the statutory provisions as they currently apply, it is necessary to trace carefully these amendments and piece together the provisions which have been deleted, substituted, inserted and so on.⁵⁰ Even by the standards of Irish legislation, for this particular Act, this is far from a straightforward exercise. The Department has recently published on its website a running consolidation of the 2005 Act, albeit subject to important disclaimers. ...even with the benefit of this consolidated version of the relevant provisions, the legal basis for the PSC and related databases remains unclear.⁵¹

Biometric processing

Other legal experts question how the Department can order someone to apply for a PSC when they have enough information to verify their identity by traditional means, albeit to a SAFE2 standard, for eg a passport and proof of address. Irish solicitor Fred Logue asserts that the biometric database is itself incompatible with Articles 7 and 8 Charter of Fundamental Rights.⁵² Biometric data is a special category of personal data that requires particular safeguards to avoid harm to data subjects. National biometric databases, including the Department's database of facial images, via the arithmetic template database or the SCV, are not necessary or proportionate to privacy violations and risky processing of sensitive personal data in light of Articles 7 and 8.

Data Protection Commission involvement

The Data Protection Commissioner also opened a formal audit of the PSC in October 2017 given unresolved questions about its lawfulness, including 'biometric data processing and governance and data issues associated with the interplay between the Card, PSI data set, MyGovID, SCV and Infosys'.

⁴⁹ 'Submission the joint Submission to Joint Committee on Employment Affairs and Social Protection. The Public Services Card' The Irish Council for Civil Liberties (7 February 2018) <https://www.iccl.ie/wp-content/uploads/2018/04/ICCL-Submission-to-Oireachtas-on-Public-Services-Card-7.2.18.pdf>

⁵⁰ By way of illustrating the difficulty of this task: Sections 241 and 242 of the 2005 Act, upon which the government relies, have been amended 31 times between them; Section 247 of the 2005 Act has been amended 35 times; Section 263 of the 2005 Act has been amended 8 times.

⁵¹ David Fennelly, preliminary legal advices to the ICCL (October 2018)

⁵² Fred Logue, preliminary legal advices to the ICCL (October 2018)

⁵³ Unfortunately, nearly two years later, that investigation has yet to conclude. The DPC has also indicated that the Data Protection Acts 1988 and 2003, in place when the investigation commenced, provide them with no powers to publish their eventual findings. The ICCL does not consider this a legally robust explanation and has asserted that the public has a right to a timely and full disclosure of the Data Protection Commissioner's assessment.⁵⁴

Access to information difficulties

In addition to the Data Protection Commission's refusal to disclose full details of their investigation and eventual conclusions, the ICCL similarly has experienced difficulty obtaining information from the Department. ICCL 2018 attempts under Freedom of Information Legislation to access the preliminary Data Protection Commission report to the Department were denied because the Department said, amongst other reasons, that it was contrary to the public interest to disclose the documents.⁵⁵

The ICCL is also, for example, unsure therefore whether the Department has conducted a Data Protection Impact Assessment, a legal requirement under the GDPR for 'high risk' data processing.⁵⁶ While we do have record of earlier government decisions to progress the PSC for improving data sharing and operational systems,⁵⁷ we are concerned that the government has not engaged clearly or transparently with civil bodies or the public regarding the impact on people's privacy of its policy decision(s) to require the use of this biometric and data sharing system of identity verification for such a broad range of public services and government bodies.

Apart from the technical question of whether there is some legislative basis for the PSC, an equally important point is that the bits of legislation that the government argues underpin the PSC are not clear and accessible, and as a result they have not led to or enabled public debate or meaningful public consultation allowing people to understand clearly the scope of PSC legislation that limits their rights in this regard. We echo the Data Protection Commissioner's concern – which she stated in August 2017 – that 'transparency to the public on the underpinning legislative provisions, what data is being collected, for what purpose, and with whom data may be shared and for what purpose,

⁵³ Joint Committee on Employment Affairs and Social Protection debate, *Public Services Card: Discussion* (8 February 2018) https://www.oireachtas.ie/en/debates/debate/joint_committee_on_employment_affairs_and_social_protection/2018-02-08/3/ Accessed 4 May 2019

⁵⁴ In particular, individuals should be entitled to rely on binding decisions of the Data Protection Commissioner in other administrative or judicial reviews.

⁵⁵ The ICCL currently has an appeal before the Office of the Information Commissioner. See more at 'Dept of Social Protection refuses FOI request on Public Services Card' (14 January 2019) <https://www.iccl.ie/news/dept-social-protection-refuse-foi-psc/>

⁵⁶ Biometric data only became a 'special category' under the GDPR. The PSC commenced under the old directive. It is unclear to the ICCL if the project was reassessed when new special protections were given to biometric data under the GDPR.

⁵⁷ Government Decisions include 29 June 2004 (S290/05/25/0025) 'To progress the development of a standard for a Public Service Card; approved, in principle, the use of the Public Service Card for all existing card-based schemes and new schemes over time and where this is not possible (for operational or legal reasons), approved compulsory compliance with relevant aspects of the SAFE standard in the development of such token-based schemes from hereon in'; and 18 September 2013 (S180/20/10/1789) 'Improving data-sharing, linking and governance in the Public Service. Provide a legal mechanism to facilitate lawful data-sharing and data-linking for all public bodies, and define standards for data governance and security that must be adhered to in any data-sharing or data-linking activities'.

needs to be adequately addressed'.⁵⁸ We remain disappointed that the Data Protection Commissioner herself has opted not to be transparent on this issue.

VI Conclusion

People dependent on essential social welfare services, are often the most at risk populations in society. In Ireland, if they don't sign their personal data over to the risky and legally unclear data processing PSC scheme, they risk being systematically denied services to which they are legally entitled. Most cannot risk the loss of essential services and are not in a position to resist the imposition of this digital identity system. Despite these urgent concerns, pull back from certain government agencies, and the ongoing investigation by the Data Protection Commissioner, the Department continues to roll out the PSC - an action that will continue to exacerbate the economic precarity of, and stereotypes experienced by, marginalised and impoverished people in Ireland.



The [Irish Council for Civil Liberties](#) is committed to an Ireland that is more just, more free, and where human rights and civil liberties are enjoyed by everyone.

Contact Elizabeth Farries, Surveillance and Human Rights Program Manager, info@iccl.ie

We consent to publication of this document

⁵⁸ 'Data protection watchdog asks for answers on legal basis for public services card, *Irish Legal News* (31 August 2017)' <https://www.irishlegal.com/article/data-protection-watchdog-asks-for-answers-on-legal-basis-for-public-services-card>