



Submission to the Department of Employment Affairs and Social Protection on Development of the Department's Strategy for 2017-2020

September 2017

Age Action

30/31 Lower Camden Street

Dublin 2

01 4756989

www.ageaction.ie



The work of the Age Action policy team is supported by the Scheme to Support National Organisations, funded via the Department of Housing, Planning, Community and Local Government, and administered by Pobal.

1. Introduction

Age Action is the leading advocacy organisation for older people in Ireland.

We want to make Ireland the best country in the world in which to grow old and we work with older people to build a society free of ageism where their rights are secured.

The proportion of our population aged 65 and over is set to increase substantially during the coming decades. The most recent census figures reported a 19.1 per cent increase in the number of people aged over 65 since 2011 to 637,567 and a 15.6 per cent increase in the number of people aged over 85 to 67,555.¹

All too often media commentary depicts an ageing population in a negative light, referring to a 'pension time bomb' or blaming older citizens for the lack of adequate healthcare by referring to them as 'bed-blockers'.

But population ageing is first and foremost a success story for public health policies and social and economic development.² We are living longer and healthier lives – this should be celebrated – but it does create both challenges and opportunities.

Writing in 2015 the economist Colm McCarthy pointed out that Ireland does not face a demographic crisis, we face a policy crisis. This crisis is a product of our collective failure to prepare and plan for the coming changes in Irish society.

We welcome the opportunity to contribute to the development of the department's strategy for 2017 to 2020 and to assist in addressing this policy crisis.

¹ <http://cso.ie/en/media/csoie/newsevents/documents/pressreleases/2017/prCensussummarypart1.pdf>

² Brundtland, G. (1999) *World Health Day; Active Ageing Makes a Difference*. Available at: www.who.int/director-general/speeches/1999/english/19990407_world_health_day.html.

2. National Positive Ageing Strategy

Age Action welcomed the publication of the National Positive Ageing Strategy in 2013. It sets out what Government departments and public agencies must do to make Ireland a great place in which to grow old.

The strategy sets out its vision as follows:

*Ireland will be a society for all ages that celebrates and prepares properly for individual and population ageing. It will enable and support all ages and older people to enjoy physical and mental health and wellbeing to their full potential. It will promote and respect older people's engagement in economic, social, cultural, community and family life, and foster better solidarity between generations.*³

There are four goals underpinning this vision with specific actions under Goals one and three directly attributed to the then Department of Social Protection.

Goal 1 of the strategy aims to:

*Remove barriers to participation and provide more opportunities for the continued involvement of people as they age in all aspects of cultural, economic and social life in their communities according to their needs, preferences and capacities.*⁴

Objective 1.1 of this goal addresses the issue of developing options for employment and training for older people as well as removing barriers that prevent longer working lives.

The Department of Social Protection was jointly charged in the strategy with the Department of Jobs, Enterprise and Innovation with dealing with the issues of gradual retirement and pre-retirement planning.

With the recent transfer of employment functions to the department its responsibility in this area has only increased.

³ Department of Health (2013) *National Positive Ageing Strategy* p. 19 – available at http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf

⁴ Department of Health (2013) *National Positive Ageing Strategy* p. 19 – available at http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf

The strategy goes on to state:

*There is evidence that longer working lives have beneficial effects on individuals' physical and psychological wellbeing. Some evidence also shows that workers' productivity does not necessarily decline with age - any decline in physical capacity is easily compensated by qualities and skills acquired through experience.*⁵

As mentioned above the strategy identifies the removal of “any barriers (legislative, attitudinal, custom and practice) to continued employment and training opportunities for people as they age” as the first objective under National Goal 1 of the strategy.⁶

Mandatory retirement ages, set arbitrarily on the basis of the worker having lived for a set number of years and not his or her capability to do the job, constitute the kind of barrier that the strategy is designed to remove.

Goal 3 is also relevant to the department as it states:

*Enable people to age with confidence, security and dignity in their own homes and communities for as long as possible.*⁷

Objective 3.1 says that this is to be achieved by providing ‘income and other supports to enable people as they age to enjoy an acceptable standard of living’, with specific actions in relation to pensions, secondary income supports, poverty reduction and occupational and private pensions.⁸

Responsibility for these actions is assigned solely to the department.

Ensuring that future generations of older people have enough money to grow old with dignity cannot be left to when the individual reaches retirement.

Our social welfare system must ensure a fair, sustainable, State Pension system that aspires to more than simply keeping older people out of poverty but aims to enable them to live full, active, lives within their communities.

⁵ National Positive Ageing Strategy 2013. Page 24. http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf

⁶ Ibid. Page 20.

⁷ Op.Cit.

⁸ Op.Cit. p.35

3. A fair and reformed State Pension

The State Pension is the main source of income for those aged over 65. Up to three-quarters of their income comes from public transfers of which the State Pension is the most important.⁹ Less than half of those aged between 15 and 64 have a private pension.¹⁰

Ensuring that all of us who hope to grow old have enough to live with dignity cannot be left to retirement.

During the recession our members repeatedly emphasised that new taxes and charges¹¹, coupled with rising prices¹² and a reduction in secondary income supports¹³ had a profound effect on their incomes.

A freeze in the weekly rate of the State Pension from 2009 to 2016 meant that many older people struggled to keep their homes warm and to pay food and medical bills.

“The State Pension is too low, especially since the extra charges were thrown at us. I find it hard to live on €233 a week and pay the property tax...along with the everyday expenses e.g. oil, phone, food and clothing and if one is lucky, like me, to own a car (it’s 10 years old) for getting the groceries that too can become a headache with rising costs of insurance and motor tax along with NCT bills and upkeep of the vehicle. It’s certainly hard. That’s my opinion” (Response to Age Action Budget 2017 Consultation).

In 2010 the Government published the National Pensions Framework¹⁴, which sets out its plan to reform the pension system. While some of its recommendations,

⁹ OECD (2016) *Pensions at a Glance 2015 – OECD and G20 Indicators*. Available at: http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/pensions-at-a-glance-2015_pension_glance-2015-en#page3

¹⁰ CSO (2016) *Quarterly National Household Survey (QNHS): Module on Pensions (Q4 2015)*. Available at: <http://www.cso.ie/en/releasesandpublications/er/q-pen/qnhsmoduleonpensionsq42015/>

¹¹ The introduction of taxes such as the Local Property Tax and the carbon tax, particularly its introduction on solid fuels, had a particularly negative effect on older people during the recession.

¹² To emphasise the impact of rising individual costs, research undertaken by the Vincentian Partnership for Social Justice in 2013 noted that while overall CPI fell by 0.15 per cent in the period 2008 to 2013, the cost of a Minimum Essential Standard of Living for a lone pensioner and a pensioner couple rose by 5.03 per cent and 7.34 per cent respectively. See VPSJ (2013) *Changes in the cost of a MESL in Comparison to CPI Inflation* – available at www.budgeting.ie.

¹³ For older people solely dependent on the State Pension and secondary supports such as the Household Benefits Package, the Telephone Allowance and the Fuel Allowance, their weekly income fell by over €13 per week between 2009 and 2016 due to cuts in the latter two benefits.

¹⁴ Department of Social Protection (2010) *National Pensions Framework* - available at http://www.welfare.ie/en/downloads/nationalpensionsframework_en.pdf

including increasing the pension age, have been implemented one of the key measures has not.

The framework states that the Government will set the State Pension at 35 per cent of average earnings “to maintain this aim of preventing poverty for older people”.¹⁵ This means the State Pension, currently €238.38 at the top rate, should be €252.64.¹⁶

According to the department we may be one of only two EU countries with no formula for indexing the pension to some combination of prices, wages or GDP.¹⁷

It should also be noted that the Citizens’ Assembly voted overwhelmingly in favour of benchmarking the State Pension to average earnings.¹⁸

We would urge the department over the next three years to work to introduce a legislative approach in Ireland where the State Pension would rise to 35 per cent of average weekly earnings and then be locked to that figure.

Reforming the State Pension

Age Action supports the department’s efforts to examine the feasibility of introducing a Universal Retirement Savings Scheme but we believe a greater emphasis must be put on the need to reform and improve the State Pension system.

The vast majority of workers will be solely or mostly dependent on the State Pension in retirement and the focus on introducing a new second-tier pension may distract resources from the more urgent work required to reform the State Pension.

It is important that pensioners and workers have confidence that the State Pension will provide them with sufficient income to live independent lives.

One area the Department should focus on over the lifetime of the strategy is the effectiveness of the State Pension in addressing issues of gender inequality. A recent report identified that the gender pension gap in Ireland was at 35 per cent.¹⁹

¹⁵ Op.Cit.

¹⁶ Based on seasonally adjusted CSO figures for average earnings for Q1 2017 – available at <http://www.cso.ie/en/releasesandpublications/er/elcq/earningsandlabourcostsq12017finalq22017preliminaryestimates/>

¹⁷ Presentation to the Joint Oireachtas Committee on Social Protection on 15 December 2016.

¹⁸ <https://www.citizensassembly.ie/en/How-we-best-respond-to-challenges-and-opportunities-of-an-ageing-population/>

The disparity in retirement income between men and women was exacerbated by the decision to change State Pension system in 2012 and the failure to backdate the Homemaker's Scheme.²⁰

These changes, combined with the system of averaging out PRSI contributions over an individual's lifetime, have greatly reduced the retirement income of tens of thousands of older people.

Our current State Pension system creates anomalies where individuals who start work late in life can receive larger pensions than individuals who worked many more years over a longer working life but who took time out of paid employment to care for their family.

Addressing these issues should be a top priority for the department in its work under this strategy and should be given priority over proposals to introduce a mandatory second-tier pension.

¹⁹ <http://www.independent.ie/business/personal-finance/pensions/pension-gender-gap-twice-as-large-as-the-pay-gender-gap-in-ireland-35798601.html>

²⁰ https://www.ageaction.ie/sites/default/files/attachments/final_towards_a_fair_state_pension_for_women_pensioners.pdf

4. Older workers and employment

As discussed above, the department has now been allocated a number of other functions, including lead on employment rights policy and legislation, which are particularly relevant for older workers.

The *Report on Smart Ageing*, referenced in the Government's *Action Plan for Jobs 2016* highlights the value of ensuring greater participation by older workers in the workforce:

Employment of older people is a question about social equity on the one hand and financial prudence (for government) on the other; and possibly skills shortages too, as older workers will tend to have skills and knowledge that are not easily replicated with younger workers.²¹

Age Action believes that mandatory retirement for older workers is contrary to the Government's commitments under the National Positive Ageing Strategy and undermines the approach being taken in the Action Plan for Jobs 2016.

Recent changes to the Irish pension system means that many victims of mandatory retirement clauses are not just losing their salaries, they're losing out in State supports.

In recent years the Government has raised the State Pension age from 65 to 66 and abolished the transition pension.

This means a worker forced into retirement at the age of 65, the most common age chosen by employers, has no choice but to go Jobseekers Benefit.

Figures provided by the department to the community and voluntary pillar in July of 2016 indicated there were more people at the age of 65 on Jobseekers Benefit than at any other age.

These newly unemployed workers are getting almost €50 a week less than they would if they were entitled to a full State Pension.

²¹ Report on Smart Ageing, 2015, page 73,
http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Press_Releases/Report_on_Smart_Ageing.pdf

And unless the Government acts soon, the situation will worsen in 2021 when the State Pension age rises to 67 and older workers face two years on Jobseekers Benefit.

Need for legislation

The legal context for mandatory retirement clauses in contracts is the Framework Employment Directive 2000/78/EC. This directive is central to EU labour law. Its aim is to prevent discrimination against workers on a variety of grounds, including age, and it was transposed into Irish law through the Equality Act 2005.

Article 6 of the directive states that Member States may allow workers to be treated differently on the basis of age if:

*...they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.*²²

Subsequently, the European Court of Justice has ruled that fixed-term contracts on the basis of age are a form of age discrimination but one that can be justified under Article 6 if such contracts are justified by a “legitimate aim”.

In *Donnellan v Minister for Justice, Equality and Law Reform* (2008 IEHC 467), Justice McKeachie found that while the forced retirement of An Assistant Garda Commissioner at the age of 60 did constitute age discrimination, it could be objectively justified.

In this case the Court accepted that the retirement age was necessary to facilitate promotion prospects for lower-ranking Gardaí and that this was a “legitimate aim” as indicated by the directive.

Similar reasoning was applied in *Doyle v ESB International* (DEC-E2012-086). The Equality Tribunal dismissed a claim brought by a graphic designer who was forced to retire at the age of 65.

²² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

As in the Donnellan case no question was raised as to the ability of the individual to discharge his duties and ESB International's case rested, in part, on the argument that forced retirement was necessary to facilitate promotion opportunities for other staff.

It is important to be clear what this means in practice. Skilled, experienced employees against whom there is no suggestion that they cannot carry out their duties are losing their jobs to provide opportunities for younger employees.

This is State sanctioned ageism and reminiscent of a time when women were forced out of work on the basis of their marital status to create employment and promotion opportunities for male workers.

Legislation is currently before the Dáil, the Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016, which is designed to address this issue.

We would urge the department to work with other relevant Government departments and State agencies to address the legislative and other barriers to the abolition of mandatory retirement over the duration of this strategy.

Ageism in employment

We would also urge the department to seriously examine the issue of ageism in access to employment to support older people who wish to continue working.

A report on age and employment published by William Fry last year found that 87 per cent of a survey of unemployed workers aged 55 or over believed their age was a factor in their inability to get work.²³

It went on to highlight that 42 per cent of employers surveyed believed there was an upper age limit for customer facing roles.

The most recent annual report for the Workplace Relations Commission indicated a substantial number of cases related to age with this ground for discrimination being cited in 161 complaints.²⁴

²³ <http://banda.ie/wp-content/uploads/william-fry-employment-report-age-in-the-workplace.pdf>

²⁴ Workplace Relations Commission Annual Report 2016

5. Conclusion

For further information or future correspondence on this submission please contact:

Justin Moran, Head of Advocacy and Communications

30-31 Camden St Lower, Dublin 2

T: 01-4756989 E: advocacy@ageaction.ie W: www.ageaction.ie