



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.

This submission is made on behalf of the Social Democrats political party

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?

The responsibility of trustees to serve all scheme members equally and impartially is not a reason to exclude any particular group from the process, especially one that has such an interest in the scheme. It is simply not an argument to say one group can be excluded legitimately because the included groups are obliged to look after the interests of the excluded.

One of the purposes of the Bill is simply to address the exclusion currently being experienced by retired pensioner members whose interest in the scheme's wellbeing is as real as – and often more urgent than – that of other members. The robustness of the job being done by collectives of scheme Trustees can surely only be enhanced by greater inclusivity with relation to the type of interests being represented and we see no good reason to continue the exclusion.

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?**

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?**

These are questions that stem from the Bill coming into force and what mechanisms will be required if/when that happens. The question in A should not be “could”, but “should” (and the answer is yes), and the question of balance is not the pertinent issue at stake here, the point is that pensioner members opportunities to represent their own interests are reduced in comparison to their working counterparts and this must be rectified by whichever mechanism best fits.

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?

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

The Social Democrats welcome the opportunity to contribute to this consultation and support the passing of the Bill in question.

The Bill seeks to strengthen the rights of retired workers in relation to their pension entitlements from their previous employer or employers. The questions in this consultation relate more to the dynamics of how these rights might interact with those of other groups, or what mechanisms might be used to vindicate those rights.

It is clear that retired workers and their representative organisations do not have the same ability to be consulted or included on issues affecting them as much or more than other cohorts and this should change. Retired members should also have equal opportunity to become members of the board of trustees of the schemes in which they very clearly have an interest. This should also extend to the ability to take cases to the WRC. The number of cases where retired scheme members have found that significant changes were being proposed or implemented to their pension schemes without them being able to negotiate on the same level as other member cohorts due them already having retired is proof of this.

Broadly, it would that pensioner members could be added to current processes without significant alteration.