



Public Consultation on Retired Workers Access to Industrial Relations Mechanisms for Pension Related Issues

The purpose of this consultation is to seek your views on proposals arising from a Private Members Bill for the introduction of a statutory right for retired persons to be included in collective trade disputes and how to balance the proposed new rights for retired persons with the current rights and interests of workers and employers who engage in the bargaining process, along with considering;

- What, if any, additionality could the proposals provide to the existing protections for retired persons including those provided by the Pensions Authority, the Financial Services and the Pensions Ombudsman;
- The effectiveness of the existing timeframe which already allows a retired person access to the industrial relations bodies in a period of 6-months post-retirement for matters arising pre-retirement please see section 26A [Revised Acts \(lawreform.ie\)](http://lawreform.ie) and
- Whether there is the potential for new or enhanced methods of consultation through the introduction of alternative systems, networks or fora which might assist retired workers in engaging more fully on pension related issues.

The document provides space for your responses to the questions set out.

Your Name: **Mr. Tony Collins,**
Organisation (if applicable): **ESB Retired Staff Association**
Telephone Number: **086 819 7083**
E-mail: **tonycollins6952@gmail.com**

Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

On behalf of ESB Retired Staff Association

Name of company, institution, organisation or group covered by this submission:

ESB Retired Staff Association

Respondents are requested to make their submissions by email to:

irsection@enterprise.gov.ie

The closing date for submissions is Friday 22nd April at 3pm.

I. Background

The Government has agreed to carry out a consultation to allow for full consideration of the proposals as set out and the possible implications of these. Part of this detailed consideration also involves a consultation process with the other relevant government departments, representative organisations, trade unions and employer bodies.

To ensure that the views of all stakeholders are considered, submissions are now invited during a six-week public consultation period from Friday 11th March to Friday 22nd April 2022.

Submissions will be reviewed by mid-May with further direct stakeholder engagement, including with representative organisations, scheduled as required. The outcome of the consultation will feed into the Government's response to the proposals.

II. Existing Protections for Retired Workers' Pension Entitlements

Protections Under the Pensions Act

Section 50 of the Pensions Act 1990 provides that the Pensions Authority may make a direction to reduce pension benefits payable to, or respect of, all scheme member cohorts (active, deferred and pensioner members) in order to satisfy the funding standard, and continue to allow the scheme to operate.

There are limits in respect of the amount by which pensioner benefits can be reduced. With effect from 25 December 2013:

- No reduction may be made from an annual pension of €12,000 or less and no reduction may be made which reduces an annual pension to below €12,000.
- If an annual pension is over €12,000 and less than €60,000, a reduction may be made by a percentage no greater than 10% and to an amount which is no less than €12,000.
- If an annual pension is €60,000 or more, a reduction may be made by a percentage no greater than 20% and to an amount which is no less than €54,000.

The 2013 changes were designed to spread the risk of scheme underfunding to all scheme member cohorts and to ensure a more equitable sharing of scheme resources where restructuring is required while still providing for significant protections to pension benefits already in payment.

While pensioner members have a protection in law in respect of their pension benefits over and above the protection offered to active and deferred members protections there are also opportunities to make submissions to the trustees of a scheme in the context of scheme restructuring.

Other Protections

There are also safeguards available to retired workers particularly given that pension entitlements are property rights and protected in the courts.

In addition, the Pensions Authority plays an important regulatory role in relation to occupational schemes and the Financial Services and Pensions Ombudsman adjudicates on pension appeals taken by individuals as an avenue to vindicate their rights.

Opportunity for Member Submissions

Current legislation provides that prior to the trustees of a scheme making a section 50 application to the Pensions Authority which could involve reductions to pension payments payable under a scheme, they must consult with the employer, the scheme member, with pensioners and with the authorised trade union representing members.

Trustees must undertake a comprehensive review of the scheme with a view to the long-term stability and sustainability of the scheme. In advance of any application, the trustees must notify members and beneficiaries of the scheme, including pensioners, in writing, of matters relating to the proposed application and provide an opportunity for such persons to make submissions to the trustees. Furthermore, the trustees must in accordance with the Prescribed Guidance in Relation to Section 50 of the Pensions Act, 1990¹, give due consideration to these observations.

In the event that the Pensions Authority makes a Section 50 direction, other than on application by the trustees, legislation also provides that the trustees must notify all member cohorts, and provide an opportunity for members, including pensioner members to make a submission/ an appeal in respect of this direction. Furthermore, in these circumstances, the Authority shall, prior to making such a direction, consider the submissions made.

While the opportunity for member submissions and consideration of these submissions is provided for, it is important to note that trustees may need to act in a timely fashion to ensure the long-term stability and sustainability of a scheme.

III. Publication of Consultation Submissions and Freedom of Information

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2018. However, please note the following:

- The information provided in the submission form will be shared with relevant Government Departments and State organisations during the review process.
- The Department will publish the outcome of the reviews and the submissions received under this consultation on its website, and
- As information received by the Department is subject to the Freedom of Information Act, such information may be considered for possible release under the FOI Act. The Department will

consult with you regarding such information before making a decision should it be required to disclose it.

- If you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive.

IV.Note Regarding Responses

Respondents are encouraged to keep their responses within the box accompanying each question. Please answer any questions that are relevant to you or your organisation.

Question 1: Duties of Pension Scheme Trustees

Pension scheme trustees have duties and responsibilities under trust law, under the Pensions Act 1990, as amended, and under other relevant legislation. The duties of pension scheme trustees include administering the scheme in accordance with the law and the terms of the trust deed and scheme rules as well as ensuring compliance with the requirements that apply to these schemes.

Pensioner members may avail of that opportunity to become scheme trustees or nominate others to act on their behalf. However, national and European law prohibits discrimination in the manner in which trustees are appointed.

RESPONSE OF ESBRSA

In Electricity Supply Board properly nominated candidates for election to the Trustee Board of ESB DB Pension Scheme are subject to a pre-selection process before their names can appear on the ballot paper for selection by the members of the scheme in an election, and subsequent appointment by ESB. A selection panel vets candidates and in disallowing any properly nominated candidate's name appear on the ballot paper that selection panel is effectively declaring that candidate as "not fit and proper".

Does this not conflict with national or European law prohibiting discrimination in the manner by which trustees are appointed?

Once appointed, trustees have a fiduciary duty to act in the best financial interest of all scheme members, whether active, deferred or retired, and must serve all beneficiaries of the scheme impartially. If there is a conflict of interest, then a person's duty as a trustee must, in law, take precedence over other interests.

Accordingly, any trustee who acts in the interests of one cohort of members, e.g., pensioner members, above the interests of other member cohorts of the scheme would be in breach of his or her fiduciary duty.

Given the legal and regulatory obligations imposed on pension scheme trustees (see: [section 50 - prescribed guidance - version 3 february 2015 .pdf \(pensionsauthority.ie\)](#)), in particular, their fiduciary duty to serve all scheme members impartially, and the opportunity for member submissions as part of any scheme restructuring process, what is the effectiveness of the current arrangements and are there any other suggestions as to how the interests and concerns of retired workers could better inform trustees in their work consistent with the existing legal framework?

Question 2: Access to Industrial Relations Mechanisms for Retired Workers on Pension Matters

The 1990 Industrial Relations Act currently allows a retired person to access to the industrial relations bodies in a period of 6-month post-retirement for matters arising pre-retirement.

This 6-months is either from the date of retirement or the date from when it became known or should have been known, the time frame in which to make a complaint for matters arising post-retirement. This may be extended by the Labour Court in exceptional circumstances on a case-by-case basis, where the justice of the case so requires.

RESPONSE OF ESBRSA

This facility is largely tokenistic and relates only to individuals and not pensioners collectively and only to issues which arose prior to the individual's retirement and offers no ongoing protection to pensioners either individually or collectively. Its inadequacy goes to the very heart of the matter for pensioners.

- A.** Is there a need for the views of retired worker members of pension schemes to be included in the consideration of pension entitlements as part of collectively bargained agreements; if so, how can this be best achieved?

RESPONSE OF ESBRSA

Yes there most certainly is unless already retired scheme members are exempt from adverse changes and that any pre-existing indexing of pensions-in-payment remains in place for those members. If there is to be no such distinction between existing pensioners and employee (future pensioner) members, then both cohorts should be part of the same process to agree and resolve issues in a single forum with the employer.

- B.** Are there any mechanisms that could provide a way for retired worker members of pension schemes to engage with pension trustees in advance of a separate collectively bargained agreement impacting on pensions?

RESPONSE OF ESBRSA

Currently, ESB DB Pension Trustees absolutely refuse to meet pensioner representatives. Even if this were not the case or if it were to change, this facility would not remedy the exclusion of

retired members from the process of engagement between employer and employees when rule changes to the scheme are being discussed / agreed.

- C. Are there any disadvantages or challenges that introducing such a mechanism might impose on the voluntary dispute resolution mechanism? If so, what are these?

RESPONSE OF ESBRSA

The Bill relates only to the pension issue and outside of that matter, pensioners have no desire to interfere with the normal industrial relation matters between employers and employees.

- D. Could there be any deterrent effect of such a mechanism on the willingness of parties to engage in collectively bargained agreements and as part of the existing IR structures more generally?

RESPONSE OF ESBRSA

Retired workers have, on their retirement, completed the terms of their contract of employment but their employer does not simultaneously complete its obligations under that contract because the employer's pension promise delivery only commences when the employee retires where the pension scheme is a defined benefit scheme. It follows that the employer must support the scheme if the scheme is otherwise unable to meet the employer's pension promise, at least in respect of already retired members.

An employer that engages under industrial relation processes with employee members of a scheme to alter the terms of a pension scheme should be limited to changing the terms for employee members only and should not be permitted to impose reduced terms on already retired former employees, now pensioners unless pensioners are made a part of the industrial relation engagement process alongside employee members of the pension scheme.

Question 3: Retired Workers and Collective Bargaining

- A. The existing legal position is that industrial relations is about the relationship between employers and workers. Could the views of retired workers be balanced with those of workers and employers engaged in negotiations to reach collectively bargained agreements? If so, on what basis?

RESPONSE OF ESBRSA

This question appears to impute that pensioners are seeking to participate in IR matters more widely than on pensions and this is not correct. Any IR process dealing with pension issues should be confined to pension issues only and should not embrace any other issues. This would ensure that pensioner involvement would not creep outside of the limited scope of the bill which is to create equality of representation for pensioners with employee members of a scheme on pensions issues only.

- B. In the event that a majority of retired workers were opposed to pension changes proposed as part of a collectively bargained pay agreement which a majority of workers wished to accept, could these competing positions be reasonably resolved within the context of the current IR landscape and legislative provisions?

RESPONSE OF ESBRSA

A single ballot of all the members of the scheme would resolve any potential issue here.

Question 4: Implications for Workers and Employers

If you are an employer or worker, do you believe that including the views of retired workers on changes to pension entitlements proposed as part of collectively bargained agreements, would have any implications (including costs) for either the effectiveness of the current structure for dispute resolution/IR agreements (e.g. positive or negative impacts on industrial harmony) or on the level of pension cover?

Question 5: Redress Mechanisms for Retired Workers

There already exist safeguards to retired workers to protect their pension rights. Accrued pension entitlements represent property rights which can be vindicated in the courts. Members of occupational pensions schemes also currently have recourse to the offices of the Pensions Authority and the Financial Services and Pensions Ombudsman.

How effective are the current redress mechanisms for retired workers?

RESPONSE OF ESBRSA

DB Pension Schemes do not provide an individual pension fund for each member – rather there is 1 collective fund. Employers engage with employee members collectively when pension issues are under discussion/negotiation but do not engage with pensioner members. The latter are excluded from the engagement process even though rule changes agreed to between employers and employee members can have very significant adverse consequences for pensions in payment.

At this level there are NO redress mechanisms. Creating equality of representation for all members of a scheme is what this bill is about.

That pension entitlement can be protected through the courts is not very practical for pensioners given the scale of costs associated with seeking the protection of the courts. A state provided low cost / no cost arbitration system is essential.

Any other comments including the potential for new or enhanced methods for consultation:

RESPONSE OF ESBRSA

Before we were pensioners, we were employees. As employees we were given no choice but to become members of ESB's Defined Benefit pension scheme as a condition of employment and the promised pension was the promise of our employer (and of the state) and not that of the pension scheme/trustees. The pension scheme is the vehicle for delivering on the employer's pension promise.

In relation to any defined benefit pension scheme, there are 2 spheres of activity and influence:

1. **The first sphere** contains the employer, the employees, and the terms and conditions of employment including pension obligations of employer and employees. This falls under the voluntarism of industrial relations in Ireland and is unregulated in that no employer is obliged by law to offer a pension scheme and if offered, there is nothing to prevent an employer ceasing contributions to the scheme. This offers scheme members no real protection.

As pensioner members of our DB pension scheme we find that we have no right to representation with ESB, our former employer, in respect of matters connected with that pension scheme, nor do we have access to the state's industrial relations

machinery for dispute resolution, while employee members of the same pension scheme have both.

A DB scheme provides for a **collective** fund into which all members contribute during their working lives and from which they all draw their pensions in retirement.

Since we retired we have discovered that employee members of the scheme of which we are members and ESB have engaged in discussions and negotiations around the pension scheme including major changes to the rules of the scheme, to the complete exclusion of retired members of the scheme. Even though pensioner members were excluded from that process, all of the revised rules were applied to all pensioners and not just employees.

The bill *Industrial Relations (Provisions in Respect of Pension Entitlements of Retired Workers) Bill 2020* is designed to rectify this exclusion of retired members and to provide for *equality of representation **for all members** of the scheme, which is the very least one should expect where the pension fund is a **collective** fund.*

In the words of the Chief Commissioner of the Irish Human Rights and Equality Commission

“The principle of participation underpins human rights and equality – making sure that the voices of those who are most affected by any issue, are part of any discussion or action on it. And not just a bit part, but a meaningful one where they are listened to and heard, in an accessible way, with respect and transparency.”

2. **The second sphere** of activity and influence contains the pension fund, the trustees, the laws and regulations applicable to the operation of pension funds, the Pensions Authority and the Pensions Ombudsman.

The Pensions Authority

The PA concerns itself almost exclusively with Trustees’ compliance with the Pensions Act and defines its mission statement (verbatim from its website) as

- “1. To regulate pension schemes and PRSAs effectively and efficiently and thereby foster public confidence in pensions.
2. To support pension scheme trustees and the public through providing guidance and information.

3. To provide expert advice to the Minister for Social Protection and to the Government on pension matters”

This definition offers nothing to individual pensioners or groups of pensioners by way of arbitration or direct assistance.

Pensions Ombudsman

The role of the ombudsman is limited to complaints made by *individual* pensioners, and only in respect of maladministration by the trustees of a scheme, and only after the fact and cannot accept a complaint from pensioners acting collectively / represented by the body of their choosing.

This leaves the sponsoring employers out of the picture entirely and in no way addresses the concerns of pensioners which are far wider than any narrow issue of maladministration by the trustees of a scheme.

Sponsoring employers only engage with *employee* members collectively as represented by their union(s) and completely disregard their former workers, now pensioners, in arriving at decisions which *affect all members* of a scheme including pensioners.

This can only be addressed by providing equality of representation rights to **all** members of a scheme, whether employee members or pensioner members, with the scheme sponsor (employer) including access to the state’s industrial relations machinery.

Suggesting that pensioners are protected by the Pensions Authority / Pensions Ombudsman or can be protected by expanding their roles/authority is an evasion of this primary issue, namely, the current exclusion of retired workers from the normal industrial relations engagement between the sponsoring employer and members of the pension scheme when pension issues are under consideration/discussion and their lack of recognition and their right to representation with the sponsoring employer.

By way of analogy, if a car stops due to a fault in the engine, no amount of washing the windscreen is going to fix what is wrong.

Equality

Pensioners cannot be expected to accept that only *some* members of a pension scheme (employees) have a right to representation with the sponsoring employer and other members (retired workers) do not.

This Bill is designed to correct this unfair and inequitable situation; to provide the same voice and participation for pensioner members as for employee members of occupational pension schemes and to provide equality of access for retired workers to the State's industrial relations machinery.

This does *not* go beyond issues involving the pension scheme and will not otherwise encroach on employer/employee relations in any other area.