



Ibec Submission to the Department of Enterprise, Trade and Employment Public Consultation on retired workers' access to industrial relations mechanisms for pension related issues

Ibec welcomes the opportunity to make a submission to the Department's consultation on the proposal to introduce a statutory right to be included in collective trade disputes for retired persons, and how to balance those proposed new rights with the current rights and interest of workers and employees who engage in the bargaining process.

We note that this consultation process has arisen from a Private Members Bill (the "Bill") which proposes to introduce a range of matters touching on the rights of retired workers across areas including industrial relations and collective bargaining, in addition to rights associated with occupational pension schemes¹.

The Bill proposes that retired workers who are members of occupational pension schemes should be granted access to the industrial relations machinery of the State. The rationale for this proposed access is stated by the Bill's sponsors to ensure that retired workers have a voice in industrial relations processes, specifically in relation to matters affecting occupational pensions.

Ibec strongly opposes the introduction of this measure and will set out the rationale for the position with particular focus on the areas of legal and Industrial relations matters in line with our particular expertise.

1. Impact of Private Members Bill on Industrial Relations and Trade Disputes/Collective Bargaining

The Bill proposes at Section 2 to amend the definition of a trade dispute to include the category of "retired worker". At Section 3 it proposes the inclusion of a third category of "organisations representing retired persons" to the existing categories of Unions and Employer Organisations, with regard to the Functions of the Commission under section 25 of the Industrial Relations Act 1990 (as amended). Section 8 of the Bill proposes an amendment to section 3 of the Industrial Relations Act 1946 to add "any dispute or difference relating to a matter affecting a retired worker's benefits under a relevant occupational pension scheme that arises after the person's employment has ceased" to the definition of trade dispute.

Industrial relations in Ireland relates to the relationship between employees and their employers. A trade dispute is defined under the Industrial Relations Act, 1946 (as amended) as meaning "*any dispute or difference between employers and workers or between workers and workers connected with the employment or non-employment, or the terms of the employment, or with the conditions of employment, of any person and includes any such dispute or difference between employers and workers where the employment has ceased*".

¹ Industrial Relations (Provisions in Respect of Pension Entitlements of Retired Workers) Bill 2021 (Bill 15 of 2021)

As such a trade dispute is concerned with a dispute between employers and workers connected with the employment or non-employment, or the terms and conditions of employment, or those affecting the employment, of any person. Non-employment in this context, is widely understood to mean dismissal, redundancy or a person seeking employment with a given employer. A retired person is legally understood to be retired, and not 'non-employed.' An individual cannot be designated as "worker" and "retired" simultaneously. It follows therefore that a retired worker cannot actively be involved in a trade dispute involving matters of employment and/or non-employment.

Industrial relations disputes involve a totality of the terms and conditions of existing workers which include terms of employment, pay, holidays, breaks, sick leave, and dismissal for example, which do not affect or impinge upon retired workers. Issues of concern to retired workers are more likely to have a limited focus on pension entitlements and matters in relation to the management of the scheme, which represents a narrower view of industrial relations matters than envisioned under the Industrial Relations Acts, and as seen in practice before the Workplace Relations Commission whose functions are to "promote the improvement of workplace relations, and maintenance of good workplace relations"². These stated functions and core services clearly do not envisage resolving complaints from retired workers in relation to their pension entitlements, the jurisdiction for which, as a specific unique area of expertise is correctly provided by the offices of the Pensions Authority and the Financial Services and Pensions Ombudsman of Ireland.

"Collective Bargaining" is defined in section 1A of the Industrial Relations (Amendment) Act, 2001 as comprising: "... *voluntary engagements or negotiations between any employer or employers' organisation on the one hand and a trade union of workers or excepted body to which this Act applies on the other, with the object of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.*"

Collective agreements provide certainty for employees and employers as to wages, benefits packages and working conditions allowing employees to know what their wages will be over a set period while equally facilitating employers in budgetary planning.

The addition of a third category to trade disputes, focused solely on pension related matters, in the collective bargaining process will distort the interests of existing workers for whom the process was originally designed. Additionally, the inclusion of a third category of participants with only one key issue and no 'skin in the game' will deter parties involved in the trade dispute from agreeing to engage in dispute resolution processes in the first instance. Including a new third category of participants, who have no bargaining mandate or conciliation to offer to the process, will only undermines the objective of maintaining collaborative, harmonious industrial relations and ensuring fairness in the workplace.

Existing Protections for Retired Workers

In the first instance, retirees' interests must be protected by the scheme Trustees under the duties set out in Section 59 of the Pensions Act. The Pensions Authority in its Trustee Handbook states at Section 2.9.4 that:

"It is not enough for trustees to consider the interests of some of the beneficiaries and not those of others. The interests of all the beneficiaries must be taken into account. However, the duty to act fairly between beneficiaries is not a duty to treat all the beneficiaries equally. It is a duty to attach

² Section 11 Workplace Relations 2015 (as amended)

equal weight to the interests of each beneficiary or group of beneficiaries, and to take everyone's interests into account.

The principal beneficiaries of the scheme are:

■ *individuals receiving benefits from the scheme*

■ *current employees, past employees who still have an entitlement to benefits from the scheme, and dependants of members who will or may receive benefits from the scheme in the future.*

The employer(s) sponsoring the scheme could also be a beneficiary, particularly where the scheme is defined benefit and is funded on the 'balance of cost' basis."

Equally, retired workers, as members of occupational pension schemes already have available to them a range of recourses to vindicate their pension rights, through the offices of the Pensions Authority and the Financial Services and Pensions Ombudsman of Ireland, or under relevant provisions of the Pensions Act 1990. Inclusion of additional avenues of potential redress may well serve to confuse matters and may even serve to deter retired members from availing of the specialist pension expertise available through these existing fora. Of note also are the rights a member of an occupational pension scheme has as against the trustees in the protection of their constitutional proprietary rights. The recently introduced European Union (Occupational Pension Schemes) Regulations, 2021 (the "Regulations") bolsters the obligations of trustees of occupational pensions schemes, introducing additional requirements and changes to the Pensions Act, 1990, increasing the obligations of trustees in their overall responsibility for safeguarding the assets of their schemes, and for ensuring the scheme is properly administered and that member's pension rights are fully protected. Trustees are now obligated to meet new fitness and probity standards and have an obligation to implement an effective governance system, to put in place written policies dealing with internal audit and risk management, actuarial functions and outsourcing, and to take reasonable steps to develop contingency plans. The Regulations additionally grant extended powers for the Pensions Authority with respect to applying forward-looking, risk-based principles to the supervision of pension schemes and monitoring of compliance.

2. Occupational Pension Schemes

Employers may set up occupational pension schemes for employees, which provide benefits including a tax-free lump sum and pension income for employees in retirement. Aside from benefits on retirement, pension schemes can also provide benefit to an employee's dependents on death in service or death after retirement. Pension benefits are also transferrable and need not be frozen when an employee moves employment.

Offering an employee access to an employer's funded occupational pension scheme as part of their remuneration is used by employers in the attraction and retention of employees. It forms a significant payroll cost that is carefully budgeted for and forms part of negotiations with the employee or trade union. Once an employee retires or leaves the employment, the employer no longer budgets for persons external to the business, nor should they have to, but nor do these former employees take part in any further benefit negotiations as they have no consideration to offer.

There is no legal obligation on an employer to set up or contribute to a pension scheme although there is an obligation to provide access to at least one standard PRSA. The introduction of a legal entitlement for retired persons to have a statutory right to access the industrial relations mechanisms will create a disincentive for employers to offer any pension above the legal minimum obligation. It will also add considerable costs in terms of additional administration and the inevitable time delays that such a

right would give rise to in any negotiation on terms and conditions. At a time when there is real focus on increasing the number of employees in Ireland with access to pension cover to address the pensions funding crisis this would be an unfortunate unintended consequence and would hasten the closure and phasing out of defined benefit pension schemes in particular.

3. Current Redress Mechanisms for Retired Workers

Ibec recognises the validity of a retired persons access to the Workplace Relations Commission for a limited period after employment, in line with all former employees under employment rights legislation.

Section 26A of the Industrial Relations Act 1990 (as amended) provides a retired person access to the WRC and Labour Court for a period of 6 months post retirement. This six-month timeframe within which a retired worker can may make a complaint commences either on the date of retirement, or the date when the grievance became known or ought to have become known.

This section addresses the right of access to justice and fair procedures work-related issues may have become known after retirement.

Even where an individual has been in retirement for more than six months, they may still bring a complaint in certain exceptional circumstances where the Labour Court extends the six-month time limit by a further 6 months. However, in an acknowledgement that other mechanisms are open to retirees the section further states that the WRC or the Labour Court shall not investigate a trade dispute “where the dispute is subject to investigation by the Pensions Ombudsman.”

The proposed amendments to this section 26A and the creation of an additional Section 26B by Section 4 and 5 of the Bill (respectively) to include the definitive reference to “a dispute relates to a matter affecting the retired worker’s benefits under a relevant occupational pension scheme” is unnecessary given the already express exclusion of such matters as a vehicle already exists for complaints in relation to benefits under an occupational pension scheme to go through the Pensions Ombudsman.

This existing robust protection is evidenced in practical terms through a Labour Court case from 2010, which pre-dates the insertion of section 26A into the 2015 legislation: *Mayo County Council and IMPACT*³ which concerned a dispute around alleged non-payment of allowances for a retired employee, whose employment ceased with the Council in July 2007. Due to administrative difficulties, the retiree had not received his “cesser payment” until October 2007. The Council raised a jurisdictional point that the Labour Court could not hear the case as the claimant was a retiree and therefore not covered by the Industrial Relations Acts. The Labour Court however decided that “*as the Claimant could not have been aware of the dispute before he retired, the Court had jurisdiction to hear the case under the Industrial Relations Acts.*” This serves to illustrate that even prior to the amendment of the 2015 legislation, the Labour Court did offer real protection to retired workers to ensure they could avail of their rights under industrial relations legislation. The subsequent amendment of the Industrial Relations Act 1990 by the Industrial Relations Amendment Act 2015 put that protection on a legislative footing.

It is clear then that there are already significant industrial relations mechanisms in place currently for the protection of retired workers’ rights. It is worth noting that no complaints have yet been brought to the Workplace Relations Commission under section 26A.

³ [LCR19942](#)

4. Implications for Trade Unions Acts

Section 9 of the Bill proposes an amendment to section 6 of the Trade Union Act 1941 by inserting a reference to a right to an exemption in respect of certain retired workers representative associations from the requirement to hold a negotiating licence.

The Industrial Relations Acts 1990 (as amended) and the Trade Union Acts 1871-1990 regulate the rules of trade unions and provide for a system of registration providing the holder with a negotiating licence for the purposes relating to trade disputes protecting the holder of the licence from liability for certain acts and restricting actions of tort against them.

The proposed amendment suggests that a body setting itself up as representing the rights of a new category of "retired worker", while not having a negotiating licence, could avail of the ability to represent "retired workers" in disputes relating to occupational pension terms and for these organisations to take cases to the WRC and have access to pay negotiations; an area where such a body would not have a legitimate interest in the determination of pay and terms and conditions in such circumstances. In practice the Bill suggests that a representative association for retired workers would fall outside the standards required of trade unions and organisations representing current workers. This would be problematic and could as Minister English referred to in the Dáil debate⁴ on the potential for such a provision "*lead to claims for variation of the requirements governing negotiating licences.*"

Summary

Ibec strongly opposes the proposals made within the Bill, which if enacted, would create significant unintended consequences for employers and workers. The proposals have potential to create division and industrial unrest where compromise cannot be found in collective negotiations with employees where retirees hold out on pension rights. The inevitable outcome is industrial action despite there not being a dispute between employer and the current employee base. Significant additional costs will accrue to the business in terms of forecasting, administration, time wasted, squandered opportunities and productivity in 'negotiations' where one party does not have a negotiating position. Most importantly, it will drive down and keep pension contributions from employers at the legal minimum to avoid this type of dispute arising with an unregulated 'third party representative' group. This would be counterproductive to the Government's Roadmap for Pension Reform⁵ which seeks to introduce and encourage participation in private pensions.

Members of occupational pensions schemes already have available to them a range of recourses to vindicate their pension rights, under relevant provisions of the Pensions Act 1990, through the offices of the Pensions Authority and the Financial Services and Pensions Ombudsman of Ireland.

End.

¹ Dáil Éireann debate -Wednesday, 30 Jun 2021

¹ [A Roadmap for Pensions Reform 2018 - 2023](#)

⁴ Dáil Éireann debate -Wednesday, 30 Jun 2021

⁵ [A Roadmap for Pensions Reform 2018 - 2023](#)