Rialtas na hÉireann
Government of Ireland

Regulatory Impact Analysis

Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024

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Title of Legislation	Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024
Department	Department of Enterprise, Trade and Employment
Date	January 2024
Related publications	• Report of the Commission on Pensions Pensions Commission Report (October 2021) • Pensions Commission Consultation Consultation by Pensions Commission (October 2021)
Available to view or download at:	
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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.

Under employment equality legislation, an employer is currently permitted to set a retirement age, but only in circumstances where it can be objectively and reasonably justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

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.

This key commitment relating to contractual mandatory retirement age is the responsibility of the Department of Enterprise, Trade and Employment. Primary legislation is required to implement this Government commitment.

2. Policy Objective

This is a matter related to standard employment contractual terms and it is considered that the most appropriate approach is to introduce a legislative provision which creates an explicit link between mandatory retirement age clauses in employment contracts and the State Pension age.

The overall policy objective of this General Scheme is to preclude enforceability of contractual mandatory retirement ages before the age at which an employee may first become entitled to the State Pension.

The General Scheme provides that:

- A clause in a contract of employment which sets a mandatory retirement age which is below the age at which a person can first access the State Pension will not be enforceable without the consent of the employee. This element of consent reflects the situation whereby a worker may want to retire at the contractual retirement age.
- Where the employee does not consent to retire at the mandatory retirement age set out in their employment contract, that age shall be read as though the age referred to is the earlier of the date at which the employee consents to retire or the State Pension age.
- Employees must serve written notice to the employer, within certain notice periods, if they do not consent to the mandatory retirement age set out in their employment contract.
- If an employee provides written notice to the employer that they do not consent to the mandatory retirement age, the employer must not retire the employee before a date to which they do consent to retire or before the State Pension age, whichever is the earlier date.

It is recognised that an **exemption** to this measure is required in relation to statutory retirement ages which apply to some public servants. Accordingly, the General Scheme provides that:

- The provision will not impact or change any retirement age which is set out in law. For example, the nature of military service and the essential requirement to impose restrictions on the retirement age in employment in the Defence Forces is expressly recognised in equality legislation. The Public Service Superannuation (Miscellaneous Provisions) Act 2004 imposes specific retirement ages for An Garda Síochána, certain members of the Irish Prison Service and the Fire Service. These provisions will continue to operate as normal.

It should be noted that the matter of mandatory retirement ages in respect of uniformed grades under the remit of the Department of Justice (Irish Prison Service and An Garda Síochána), the Department of Housing, Local Government and Heritage (Full-time Firefighters) and the Department of Defence (Permanent Defence Force) is currently being considered by the Interdepartmental Working Group on Fast Accrual Pension terms. This General Scheme has been drafted so as not to alter any current statutory retirement ages and to ensure it does not interfere with or override the outcome of any review.

Furthermore, there may be limited cases where there may be a need for a contractual retirement age which is below the State Pension Age to apply, for example for physically demanding or public-safety critical professions. Under existing equality legislation an employer is permitted to set a retirement age but only in circumstances where it can be objectively and reasonably justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. Equality legislation does not specify any age and the General Scheme provides that it will continue to operate as normal. This means that employees over the State Pension age may continue to invoke the protection of the Employment Equality Acts if their employer seeks to compulsorily retire them.

However, in order to allow for strictly limited cases where there may be a requirement for a retirement age below the State Pension Age, but to also ensure protection for employees, the General Scheme provides that in circumstances where-

- an employee has advised their employer that they do not consent to retire at an age below the State Pension Age, and
- notwithstanding that notification the employer dismisses the employee at that age, and
- the employee seeks redress under Equality Legislation

the employer cannot then rely on the existing exemption set out in the Employment Equality Act 1998 which permits an employer to set a retirement age, unless they can establish that the dismissal was justified by the existence of a legitimate aim, and that the means of achieving that aim are appropriate and necessary in relation to the *individual* employee concerned (as distinct from a general class of employee).

The General Scheme also amends the Unfair Dismissals Act 1977, to ensure employees will have the right to seek redress under that Act if their employer imposes a mandatory retirement age which is lower than the State Pension Age without their consent.

The Unfair Dismissals Act 1977 currently provides at section 2(1)(b) that the Act does not apply to an employee who is dismissed and who on or before the date of their dismissal had reached the normal retirement age for employees of the same employer in similar employment.

Essentially a dismissal in such circumstances is deemed to be fair and not subject to the provisions of the Unfair Dismissals Act.

The General Scheme amends the Unfair Dismissals Act and ultimately provides that the Act will apply to employees who are mandatorily retired at an age which is below the State Pension age without their consent, so that such employees will have the right to seek the relevant redress under that Act.

The General Scheme also recognises existing retirement ages for certain public sector employments which may be lower than the State Pension Age. These retirement dates are set out in law and such dismissals are deemed to be fair and are not subject to the Unfair Dismissals Act 1977.

The General Scheme includes a provision which further clarifies that an employee make take a case at the Workplace Relations Commission under either the Unfair Dismissals Act 1977 or the Employment Equality Act 1998 but not both.

Finally, there is no impact or change to the operation of any pension scheme.

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 State Pension 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 State Pension 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 State Pension Age will be 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) • 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 more routine age that employers are allowed to enforce retirement, which is not the intention, whereas as the law stands, employees over the age of 66 are entitled to make a compliant 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 result in them saying people must go at 66 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.

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 State Pension age is provided for in law; or professions where there is mandatory retirement age included in an employment contract which is below the State Pension 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 State Pension Age. Currently, individuals who retire at 65 can apply for the Benefit Payment for 65-year-olds. However, the Benefit Payment for 65-year-olds is set at the same rate as Jobseekers Benefit.

Submissions to the Pensions Commission stated this leaves low-income retirees who are forced to retire and who do not have a supplementary pension without a sufficient income. It is considered the same situation applies to those people who, while they have a supplementary pension, receive only a modest amount from it.

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 State Pension 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.