



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.

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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 organisation

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

Irish Senior Citizens Parliament working with Collective Network of Retired Workers.

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.

APRIL 2022



The Collective Network of retired workers organizations, working under the aegis of the Irish Senior Citizens Parliament are key stakeholders in the negotiation process, which was set up by Government to enable each stakeholder to have a meaningful input to this process.

The “Collective Network” wish to state, at the outset, that their ultimate goal is, that at the end of this process the **Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021**, will move successfully through the various stages in the Houses of the Oireachtas, and ultimately be incorporated into legislation and will give retired workers a voice and seat at the table where negotiations and decisions are made that impact their pensions.

This Bill, when passed into legislation will give Retired Workers the following:

1. It will give a voice to retired workers regarding what happens to their occupational pension schemes after they have left their employment. At present, thousands of workers who have worked for decades in a company or a semi state find that once they have left their job, any changes that impact their pension schemes can happen with little notice or consultation with them.
2. The Bill will give retired workers and their representative associations the right to go to the WRC when their occupational schemes are affected or there are proposed changes that could affect their benefits. At present, if these changes happen more than six months after a worker has retired, they have no rights to access the WRC
3. The Bill will give rights to retired workers associations to be included when talks between trade unions and employers have direct effects on their occupational pension schemes, e.g. Governance’, IR and Minimum Funding Standard. At present, retired workers and their representative associations are not consulted on any issues that may have an impact on their pensions.
4. The introduction of a new category “Retired workers” will change the definition of a trade dispute and will allow pensioner representative associations who cannot currently access the WRC because of the definition of a trade dispute in legislation to do so. This will mean that where substantial changes are proposed for their pension schemes, retired workers will have an effective environment within which to seek redress or demand meaningful consultation on these issues.
5. While there are proposed changes to the definition of a trade dispute, retired workers have no desire to interfere with the collective bargaining process

- between Employers and trade unions and only wish to exercise their rights to be present when discussions are being held that directly affect their pension rights.
6. This Retired Workers Rights bill will ensure that retired workers and their representative organisations are at the table and recognised when their hard-won pensions are being discussed.

There should be “Nothing about us Without us”



The Collective Retired Workers Network Response

1. With regard to the trustees, the laws and regulations applicable to the operation of pension funds, the Pensions Authority and the Pensions Ombudsman. The following applies:

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.

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.

Lived Example of Inequitable Treatment of Retired Workers

Currently once Retired Workers are more than 6 months retired, they do not have any procedures if they have any grievance with their former employers in respect of their occupational pension scheme in contrast to existing contributing members of the same schemes who are members of Trade Unions. Retired Workers are excluded from the current State machinery and are being pushed to pursue their grievances through the legal Courts system. Very many retired workers are on very low occupational pensions e.g., in the range of €10,000 to €13,000 per annum and obviously are not able to access legal representation through the Courts in contrast to pension providers who can avail of substantial funding for legal representation. Retired Workers have

- No voice
- No rights when changes that affect their pension scheme and pension income are being negotiated
- No rights to income security and protection in retirement
- No future financial security
- No equality of treatment with contributing members of pension schemes (workers) when it comes to pension rights.

There are many examples of situations where retired workers have been severely disadvantaged because of not being represented at negotiations between pension providers and Trade Unions that impacted severely on their rights. Retired Workers are not at the negotiating table nor have a vote on the terms which affected them. These arrangements have and continue to have a very serious impact on current and future pension income security. In these bi lateral arrangements Trade Unions and Pension Providers guard their own interests to the detriment of retired workers rights.

These agreements, amongst others, have reduced the benefit of retired workers for instance by in reducing in pension payment, imposing a freeze on pensions both for life and a period of years resulting in income poverty for many retired workers.

This is despite past Government Agreement to maintain pension parity in future years. .. *'This will be effective on the basis of revising public service pensions by reference to the rates of pay in force on 1st June each year, the revised rates being paid with effect as from 1st October following'.*

Pension Schemes are required to submit a Minimum Funding Standard to the Pensions Provider, Minister and the Pensions Authority for approval.

In some instances, this funding is negotiated between the Pensions Providers and the Trade Unions to the exclusion of Retired Workers Associations being at the table and not having the same rights as the aforementioned. A number of Pensions schemes are subjected to the Statutory Minimum Funding Standards.

Governance of schemes.

In some Pension Schemes the Governance of the Schemes have been negotiated between Trade Unions and Pension Schemes without the presence of retired workers at the negotiations, resulting in

- a) Trade Unions and Pension Providers looking after their own interests to the detriment of the retired workers representing the majority of members of the Scheme.
- b) underrepresentation of retired workers in the governance of the Scheme.
- c) former senior Executives of the Pension Providers being appointed to key positions on the Governance Structures.
- d) Governance Structures not being clearly open and transparent, sometimes not even present in the rules of the Scheme, in conflict with the European Legislation IORP11
- e) Trustees not engaging with Pensioner Organisations at present, retired workers do not have a right to be involved in negotiations on substantive issues that may have an impact on their pensions and accordingly their livelihood.

Pension Providers have enormous power in the running of Pension Schemes and must be made accountable for their actions by way of procedures and arbitration at the W.R.C. It should be noted that in many Schemes the Pension Providers appoint all Trustees and or Committees. It follows, therefore, that in the first instance disputes/grievances by retired workers are with the Pension Providers and should be dealt with by way of IR procedures at the WRC.

Retired workers have no forum within which to challenge the attack on their pension income. This must change. This Bill will give retired workers the rights to challenge any changes to their pension rights.

Retired Workers are, on average, living longer and are long overdue rights enjoyed by other sections of society to fair and just procedures.

Lived Experience of Loss of Income in Retirement

Retired Workers/pensioners lived experience of continuing exclusion and isolation has negative impact on their security and protection of income in retirement.

Monthly income in payment has been attacked and reduced without access to Industrial Relations mechanisms or our voice at the table:

No cost-of-living increases for 14 years - since 2008

Govt Stamp Duty Pension Levy introduced in 2011 for four years. Continues to be taken from income with no restoration – Govt received €39m

Over four years total exclusion from Industrial Relations discussions and negotiations on changes to retired workers' pensions in payment. The outcome of these negotiations cut monthly retired income further.

In a highly coordinated way Employers/Trade Unions/Trustees/Government availed of the State's Industrial Relations mechanisms such as Labour Court/WRC structures along with amendments to Social Welfare & Pensions Legislation 2013 law able to reduce retired workers monthly pension income further. Total c€44m so far.

Five years in High Court at a cost just under €3m

In summary:

- **TO GIVE RETIRED WORKERS THE RIGHT TO BE INCLUDED IN DECISIONS REGARDING THEIR PENSION PROVISION**
- **WHY THIS IS NEEDED - CURRENT INDUSTRIAL RELATIONS STRUCTURES EXCLUDE RETIRED WORKERS WHO HAVE LEFT THEIR EMPLOYER AFTER SIX MONTHS**

- **EXPERIENCE OF RETIRED WORKERS: WORKERS HAVE EXPERIENCED THE PENSIONS THEY WERE RECEIVING FOR YEARS/DECADES REDUCED BY DECISIONS MADE BY EMPLOYERS/TRADE UNIONS/TRUSTEES/GOVERNMENT AS PART OF INDUSTRIAL RELATIONS NEGOTIATIONS.**
- **NO VOICE OR SEAT AT THE TABLE: THE EXCLUSION OF PENSION REPRESENTATION WITH EQUAL RIGHTS AT THE NEGOTIATING TABLE WHEN PENSION ISSUES ARE BEING NEGOTIATED.**

**Irish Senior Citizens Parliament including the Collective Network of Retired Workers Organisations
Representing over 500,000 Pensioners**



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.

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?

RESPONSE of The Collective Network

Many DB Pension Schemes already have provided for employee representation on Trustee Boards with nominees going forward for election in a ballot of the membership of the scheme. There is also a need for Trustees to meet with retired workers in an open and transparent manner. This would be in keeping with the spirit of IIRP2. It is only in the recent past that this has ceased.

1. The Retired Workers Collective Network comprises all pension schemes including those that are both regulated and non-regulated i.e., subject to Minimum Funding Standard. Section 50 is an application by the trustees of a relevant scheme (other than a regulatory own funds schemes) to the Pension Board which provides for the reduction of pension benefits to both current pensioners and those who have not yet normal pension entitlement age normally in a situation where the scheme does not meet Funding Standards.
2. Many DB Pension Schemes provides for employee representation on Trustee Boards
3. Before such S50 is submitted pensioners representative associations should be at the table where decisions are being made regarding the structure/content of the S50 form.
4. There is a need for Trustees to meet with retired workers representative associations in an open and transparent manner. This would be in keeping with the spirit of IORP2. For a number of DB pensions schemes it is only in the recent past that this has significantly changed has ceased and pensioners excluded.

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 The Collective Network

This facility is largely tokenistic. It 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. It is totally inadequate and is the core issue that the Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021 proposes to address.

This would now be six months from the time at which a dispute arose as a result of proposed changes to the scheme. The six-month time period should be deleted to allow for ongoing protection for retired workers.

- 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 The Collective Network

There is a need to include the views of retired worker members of pension schemes unless they are exempted from adverse changes to their pensions post retirement and that pre-existing arrangements for indexing of pensions-in-payment remains in place for those members. This is very often not the case. A right for retired workers associations to be consulted when talks between trade unions and employers have direct effects on their occupational pension scheme

There should be to be no such distinction between existing pensioners and employee members, and 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 The Collective Network

Most Pension Trustees do not engage with pensioner representatives who are generally excluded from the process of engagement between employer and employees when rule changes to the scheme are being discussed / agreed.

The Bill is designed to ensure rights for retired workers and their representative organisations to participate in negotiations.

Retired workers representative associations should not be excluded from ongoing discussions/negotiations and/or communication briefings in relation to their pension benefits and entitlements to allow for full understanding of issues relating to pensions.

- 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 The Collective Network

The Bill relates only to pension issues and 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 The Collective Network

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 The Collective Network

This question appears to infer those pensioners are seeking to participate in IR matters more widely than on pensions, which is incorrect. 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 Collective Network.

Allowing that IR process includes conciliation and arbitration, and those retired workers cannot take industrial action we have every confidence that the IR process will resolve disputes.

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

Question 4: Implications for Workers and Employers 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 exists 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 The Collective Network

DB Pension Schemes represent a collective fund for all members of that fund. Employers engage with employee members collectively when pension issues are under discussion/negotiation but do not engage with pensioner members and or their representative associations. 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.