Rialtas na hÉireann
Government of Ireland

Regulatory Impact Analysis

Employment (Contractual Retirement Ages) Bill 2025

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Title of Legislation	Employment (Contractual Retirement Ages) Bill 2025
Department	Department of Enterprise, Trade and Employment
Date	March 2025
Related publications	• Report of the Commission on Pensions Pensions Commission Report (October 2021) • Pensions Commission Consultation Consultation by Pensions Commission (October 2021) • General Scheme - Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024 (enterprise.gov.ie) • Regulatory Impact Analysis - Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024 (enterprise.gov.ie)
Available to view or download at:	enterprise.gov.ie/en/legislation
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1. Policy Context

1.1 PROGRAMME FOR GOVERNMENT

The 2020 *Programme for Government, Our Shared Future* provided for the establishment of a Commission on Pensions: “to examine the sustainability eligibility issues with State Pensions and the Social Insurance Fund. The Commission will outline options for Government to address issues including qualifying age, contribution rates, total contributions and eligibility requirements.”

The Pensions Commission was established in November 2020. The membership of the Commission included representation of workers, employers, civil society, academics, and those with technical and policy expertise. In its Terms of Reference, the Commission was also asked to consider the issue of retirement ages in private employment contracts that are set below the State Pension age.

1.2 REPORT OF THE PENSIONS COMMISSION

The report of the Commission was published on 7 October 2021 and is a comprehensive and authoritative report based on various analyses of population, labour force and expenditure projections; an examination of international approaches; and responses to an extensive consultation process.

In response to the Pensions Commission Recommendations and Implementation Plan, the Government approved a number of commitments, the majority of which relate to significant reform of the State Pension System. The envisaged set of reforms will ensure that the State Pension System is sustainable in the face of demographic change and that people relying on the State Pension have adequate and predictable income in retirement. Along with the introduction of the new Auto-Enrolment system, these changes will be led by the Department of Social Protection, which has overarching responsibility for pensions policy and the operation of the State Pension system.

The Report of the Pensions Commission also includes a recommendation to align retirement ages in employment contracts with the State Pension Age, by introducing legislation that allows but does not compel an employee to stay in employment until State Pension age.

1.3 MANDATORY RETIREMENT AGE

Currently there is no general retirement age for employees in Irish legislation, apart from certain public sector employees where statutory retirement ages may apply. A contract of employment often sets out a specific retirement age but this is a matter of contract between the parties.

The Employment Equality Acts 1998 to 2021 prohibit discrimination on nine grounds including age. The legislation provides that compulsory retirement ages set by employers for employees, or any class or description of employees, must be capable of objective justification both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary. Therefore, the termination of an employee's employment because of age could be construed as discrimination under that legislation.

In response to the Pensions Commission recommendation, the Government has committed to introduce measures that allow, but do not compel, an employee to stay in employment until the State Pension Age, age 66.

2. Policy Objective

2.1 POLICY OBJECTIVE

The Employment (Contractual Retirement Ages) Bill 2025 will implement the Government commitment to introduce measures that allow, but do not compel, an employee to stay in employment until the State Pension Age (hereafter referred to as the "pensionable age"), which is age 66.

Currently, employees who wish to challenge their retirement on the basis of age have the right to refer a complaint and seek redress under the Employment Equality Acts 1998-2021. The overall policy objective of this Bill is to provide additional protection specifically for those employees who do not consent to retire at a contractual retirement age which is set below the pensionable age. Such employees will retain their existing rights under employment equality legislation but will have an additional avenue for complaint and redress provided for in this Bill. A key difference between the policy set out in this Bill and the protections under employment equality legislation is that the employer will be subject to a higher threshold in terms of objective justification. The Bill provides that this objective justification must be based on an assessment in relation to the individual employee, as distinct from an assessment of a general class or description of employees.

The level of compensation provided for is aligned with the compensation available under the Employment Equality Act 1998-2021.

As this is a matter related to standard employment contractual terms it is considered that the most appropriate approach is to introduce a standalone legislative provision which effectively creates a new employment right for employees who are subject to a contractual retirement age which is below the pensionable age.

The main provisions of the Bill provide:

- An employee whose contract of employment provides for a retirement age which is lower than the pensionable age may notify an employer in writing that they do not consent to retire at the contractual retirement age. This must be not more than a year and not less than 3 months prior to the contractual retirement date.

- An employer who proposes to enforce a contractual retirement age for an employee notwithstanding that notification must give the employee a written reasoned reply within one month of the date of notification.

- The employer must not enforce the contractual retirement age of the employee before giving that reasoned written reply to the employee, or otherwise before a date to which the employee does consent to retire or the date at which the employee reaches the pensionable age, whichever date occurs first.

- An employer may not enforce the contractual retirement age unless they can objectively and reasonably justify, as a legitimate aim, the retirement of that individual employee. The means of achieving that legitimate aim must be appropriate and necessary.

- An employee has the right to refer a complaint to the Workplace Relations Commission relating to the employer's non-compliance with the Act. A decision by an adjudication may include reinstatement or reengagement of the employee in their employment or an order for compensation. On appeal the Labour Court shall affirm, vary or set aside the decision of the adjudication officer.

- In circumstances of non-compliance by the employer, relief may not be granted under both this Act and the Employment Equality Act 1998.

- Employees are protected from penalisation.

- Employers who do not comply with the Act are guilty of an offence.

2.2 FACTORS FOR CONSIDERATION

This proposed measure will implement the long-standing Government policy to facilitate employees who wish to remain in employment past the prevalent contractual retirement age of 65. A number of strategies and reports over the last decade and more have reaffirmed the Government commitment to encourage fuller working lives. These include the 2013 National Positive Ageing Strategy published by the Department of Health; the 2016 Report on the Interdepartmental Working Group on Fuller Working Lives, which in turn led to the Workplace Relations Commissions Code of Practice on Longer Working and IHREC's Guidelines on Retirement and Fixed-Term Contracts; and the Roadmap for Pensions Reform 2018-2023.

Under existing EU and Irish employment equality law employers are already prohibited from enforcing mandatory retirement ages on employees at any age unless they can objectively justify the retirement both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary. This objective justification is by reference to a particular class or description of employees, rather than the individual employee.

By contrast, the Bill provides that an employer can enforce a contractual retirement age which is lower than the pensionable age, provided that the employer can that the employee's retirement is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary in relation to the individual concerned.

Employers will have the opportunity to retain experienced employees and their corporate knowledge for longer periods.

This measure does not interfere with employers' other existing contractual rights to terminate an employment contract. The Bill's effect is that an employer cannot retire an employee against their wishes at an age below the pensionable age only because that lower retirement age is stipulated in the employment contract. The existing rights of employers to dismiss employees for other reasons remain intact, for example for misconduct or for capability reasons.

It is acknowledged that there are potential challenges on businesses in attracting new talent and retaining staff if promotional opportunities are significantly reduced. The report of the Pensions Commission, in considering this issue, referred to the 2016 Report of the Interdepartmental Group on Fuller Working Lives. That report states that the argument is frequently made that the amount of work in an economy is fixed so therefore one more job for an older person means one less job for a younger person ('lump of labour' theory) – the belief that older persons are 'crowding out' younger workers from jobs. The 2016 Group noted that research has shown this theory to be a fallacy and observes that the number of jobs in an economy is elastic and not finite, labour markets are dynamic, and economies adapt to labour force changes.

It is in the public interest to ensure the pensions system is sustainable in the face of demographic change and that people relying on the State Pension have adequate and predictable income in retirement. The legislation will particularly benefit employees who may experience a significant drop in their income when they are required to retire before reaching pensionable age. The provision will also facilitate older peoples' engagement in economic and social life and encourage fuller and longer working lives.

3. Policy Options

3.1 CONTEXT OF ANALYSIS OF POLICY OPTIONS

In the report of the Pensions Commission, it is outlined that in coming to this recommendation the Commission carried out analysis on the current legislative framework and case law, existing guidelines and codes and submissions received in the public consultation process. They also considered a number of alternative options that could address the issues posed by employment contracts specifying retirement ages below the pensionable age. The Commission reviewed the advantages and challenges of these alternatives and concluded that they did not effectively tackle the problem.

Given the extensive analysis on policy options already carried out by the Pensions Commission, the analysis in this Regulatory Impact Assessment focuses solely on the options to implement the recommendation of the Pensions Commission. The benefits and challenges in introducing such a measure are not re-examined.

The policy options are:

- **Do nothing.**
- **Enact a standalone legislative provision.**
- **Amend the Employment Equality Act 1998.**

4. Analysis of Policy Options

4.1 TABLE OF OPTIONS

Option	Benefits	Impacts
1. Do nothing	• No State intervention required	• Government commitment to introduce measures that allow, but do not compel, an employee to stay in employment until the pensionable age will not be met. Accordingly, this option is not viable.
2. **Enact a standalone legislative provision**	• The Government commitment to introduce measures that allow, but do not compel, an employee to stay in employment until the pensionable age will be satisfied. • Addresses the income gap between certain contractual retirement ages and the age at which an individual can access the State Pension (currently 66) • Potential savings for State as people who stay in work will not claim Jobseekers Benefit or Benefit Payment for 65-year-olds. • Removes the barrier placed by contractual retirement age for those who wish to remain at work.	• Challenges for employers in relation to interaction with existing provisions relating to retirement age contained in Employment Equality Acts. • To mitigate such challenges clear guidance will be provided and an appropriate lead in time will be given.

Option	Benefits	Impacts
3. Amend the Employment Equality Acts	• Provisions addressing retirement age rights contained in one Act may be more streamlined for stakeholders. • Government commitment is satisfied. • Addresses the income gap between certain contractual retirement ages (normally 65) and the age at which an individual can access the State Pension (currently 66) • Savings for the State as people who stay in work will not claim Jobseekers Benefit or Benefit Payment for 65-year-olds. • Removes the barrier placed by contractual retirement age for those who wish to remain at work.	• If inserted into employment equality legislation, there is a danger of unintendingly creating a de facto retirement age of 66. It could be interpreted as 66 being the routine age that employers are allowed to enforce retirement, which is not the intention. Under the law as it stands, employees over the age of 66 are entitled to make a complaint under the Employment Equality Acts. • Employers could make people retire at 66 because that would be the age referred to in the Employment Equality Acts. It could a greater presumption that 66 is a de facto retirement age rather than creating true discretion. • This measure effectively creates a new employment right. It is therefore appropriate that it is included in the suite of employment rights legislation and equality legislation remains unchanged and continues to operate as normal. • Employment equality legislation provides that the retirement of an employee, or any class or description of employees, must be capable of objective justification both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary. The policy objective is to provide for higher threshold of proof by way of an individual employee assessment (not a class of employee) and to allow employment equality legislation to continue to operate as normal.

4.2 CONCLUSION

Option 2 is the preferred option.

5. Consultation

The membership of the Pensions Commission included representation of workers, employers, civil society, academics, and those with technical and policy expertise.

Extensive consultation and analysis were carried out by the Pensions Commission in producing their report and recommendations, including a public consultation and a virtual Stakeholder Forum. The final report of the Commission is a comprehensive and authoritative report based on various analyses of population, labour force and expenditure projections; an examination of international approaches; and responses to an extensive consultation process.

As part of the considerations of the recommendations by Government, there were a series of discussions on the various options and recommendations through the Cabinet Committee structure. The views of the Joint Committee on Social Protection and the Commission on Taxation and Welfare were also taken into account.

Given the extensive consultation already carried out by the Pensions Commission and the Government's deliberations on the recommendations of the report, further wide-ranging consultation was not required. However, the Department of Enterprise, Trade and Employment undertook the following additional consultation:

- Consultation with all other Government Departments was carried out to identify any professions within areas of their responsibility where a statutory retirement age below the pensionable age is provided for in law; or professions where there is mandatory retirement age included in an employment contract which is below the pensionable age.

- The Department of Children, Equality, Disability, Integration and Youth were consulted to ensure that full consideration is given to employment equality aspects of the overall proposal, and employment equality will be a core consideration in reforms to address mandatory retirement clauses.

- Officials also worked closely with the Department of Social Protection in relation to the significant State Pension reforms that they are leading on following the report of the Pensions Commission.

- Officials met with members of the Labour Economic Employment Forum, including employer and employee representative groups to discuss plans to implement the legislative provision.

6. Impact Analysis

6.1 NATIONAL COMPETITIVENESS

Employers will have the opportunity to retain experienced employees and their corporate knowledge for longer periods. However, there are potential challenges on attracting new talent and the retention of staff due if promotional opportunities are reduced.

6.2 SOCIALLY EXCLUDED OR VULNERABLE GROUPS INCLUDING GENDER EQUALITY, POVERTY, PEOPLE WITH DISABILITIES AND RURAL COMMUNITIES.

This measure would particularly benefit employees who experience a significant drop in their income when they are forced to retire before reaching pensionable age.

The provision would also facilitate older peoples' engagement in economic and social life and encourage fuller and longer working lives.

6.3 THE ENVIRONMENT

No impacts have been identified.

6.4 SIGNIFICANT POLICY CHANGE IN AN ECONOMIC MARKET INCLUDING IMPACTS ON COMPETITION AND CONSUMERS.

No impacts have been identified.

6.5 NORTH-SOUTH, EAST-WEST RELATIONS

No impacts have been identified.

6.6 THE RIGHTS OF CITIZENS/HUMAN RIGHTS

This provision would have a positive impact for citizens who wish to remain at work beyond the retirement age provided for in their employment contract.

6.7 COMPLIANCE BURDEN ON THIRD PARTIES E.G., CITIZENS AND BUSINESS

Employers will be obliged to comply with this provision however there are no significant administrative costs in doing so.

6.8 SME TEST

The possible impact on SMEs arising from the proposed legislative changes has been considered in line with the SME (Micro, Small and Medium Enterprises) Test. This is an integral part of the European Commission's Better Regulation Guidelines since 2009. It asks each Member State to include an assessment of the burden on SMEs for relevant regulations and legislation.

While this measure introduces a new employment right which allows workers to stay in employment until the pensionable age, it is not envisaged that this measure will have very significant impact on SME employers. There are certain positive impacts in that employers will have the opportunity to retain experienced employees and their corporate knowledge for longer periods, which is of benefit to the business.

It is also acknowledged that there are potential negative impacts on businesses in attracting new talent and retaining staff if promotional opportunities are significantly reduced. However, the report of the Pensions Commission in considering this issue referred to the 2016 Report of the Interdepartmental Group on Fuller Working Lives which states that the argument is frequently made that the amount of work in an economy is fixed so therefore one more job for an older person means one less job for a younger person ('lump of labour' theory) – the belief that older persons are 'crowding out younger workers from jobs. The 2016 Group noted that research has shown this theory to be a fallacy and observes that the number of jobs in an economy is elastic and not finite, labour markets are dynamic, and economies adapt to labour force changes.

In order to support all employers, clear guidance on this measure will be provided and an appropriate lead in time will be given.

As outlined in Section 5, the report of the Pensions Commission was developed following extensive consultation with various representative groups. IBEC was represented on the Pensions Commission and ISME made a submission to the Commission during the consultation process.