



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: ___Tony O'Connor_____

Organisation (if applicable): ___RTERSA and RSSA (Retired Semi States Association)_____

Telephone Number: ___0872605862_____

E-mail: ___rterrsa2018@gmail.com
tonyjoconnor@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.

As chair of both above_____

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

___RTERSA___RSSA_____

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.

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?

A. There is NO mechanism whereby elected representatives of retired staff can make submissions to pension scheme trustees. Many of our members are quite elderly, and are simply unable to take on board the potential implications of decisions which may be counter to their best interests. Trustees may well be sincere, honest, and well intentioned. However, they are human and fallible and can be mistaken. It is a simple fact that the sponsor always has a majority on the trustee board. Regrettably it is not unknown that some "staff" trustees can always be relied upon to vote with the sponsor. It is important that retired staff have a representative body who are well informed and able to present alternative points of view without being summarily dismissed as people without legal standing as we have been on a regular basis. We require only that our opinion be sought, respected and taken on board.

B It is simply a nonsense that a Chairman and Board of Trustees can sit for years managing a Superannuation Fund very successfully with careful oversight from properly conservative actuarial advice and, after extremely careful consideration, decide to award a modest pension increase, only to be second guessed by anonymous panel operating under the authority of the Minister.

Particularly outrageous - I use this word advisedly - is the time taken to decide on refusal. Many many months stretching to years. This a complete abuse of process and is indefensible. And since we are dealing with the happiness of people at the end of their lives, unspeakable.

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.

- 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?**
- 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?**
- 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?**
- 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?**

Many organisations - particularly the larger ones - have long standing Retired Staff Associations such as ours, the RTÉ Retired Staff Association (RTÉRSA). We exist for all the obvious reasons - social, welfare, information and to provide a voice for former employees who are in receipt of a defined benefit pension. Membership is optional and members pay a small monthly fee which is deducted at source by the RTE Superannuation management and forwarded to the RTERSA. The majority of retired staff are members which speaks for itself. However, remarkably, retired staff associations such as our have NO legal standing - a fact which is frequently quoted when we make representations. Legally, invested savings are intended for the exclusive benefit of retirees, yet decisions are not infrequently made which are contrary to the the wishes or the long term benefit of our members. The sponsor company, trade unions, faceless functionaries in the Civil Service and Government Ministers all can have an input to critical decisions which affect our welfare, yet we are non persons in law. This is a critical lacuna which requires an immediate legal solution. It is difficult to imagine any other large representative group in society nowadays which does not have an official voice. It will be claimed that the Trustees in Superannuation fulfil this need. We all know this to be simply untrue. One or two staff trustees will always be outvoted.

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?**
- 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?**

A. We do not have any wish to have a voice in normal trade union / employer negotiations. However, if negotiations take place which have the potential to affect our established pension expectations then of course retired staff must have an input.

B. Current solutions to the type of dilemmas outlined are regularly solved in society through mediation and consultation. This needs be no different.

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?

I don't see why granting an important group of people their rights is relevant here.

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?

Not at all for all the reasons given. The only real avenue is the High Court. An irrelevance for most people.

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

With respect, this questionnaire seems to ignore the proposed Bill. Speaking as the Chair of the RTE Retired Staff Association and as Chair of the Retired Semi State Group the proposed Bill provides a straightforward and simple solution to the problem. We should not be over complicating matters.

