Sustainable pensions and longer working lives

Ibec Submission to the Pensions Commission

March 2021

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Key messages

The Social Insurance Fund and PRSI Rates

> Rates of Pay Related Social Insurance (PRSI) will have to increase for both employers and employees over the coming decades in order to offset the increased costs of an ageing population. Discussion about how to balance those implied costs should be part of a holistic review of the tax and social insurance system under the Commission on Taxation and Welfare.

> The information available on policy choices is too narrow for effective engagement by stakeholders or wider society in this debate. It would be beneficial if the current Commission on Pensions were to recommend a recurring actuarial study of the various approaches to maintaining a balance in the Social Insurance Fund (SIF) between now and 2050.

> There is a significant risk that elements of pensions and social insurance policy are being considered in an *ad-hoc* manner and independent of one another. As such, it must be cognisant of potential new policies such as expansion of working age benefits and auto-enrolment.

> Given the ageing population, the growing size of the SIF into the future and the different policy aims for its use, Ibec would support the State Pension being separated from the SIF entirely. This would involve creating a standalone State Pension Fund (SPF) and separating SIF contributions from SPF contributions for the purposes of payroll and accounting. The SIF would then be focused mostly on working age benefits.

> Allow for continuation of PRSI contributions past the State pension age: splitting the SIF into two separate funds, as above, which would also benefit workers looking for flexible retirement pathways beyond the State pension age. Those workers choosing to do so should be allowed continue to pay PRSI contributions at Class A rather than Class J and received a broader range of working age benefits under the reformed SIF.

State pension qualifying age

> Government should pursue a policy which links the State pension age with life expectancy. Future increases to the State pension age should be introduced within a fair, transparent and clearly understandable framework. Government should begin with an immediate assessment of life expectancy to include a review of the proportionality between time spent in working life and retirement.

Retirement age in contracts

> Employer's ability to fix mandatory retirement ages in contracts should be retained. The removal of this ability would be disproportionate and arbitrary. It would remove the legitimate autonomy of employers for workforce planning as reiterated in the Workplace Relations Code of Practice on Longer Working which states: 'Good workforce planning is a critical element in any workplace. Central to this are appropriate employee numbers and skill sets, recruitment, and planning for departures including retirement.'

> Government should provide as much legal support (including legislative support) as is possible to recognising the alignment of contractual retirement ages with the State pension age as a legitimate employment policy and labour market aim and that the

means used are appropriate and necessary, in line with Article 6 of the European Employment Equality Directive.

> The possibility of setting a Default Retirement Age (DRA) at the level of the State pension age should be explored and should be framed in compliance with EU law. The DRA could be set by Government and could be the minimum age at which employers can, (if they choose to, set a mandatory retirement age. Employers would be able to set a mandatory retirement age below the DRA only where this can be objectively justified by the particular occupation. Employers would also be able to set a mandatory retirement age above the DRA.

> Government should remove the necessity to objectively justify a post-retirement fixed term contract (not required under EU Directive) or confirm that bridging the gap to age of entitlement to the State pension age is sufficient objective justification.

> Legislation and/or Codes of Practice should provide certainty to employers around the provision of different benefits for post-retirement fixed term contracts.

Ageing in the workplace

> A range of workplace changes could facilitate the productive employment of older workers including: work scheduling, flexible hours, voluntary work-time reductions, vacation and leave policies, phased retirement, job assignment, improved workplace organisation, hiring and contracting strategies, training practices and benefit and compensation methods.

Pension calculation methods and eligibility criteria

> A solely Total Contributions Approach system for future pensioners should be introduced to provide a framework for developing further State Pension reforms including flexible pathways to retirement and improved benefits for carers.

The Social Insurance Fund and PRSI Rates

The problem

Population ageing across Europe has become a major policy theme in recent years. The challenges presented by looming demographic shifts are stark. In 30 years, 30% of the total population of the EU could be over the age of 65, an increase from 20.5% today. In Ireland the equivalent share would be 25%; an increase of 11 percentage points on the position today.

Table 1: Population share aged 65 and over by year (Central scenario)

	2020	2025	2030	2040	2050
EU 28	20.6%	22.3%	24.2%	27.6%	29.5%
Ireland	14.4%	15.9%	17.6%	21.0%	24.7%

Source: EUROPOP, 2019

One of the challenges faced by Governments in this context, is that the pension commitments of the post-war European welfare state must be financed in the face of growing dependency ratios. This will pose particular problems to countries, such as Ireland, who have adopted a “Pay As You Go” (PAYG) approach to their State Pension. The explicit social contract in PAYG pension arrangements is that today’s workers will pay for the pension needs of today’s pensioners through the taxation system and in turn future workers will pay for the pensions of current workers.

In its simplest form a PAYG pension system’s expenditure over the business cycle will balance such that total contributions on pensions should equal outflows. The system can be written as:

$$. P \times A = W \times C \times L \qquad (1)$$

Where A is the average pension paid, P is the number of pensioners, W is the number of workers, C is their average wage, and L is their rate of contribution. Assuming replacement rates of pensions are constant as a proportion of wages over time, the contribution rate of tomorrow’s workers in a PAYG system will depend on the relative dependency ratio of workers to retired persons. If dependency ratios are constant over time, then replacement and contribution rates may remain at their current level with pensions sharing in productivity growth through indexation to wages.

This system of intergenerational transfers has worked well at providing adequate replacement rates for retired persons in much of the post-war era. This has been facilitated by the fact that the ratio of workers to pensioners has been sufficiently high to allow modest contribution rates. Favourable demographics have meant that at present the absolute sum of the difference between Irish government expenditure and that of other European countries is accounted for by lower expenditure on pensions.

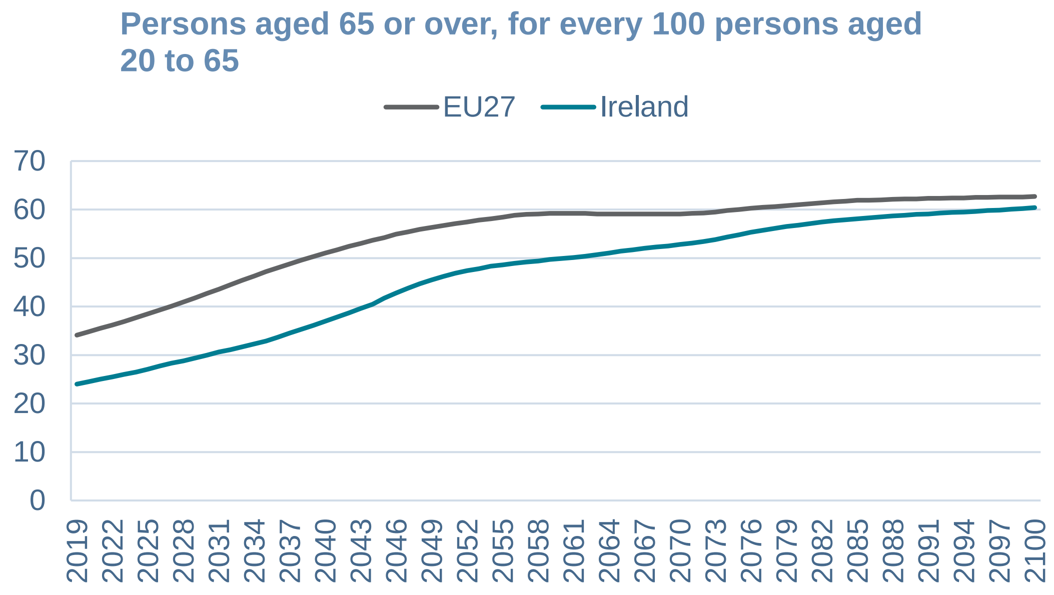
Table 2: Government spending with and without old age pensions

	Total	Total excluding old age pensions and defence	Ireland relative to EU countries ex. old age pensions and defence (pp of GDP)
Ireland (GNI*)	41.8	36.1	.
EU average	45.7	34.3	1.8
Germany	44.5	34.0	2.1
France	55.7	40.6	-4.5
Netherlands	42.3	34.7	1.4

Source: Eurostat, author's calculations

Currently the Irish State spends 4.8 percentage points of GDP less than the EU average on pension provision; this gap will necessarily narrow as our population gets older. Today there are 24 persons of pensionable age for every 100 persons of working age. In thirty years, that ratio will be closer to 50 persons of pensionable age for every 100 workers.

Person aged 65 or over, for every 100 persons aged 20 to 65



The implication of this for equation (1) in effect is that the State Pension system in its current form will be unable to fund itself within a generation. Within the PAYG framework policymakers have a limited number of choices when faced with this pension funding problem. They can reduce replacement rates for either all or some pensioners, increase the contribution rate of today's workers through the taxation system or attempt to reduce the ratio of pensioners to workers. Irish policymakers as a first step toward ensuring pension sustainability had chosen to attempt the latter.

The OECD (2014, p.94)[1] had noted Ireland as being in the "group of the more advanced countries" when it comes to increasing the pensionable age of workers. In January 2014, the age of eligibility for the State Pension increased from 65 to 66 years. Further increases in the qualifying age for the State Pension were due to come into effect over the coming years. By 2028 the age of eligibility would have been 68. Although that further age of eligibility is now part of this Review.

Even were these changes in the pension age to be implemented, the most recent actuarial review of the Social Insurance Fund (SIF) put the annual gap between PRSI income and outgoing payments at the equivalent of €15 billion at 2017 prices. This would have significant implications for fiscal sustainability. In this context, the State will have three options to begin to pay for increased pensions costs:

1. An increase in taxation through increase employer and employee payments to the SIF;
2. Reduced expected future pension benefits for some or all future retirees in real terms;
3. Increase the retirement age further over and above what had been planned before the 2017 actuarial review of the SIF.

Within each of these broad choices there are multiple potential ways of splitting the cost, burden and impact of policy changes.

The perspective set out in the Government's 'Roadmap for Pensions Reform 2018-2023' is also worth restating:

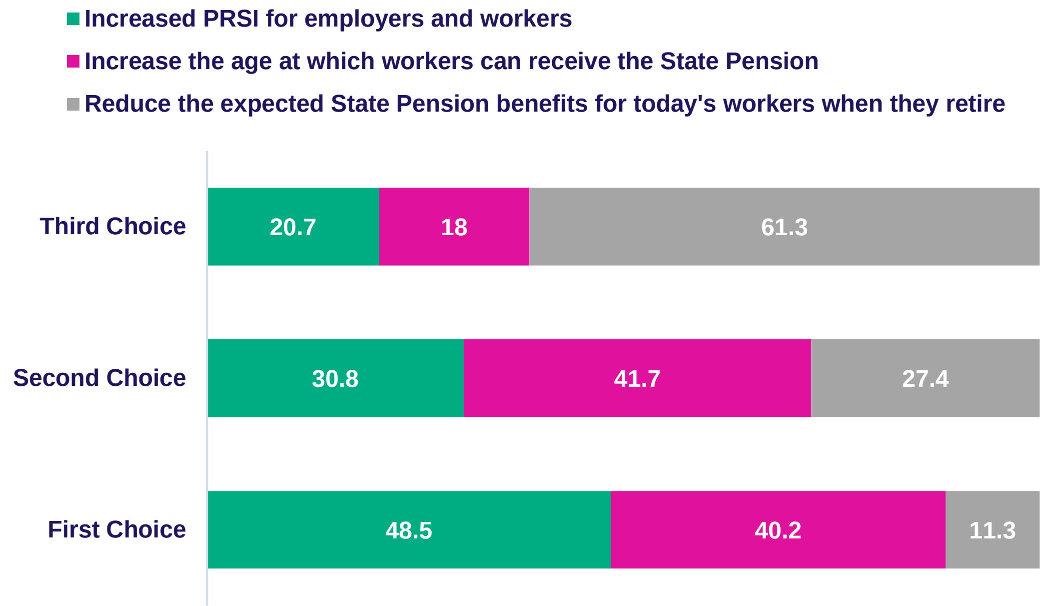
"The issue of intergenerational equity is related to the issue of sustainability. Any pension system, be it public or private, must be able to absorb the impact of population ageing without becoming financially destabilised. If the structural cost of the system becomes too high for current and future workers to sustain, it will not survive, at least in its present form. Whilst it might be possible to maintain a system with escalating costs for some time before reaching what might be considered a 'tipping-point', it would be inequitable to require the current generation of workers to maintain, or more likely increase, contributions to fund a pension system for current retirees that delivers significantly better payments than those that might be available to them when they retire".[2]

Business views

In a survey of 300 Ibec members, we asked CEOs and Senior HR Directors their preferred approach to dealing with the policy trade-offs outlined above. The results of this survey are outlined below.

[1] www.oecd-ilibrary.org/social-issues-migration-health/oecd-reviews-of-pension-systems-ireland_9789264208834-en
[2] www.gov.ie/en/publication/abdb6f-a-roadmap-for-pensions-reform-2018-2023/

Ibec survey of broad pension policy preferences



It is clear the any reduction in the real replacement rate of the State Pension would be unwelcome from a business point of view. Only 11% of respondents picked it as their main choice. On the other hand, a much broader group of firms picked either increased PRSI contributions for employers and employees (48.5%) or further increases in the State Pension age (40.2%). It is notable that when second choices are included around 80% of respondees picked one of these two options as their first or second choice.

The Pension Commission's remit is tightly focused on the State pension and contractual retirement ages. However, with a current supplementary pension coverage rate of just 40 per cent for those in private sector employment, the urgent requirement for a system of supplementary saving cannot be ignored. It is not widely appreciated that the State pension is essentially an anti-poverty payment and that unless older workers have adequate provision for retirement, their choices are, in reality, severely curtailed. Therefore, the long delay in the introduction of the proposed auto-enrolment savings system provides an important context for the Pension Commission's work.

Policy actions

From a business perspective we support a number of suggested policy actions:

> **Higher costs will mean change**: We acknowledge that rates of PRSI will have to increase for both employers and employees over the coming decades in order to offset the increased costs of an ageing population. It is our view that discussion about how to balance those implied costs should be part of a holistic review of the tax and social insurance system under the Commission on Taxation and Welfare. This would allow those implied costs to be weighed against other immediate demands on the SIF.

- **Better information is key to future decisions**: The information available on policy choices is too narrow for effective engagement by stakeholders or wider society in this debate. It would be beneficial if the current Pensions Commission were to recommend a recurring actuarial study of the various approaches to maintaining a balance in the SIF between now and 2050. This approach will be necessary if policy decisions over the coming decades are to be guided by a firmly grounded and evidence assessment of financing needs and policy trade-offs. This process should include: the baseline deficit and exchequer cost in a 'no-change' scenario and estimates of future budget balancing tax rates necessary under different assumptions of pensionable ages. It should also take account of alternative approaches not currently supported (e.g. Means Testing).

  Finally, there is a significant risk that elements of pensions and social insurance policy are being considered in an *ad-hoc* manner and independent of one another. As such, it must be cognisant of potential new policies such as expansion of working age benefits and auto-enrolment.

- **Separate out the State pension portion of PRSI rates and create a separate pension social insurance fund:** Given the ageing population, the growing size of the SIF into the future and the different policy aims for its use, we would support the State Pension being separated from the SIF entirely. This would involve creating a standalone State Pension Fund (SPF) and separating SIF contributions from SPF contributions for the purposes of payroll and accounting. The SIF would then be focused mostly on working age benefits. This would be beneficial in providing clearer line of sight to employees about where their contributions were going and allow a clearer delineation between working age policy and pensions policy which will increasingly become two quite different spheres.

- **Allow for continuation of PRSI contributions past State pension age:** Splitting the SIF into two separate funds, as above, would also benefit workers looking for flexible retirement pathways beyond the State Pension age. Those workers choosing to do so should be allowed continue to pay PRSI contributions at Class A rather than Class J and received a broader range of working age benefits under the reformed SIF.

Pension calculation methods and eligibility criteria

Ibec supports the Total Contributions Approach (TCA) which is intended to align a person's contributory pension more closely with their actual contributions over time (by calculating the number of contributions as a percentage of the maximum number of contributions required to earn a full pension – that is 2,080 weeks). This change was committed to in 2010 under the National Pensions Framework and was set to be implemented fully under the Roadmap for Pension Reform by Q3 2020.

The existing Yearly Average method is calculated by dividing the number of contributions by the total number of years making contributions, i.e. from the date the applicant first enters social insurance to their last contribution year before reaching pension age. This provides higher rates of payment for those with shorter contribution histories. However, the TCA design is more equitable and efficient. It abolishes gender imbalances (primarily as a result of the introduction of Home Caring periods) and strengthens the contributory principle of the system.

Since April 2019 all new contributory state pensions applications are assessed under both the yearly average and an Interim TCA, with the most beneficial rate paid to the person – essentially a 'best of both worlds' approach. This is inefficient, and in the longer term, fiscally unsustainable.

Despite the significant political challenges to be faced in terms of moving away from the current 'best of both worlds' approach, Ibec believes that a solely TCA system for future pensioners provides a possible framework for developing further State Pension reforms including flexible pathways to retirement and improved benefits for carers and incremental changes (e.g for Class S pensioners, as it is only 34 years since this class was introduced) may be required in certain instances.

Transition arrangements (e.g. a gradual increase in the number of contributions required for a maximum rate pension) are required to mitigate the adverse consequence for a certain cohort of pensioners. While paid PRSI contributions should be the core to qualifying for contributory payments, provision could also be made for periods of home caring, and for periods on social protection payments while in receipt of credits, subject to a combined ceiling.

Ibec supports the requirement for 10 years of paid contribution as a minimum requirement to qualify for a contributory state pension. However, the Pensions Commission should also explore options such as a reduced contributory pension to introduce more flexibility into the system.

Such an approach should retain both the contributory and solidarity principles of the Irish social insurance system. The State Pension (Non-Contributory) and the Increase for Qualified Adult payment can continue to provide a safety net to pensioners with low income and few assets.

Policy actions

> A solely Total Contributions Approach system for future pensioners should be introduced to provide a framework for developing further State Pension reforms including flexible pathways to retirement and improved benefits for carers.

State pension qualifying age

The view of respondents to the Ibec survey on the decision not to proceed with the planned pension age increases to 67 in 2021 and 68 in 2028 (as legislated for in 2011) was evenly divided. Notwithstanding this, there was general agreement that adjusting the pension age in line with rising life expectancy would make the system more sustainable.

It was pointed out that the requirement for a 65 year-old person to sign on the Live Register and be available for full-time work or genuinely seeking work in order to bridge the gap between their retirement and receipt of the State Pension had undermined the credibility of a legitimate policy objective

The more recent introduction of Benefit Payment for 65 year-olds is welcome but will not address the core issue. The fiscal challenge has been set out in the previous section.

Despite significant improvements in life expectancy, the retirement age in Ireland has remained relatively constant over time. The pension age was 65 in 1980, rose to 66 in 2014. By contrast, average life expectancy at age 65 has risen from 79 in 1980 to almost 85 in 2016 and is projected to rise further to 89, by 2050.

According to the Irish Fiscal Advisory Council[3], raising the pension age, as many other countries have done, would help to keep contributions and benefits closer to existing levels. A scenario where the pension age rises partly in line with life expectancy would produce annual savings of 0.3 per cent of GNI* initially, rising to 1.1 per cent of GNI* by the late 2040s relative to a situation where the pension age is unchanged at 66.

Failure to implement the legislated increases in the pension age planned for 2021 and 2028 would raise spending and contribute to a rising debt burden over time. Not increasing the pension age as planned in 2021, for example, will add up to €575 million to annual spending, with this cost steadily rising over time.

A policy which sees Ireland linking the State pension age with life expectancy has been advocated for at EU level and by the OECD. Indeed, the challenge of maintaining adequate, fair and sustainable pensions in an ageing society have been highlighted repeatedly[4]. The recent EC Green Paper on Ageing[5] has warned that more pensioners and fewer people of working age could lead to higher contribution rates and lower pension replacement rates in order to ensure the sustainability of public finances. Such developments may create a double burden for the younger generations.

Policy actions

> Government should pursue a policy which links the State pension age with life expectancy. Future increases to the State pension age should be introduced within a fair, transparent and clearly understandable framework. Government should begin with an immediate assessment of life expectancy to include a review of the proportionality between time spent in working life and retirement. Similar assessments of life expectancy should take place every five years with sufficient notice regarding any proposed changes. This should assist employers in their considerations regarding amendments to the terms of employment contracts. It should also allow individuals to plan, both personally and financially, for their retirement.

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[3] https://www.fiscalcouncil.ie/wp-content/uploads/2020/07/Long-Term-Sustainability-Report_Website.pdf

[4] Every three years the European Council and the European Commission jointly publish the Ageing Report and the Pension Adequacy Report (next editions will be published in 2021)

[5] https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v8_0.pdf

Retirement age in employment contracts

Government and business must work together to address the fiscal sustainability implications of an aging workforce, without jeopardising the needs of business for certainty, talent attraction, retention and succession planning. We will examine the current legal framework and the challenges this framework presents to employers. We will also examine what challenges the abolition of fixed retirement age in employment contracts would present. This section considers the options presented by a statutory right to employees to remain in employment until the State pension age and other strategies to align retirement age with the State pension age.

Legislative framework providing for mandatory retirement ages

Whilst adverse treatment in employment on the basis of age is prohibited under Article 2 of the General Framework for Equal treatment in Employment and Education 2000/78/EC 9 (the Directive); there is a defence to a claim for age-based discrimination provided for in Article 6 (1) of the Directive, if the difference in treatment is capable of being objectively justified by a legitimate aim. This provision came into effect in December 2006 and from then on, the principle of non-discrimination was regarded as a general principle of Community Law.

National legislation on age-based discrimination is found in the Employment Equality Act 1998 - 2015. Section 34 (4) of the Employment Equality Act 1998 (the EE Acts) was amended in 2015 by Section 10 of the Equality (Miscellaneous Provisions) Act 2015 to take account of the Framework Directive 2000/78/EC. The substituted Section 34 (4) now reads; "*it shall not constitute discrimination on the age ground to fix different ages for the retirement (whether voluntary or compulsorily) of employees or any class or description of employees if; (a) it is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary*".

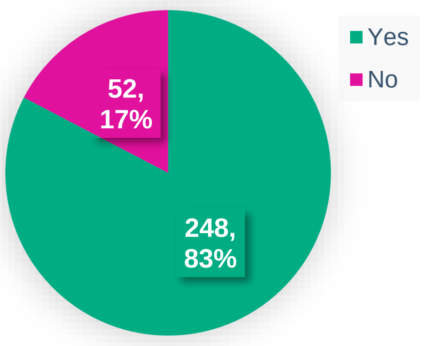
Under Irish law the fixing of an age for mandatory retirement of an employee is subject to objective justification by a legitimate aim if the means of doing so is appropriate and necessary.

Section 6(3)(c) of the EE Acts was inserted in 2015 by Section 4 of the Equality (Miscellaneous Provisions) Act 2015 and provides that offering a fixed term contract to a person over the compulsory retirement age shall not be taken as constituting discrimination on the age ground if it is objectively and reasonably justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

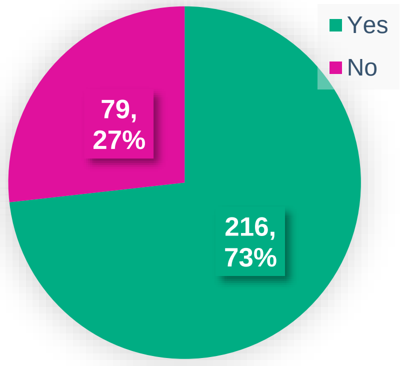
In the sample of 300 Ibec members, we asked CEOs and Senior HR Directors if they had a fixed retirement age and 248 members companies confirmed that they did, with 216 of those surveyed also confirming that they consider retaining staff beyond their fixed retirement age.

Furthermore 184 of those surveyed confirmed that they utilised the post retirement fixed term contract option.

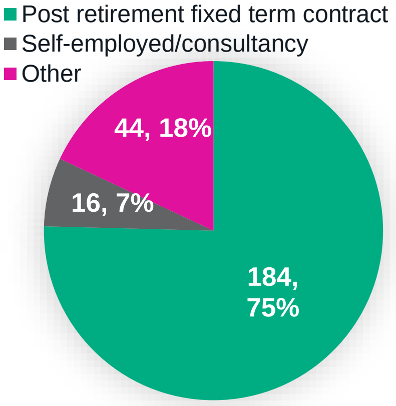
Companies with fixed retirement age (%)



Companies retaining staff beyond retirement age (%)



Provision used for retaining staff beyond retirement age

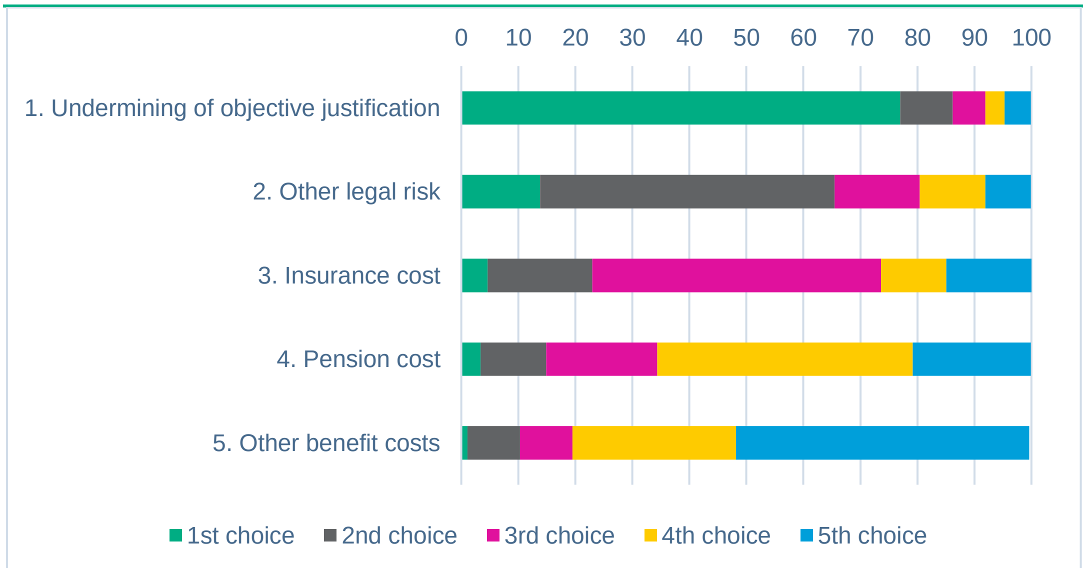


Challenges of current legislative framework

The current legislative framework presents many difficulties for employers, in particular where an employer seeks to facilitate employee requests to work longer. Such arrangements are undermining their ability to rely on the objective justification of the aim of their mandatory retirement age as prescribed by Section 34 of the EE Acts.

In the Ibec Survey of member companies, 77% of those surveyed referenced the undermining of their objective justification of fixing their retirement age as being the disincentive to the retention of employees beyond this age.

Reasons for not considering retaining staff beyond their fixed retirement age, ranked by priority



In addition to the risk of undermining the objection justification fixing the retirement age, employers are also presented with:

- The potential liabilities under the EE Acts or the Protection of Employees (Fixed Term Work Act) 2003 where the employer fails or is not in a position to provide other contractual benefits such as permanent health Insurance and life cover.
- Ambiguity as to whether there is a break in the continuity of service from the permanent position to that of a post retirement fixed term contractual role.
- The challenge of an objective justification for both the retirement age and the provision of the post- retirement fixed-term contract.

Challenges presented by the abolition of fixed retirement age in employment contracts

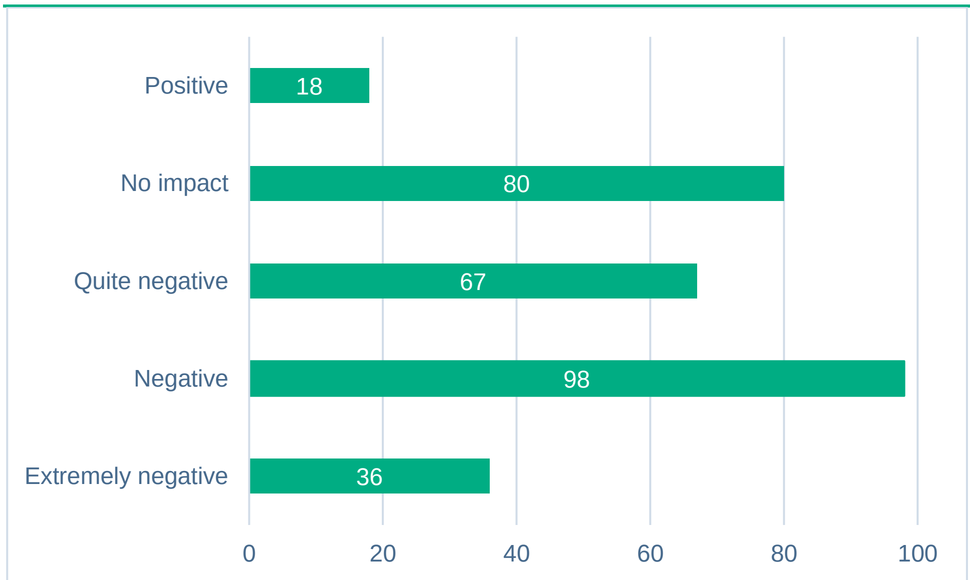
Setting aside the retirement provisions of most existing employment contracts on a unilateral basis would have serious implications not only for the private sector but for public sector employment and for pensions policy.

State intervention in private contracts to abolish, on a unilateral basis, the retirement arrangements entered into by the two parties would also be doubtful legally.

The abolition of the mandatory retirement ages will have adverse effect on the ability for business to succession plan for employment positions within the business, which will affect talent acquisition and the retention of employees further frustrating motivation and dynamism in the workplace. It will introduce the need for the use of robust performance management policies which encroach upon the dignity of employees and may also affect an employer's commitment to the management of funding of Occupational Pension Schemes over and above legal obligations.

The Ibec Survey of 300 members, shows that when asked what impact legislation abolishing an employer's right to fix a retirement age would have on their business, 201 indicated that it would have an extremely negative, negative or quite negative effect on their business.

Impact of legislation abolishing an employer's right to fix a retirement age



It is also noteworthy that the Civil Service Conciliation and Arbitration Scheme General Council Report 1481 noted the possible adverse effect of removing the compulsory retirement age for serving civil servants; this measure would limit the career opportunities for existing staff by reducing the number of vacancies for promotion in the Civil Service in any year.[6]

The Public Service Pensions (Single Scheme and Other Provisions) Act 2012 reintroduced a mandatory retirement age of 70 years for those recruited into the service from 1 January 2013. It is of note that the relevant Government departments chose not to continue the practice of removing mandatory retirement ages.

As stated by then Minister for State Michael D'Arcy when introducing the Public Service Superannuation (Age of Retirement) Bill 2018 on behalf of his colleague, the Minister for Public Expenditure and Reform[7]

"A defined retirement age is important for planning of recruitment and promotion throughout an organisation. For this reason, it was agreed with public service employers that a specific age limit should be set. While there can be no right answer as to what the perfect compulsory retirement age might be, the age of 70 strikes the right balance."

Ibec believes that the abolition of mandatory retirement ages in the private sector is also disproportionate and arbitrary. It removes the legitimate autonomy of employers for workforce planning as reiterated in the Workplace Relations Code of Practice on Longer Working[8] which states "Good workforce planning is a critical element in any workplace. Central to this are appropriate employee numbers and skill sets, recruitment, and planning for departures including retirement."

The United Kingdom and mandatory retirement ages

Lessons can be learned from the United Kingdom's efforts to address the pension crisis and the contributing demographic of an aging population.

When age discrimination legislation was first introduced in 2006, it allowed employers to mandatorily retire employees at or over the default retirement age ("DRA") of 65 if they followed a statutory retirement notification procedure. No objective justification was prescribed in the legislation. It also prescribed a duty on employers to consider applications from employees to working beyond retirement and transitional and procedural provisions in this regard.

The Employment Equality (Repeal of Retirement Age Provisions) Regulation 2011 which commenced on the 6 April 2011 abolished default retirement ages and the employer's duty with regard to transitional and procedural provisions for longer working requests. The current position is that requiring an employee to retire at any age will amount to age discrimination, unless objectively justified. However, the option still exists for an employer to have an employer justified retirement age (EJRA).

It is noteworthy that the mandatory retirement ages are legal with the same qualifications as those prescribed by our national legislation i.e. that the aim of the mandatory retirement age is objectively justified and the EJRA is a proportionate means of achieving the aim. A recent UK Employment Tribunal judgement found that the EJRA of safeguarding the high standards of a University in its teaching research and professional services was an overarching legitimate aim. An EJRA of 68, together with the opportunity for employees to engage with extension provisions against the other objectives of ensuring intergenerational

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[6] Civil Service Conciliation and Arbitration Scheme General Council Report 1481

[7] Dáil debates Thursday 25th of October 2018 Public Service Superannuation (Age of Retirement) Bill 2018 [Seanad]: Second Stage

[8] http://www.irishstatutebook.ie/eli/2017/si/600/made/en/pdf

fairness, facilitating succession planning, promoting equality and diversity, facilitating flexibility through turnover in the academic-related workforce, and minimising the impact on staff morale were held to be a proportionate means of achieving the legitimate aim.

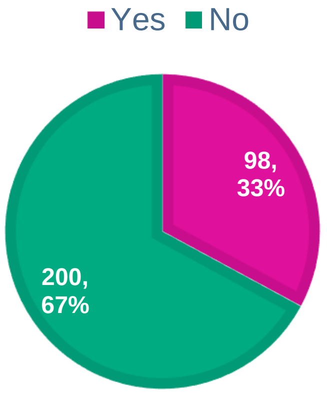
It is also noteworthy that within the UK legislation, the Employment Equality (Repeal of Retirement Age Provisions) Regulation 2011 introduced a helpful provision which clearly sets out that it is not discrimination on the grounds of age for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service for an employee for a period ending when the employee reaches the greater of the State pension age or the age of 65. This measure strengthens the argument around the provision of longer working.

In place of a default retirement age, UK employers who do not have an EJRA must manage their workforce through performance management or offering financial incentives to free up positions for succession planning.

Providing a statutory right to remain in employment until the State pension age

The Pensions Commission is also considering the introduction of a statutory right to remain in employment until the State pension age, as a way to address gaps between the retirement age and the age at which the State pension becomes available. In response to this potential option, it should be noted that most employers are not particularly attached to a mandatory retirement age of 65. They just want certainty - certainty in knowing who will be leaving their employment and when, so that they can plan for the future and hire new staff; and certainty in knowing the demographic of their employees and any needs that might arise in that respect, whether family leave needs or other issues which may need to be accommodated. This view is supported by results of the Ibec survey.

Companies which have concerns aligning a fixed retirement age with the State pension age



Ibec wishes to identify ways in which employers can facilitate employees who want to work beyond the contractual retirement age, specifically with a view to bridging the gap to the State pension age. For employers, it is critical that a solution is achieved which does not create an additional risk of litigation against individual companies.

One possible approach may be to give as much legal support (including legislative amendments) as is possible to recognising the alignment of contractual retirement ages with the State pension age as a legitimate employment policy and labour market aim and that the means used are appropriate and necessary, in line with Article 6 of the European Employment Equality Directive

For existing employees, the upwards alignment of the contractual retirement age would need to be done voluntarily, through mutual agreement. Employers also need reassurance that, if they take this step, it will not be used to argue that the contractual retirement age has been undermined, or that a separate set of objective justifications must now be used for the revised retirement age.

Ibec believes that there is a sufficient pattern of case law relying on access to a pension payment as one of the valid objective justifications to allow it to be reflected in Statute. However, if this is not possible, there are other mechanisms by which the primacy of access to a pension payment as a possible objective justification could be progressed, perhaps by way of an amendment to the Code of Practice on Longer Working.

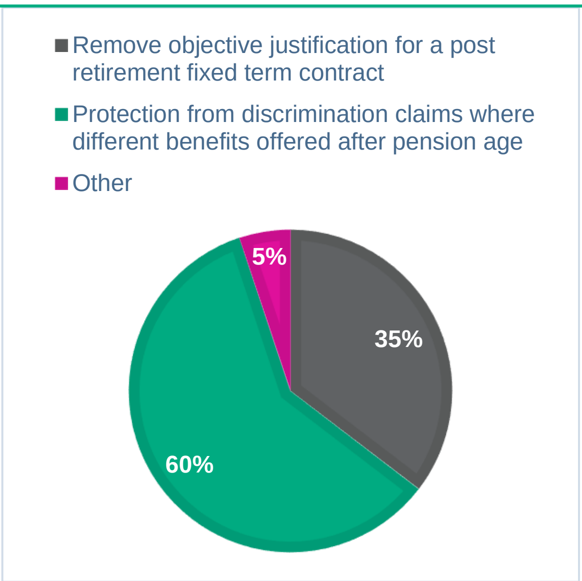
The possibility of setting a default retirement age (DRA) at the level of the State pension age should be explored (and framed in a way which complies with EU law). The DRA could be set by Government and could be the minimum age at which employers can (if they choose to) set a mandatory retirement age, requiring employees to retire. Employers would be able to set a mandatory retirement age below the DRA only where this can be objectively justified by the particular occupation. Employers would also be able to set a mandatory retirement age above the DRA.

However, the Pensions Commission should be aware of the legal complexities faced by companies who might contemplate a change to their contractual employment age. Some of these challenges, such as access to insurance cover have been highlighted above. The challenges associated with defined benefit pension schemes which usually have a 65 year retirement age underwritten by trust deed, could be even more complicated.

Other options to align retirement age with State pension age

The Ibec survey indicates that employers also support other practical options to align retirement age with State pension age (and beyond) including removing the need to objectively justify a post retirement fixed term contract and legal protection from discrimination claims where employees over the State pension age are offered different benefits.

Other options to support employers in aligning the fixed age for retirement with the state pension age



The Workplace Relations Commission Code of Practice on Longer Working S.I.600/2017, goes some way to address the challenge of using fixed term contracts. However, a provision which allows post-retirement fixed term contracts to be utilised without the need for a second individual objective justification would be helpful to Irish employers. This could be achieved by revising the amendment to Section 6 of the Employment Equality Acts effected by the 2015 Act and return to a general exemption which allows employers to grant a post-retirement fixed-term contract without any requirement to objectively justify it. This would require the repeal (or at least amendment) of Section 4 of the Equality (Miscellaneous Provisions) Act 2015.

Furthermore, Ibec members would welcome clear guidance on the area of benefits where provision is made for employee to work longer. A similar provision to Section 14 of the UK Equality Act 2010 or guidance from the Workplace Relations Commission on this point with regard to the provision of benefits to employees over the traditional age of retirement would alleviate one of the main financial and administrative obstacles faced by employers of engaging in the provision of longer working for employees. It would also go some way to reducing the liability of litigation under both the EE Acts and the Protection of Employees (Fixed Term Workers) Act 2003 where it is prohibitively expensive for an employer to provide or continue to provide these benefits to employees over the mandatory retirement age.

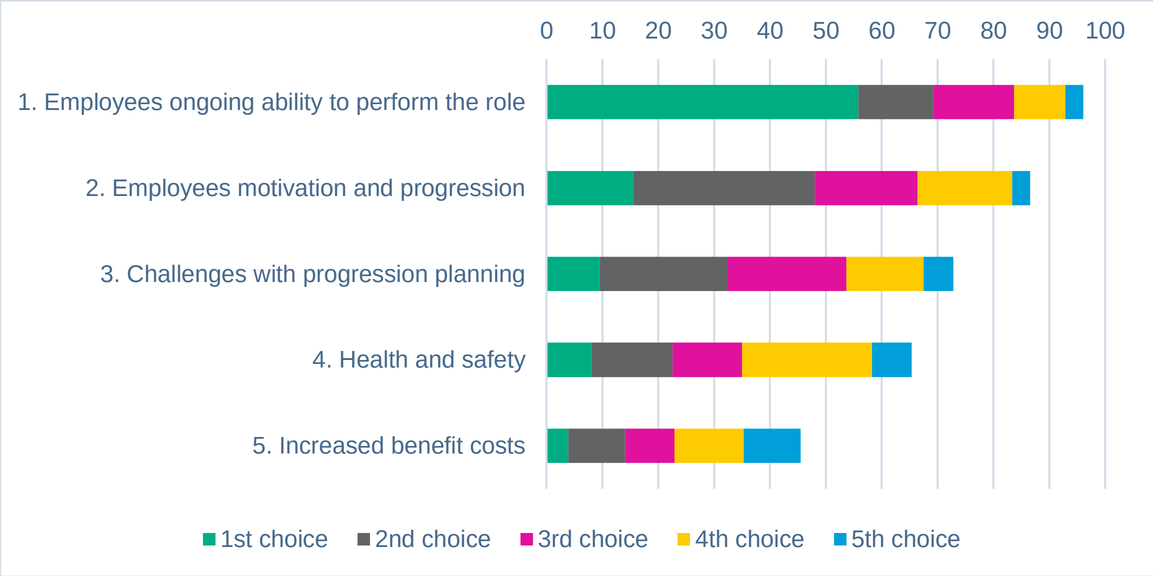
Policy actions

- Employers' ability to fix mandatory retirement ages in contracts should be retained. The removal of this ability would be disproportionate and arbitrary. It would remove the legitimate autonomy of employers for workforce planning as reiterated in the Workplace Relations Code of Practice on Longer Working which states: 'Good workforce planning is a critical element in any workplace. Central to this are appropriate employee numbers and skill sets, recruitment, and planning for departures including retirement.'
- Government should provide as much legal support (including legislative amendment) as is possible to recognising the alignment of contractual retirement ages with the State pension age as a legitimate employment policy and labour market aim and that the means used are appropriate and necessary, in line with Article 6 of the European Employment Equality Directive
- The possibility of setting a default retirement age (DRA) at the level of the State pension age should be explored (and framed in a way which complies with EU law). The DRA could be set by Government and could be the minimum age at which employers can (if they choose to) set a mandatory retirement age, requiring employees to retire. Employers would be able to set a mandatory retirement age below the DRA only where this can be objectively justified by the particular occupation. Employers would also be able to set a mandatory retirement age above the DRA.
- Government should remove the necessity to objectively justify a post-retirement fixed term contract (not required under EU Directive) or confirm that bridging the gap to age of entitlement to state pension age is sufficient objective justification.
- Legislation and/or Codes of Practice should provide certainty to employers around the provision of different benefits for post-retirement fixed term contracts.

Ageing in the workplace

International evidence indicates that age legislation, with no accompanying policies to encourage older working, is unlikely to increase the participation rates of older workers significantly[9]. Older workers in certain occupations e.g. trades/heavy physical work may not have the same potential or desire to continue with the same job role as they grow older and less physically able. Research also has shown that working conditions play an important role in retirement decisions and 'blue collar' workers are more likely to retire early than 'white collar' workers[10]. The Ibec survey reveals that employees ongoing to ability to perform a role is cited as the primary concern by 55.8% of employers in relation to the abolition of fixed retirement age. Measures are needed to address this issue and to support the continued participation of such workers in the labour market through workplace adaptation or re-skilling.

Employers' main concerns in relation to the abolition of fixed retirement age (ranked by order of importance)



Policies to extend working lives require a dual approach: on one hand they should reduce incentives to retire early and reward longer careers (pension system related); on the other hand they should support companies so they can accommodate both enterprises' and older workers' needs. A range of workplace changes that could facilitate the productive employment of older workers include: work scheduling, flexible hours, voluntary work-time reductions, vacation and leave policies, phased retirement, job assignment, improved workplace organisation, hiring and contracting strategies, training practices and benefit and compensation methods.

[9] A comparative review of international approaches to mandatory retirement: UK Department of Work and Pensions (2010)

[10] Report of the Interdepartmental Group on Fuller Working Lives: https://assets.gov.ie/4984/191218122321-2472d175810b4278a78cce28d1118a07.pdf

The European Social Partners in their Framework Agreement on Active Ageing and Inter-Generational Approach of March 2017 [11]addressed some of these issues. For example, it proposed carrying periodic strategic assessments of the workforce demography. These assessments could include:

- Current and projected age pyramid, including gender aspects;
- Skills, qualifications and experience;
- Working conditions;
- Job specific health and safety consideration, in particular for arduous occupations;
- Development linked to digitalisation and innovations.

Ensuring that older people maintain their employability and have access to better employment choices is likely to help them find their place in the labour market that will increasingly require constant adaptation of skills and job changes. In particular, equipping older workers with appropriate digital skills is a perquisite to enable longer working. Older workers are also better prepared to update their skills if they have access to lifelong learning throughout their career.

Employment policies need to be assessed and, where necessary, adjusted. For example, attention should be paid to disincentives to retain older workers, such as seniority-based pay systems. Working conditions (for example, nature of work or work organisation) should also be adapted to the capacities and changes in general conditions of older workers.

Phased retirement is another option to extend working lives. It enables gradual decrease of working time and keeps in employment those who still feel able to work but are not interested or find it too demanding to work full-time. There are different patterns of organising phased retirement; it can take the form of a regular part-time work, but can also foresee longer breaks, for example a week per month or even taking time off during summer months.

Policy actions

- A range of workplace changes could facilitate the productive employment of older workers including: work scheduling, flexible hours, voluntary work-time reductions, vacation and leave policies, phased retirement, job assignment, improved workplace organisation, hiring and contracting strategies, training practices and benefit and compensation methods.

11 https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/with_signatures_framework_agreement_on_active_ageing_0.pdf

About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 36 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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