



Submission to the Department of Business, Enterprise and Innovation on the Action
Plan for Jobs 2018

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.

Every year in Ireland workers are forced out of their job for no other reason than they turn 65 years of age.

This is possible because Irish law permits employers to impose arbitrarily selected mandatory retirement ages in their employees' contracts, in effect, facilitating ageism and creating a set of second-class employment rights for older workers.

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

When we talk about planning for an ageing population, effectively we are talking about developing an age friendly society not just for those currently over the age of 65 but for all of us who hope to grow old.

This planning includes developing a coordinated response across all policy areas. It must ensure that employment legislation supports older workers and that retirement practices and policies enable older people to have a choice around when they stop working.

Abolishing mandatory retirement, tackling ageism and providing the supports and training needed to encourage older workers to re-enter employment should all feature in the department's Action Plan for Jobs 2018 and we are grateful for the opportunity to make a submission.

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

2. The legal context

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*”.²

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 *Palacios de la Villa v Cortefiel Servicios SA C-411/05*, the ECJ rejected an employee’s challenge to being forced out of his job at the age of 65 on the grounds that this was justified by the ‘legitimate aim’ of creating opportunities for people seeking employment.

In *Fuchs and Köhler v Land Hessen C-159/10; C-160/10*, the ECJ ruled that two German civil servants could be forced from their job at the age of 65 to “encourage the recruitment and promotion of young people”.

Irish jurisprudence has echoed these decisions at the European level.

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.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

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.

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 ageism, pure and simple, and the fact that it is legal does not change that fact.

There was a time in Ireland when it was believed to be a fair and sensible employment policy to force young women out of their jobs on the grounds of gender and marital status to create employment or promotion opportunities for men.

While Ireland today would reject such an attitude to women, it seems that a similar form of discrimination against people on the basis of age is justifiable.

In 2015 the Oireachtas passed the Equality (Miscellaneous Provisions) Act 2015. Among other changes to Irish equality law it amended section 34 (4) of the Employment Equality Acts 1998-2011 to bring it into line with the directive and subsequent ECJ jurisprudence.

3. The policy context

In April 2013 the Government published the National Positive Ageing Strategy. It outlines Ireland's vision for ageing and for older people and sets out a roadmap of goals and objectives to make growing old in Ireland a positive, fulfilling experience.

With regard to employment the strategy states:

“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.”³

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.⁴

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.

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.”⁵

³ National Positive Ageing Strategy 2013. Page 24. http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf

⁴ Ibid. Page 20.

⁵ Report on Smart Ageing, 2015, page 73, http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Press_Releases/Report_on_Smart_Ageing.pdf

Age Action believes that mandatory retirement for older workers is contrary to the Government's commitments under the National Positive Ageing Strategy, undermines the approach being taken in the Action Plan for Jobs 2016 and designing a roadmap for its abolition should be a commitment under the Action Plan for Jobs 2018.

4. The international experience

As countries increasingly recognise the social and economic benefits of facilitating longer working lives, a number of countries have abolished mandatory retirement.

In 1986, the United States became one of the first countries to outlaw mandatory retirement, with exceptions for certain occupations.

New Zealand abolished mandatory retirement in 1999, Australia in 2004 and Nova Scotia became the last Canadian state to abolish mandatory retirement in 2009.⁶

The World Health Organisation recommends the elimination of mandatory retirement ages:

“Policies enforcing mandatory retirement ages do not help create jobs for youth, as was initially envisaged, but they reduce older workers’ ability to contribute and reduce an organization’s opportunities to benefit from the capabilities of older workers.”⁷

The United Nations Madrid International Plan of Action on Ageing, published in 2002, says that States should, “Enable older persons to continue working as long as they want to work and are able to do so”.⁸

⁶ Wood, Robertson and Wintersgill. *A comparative review of international approaches to mandatory retirement*. Department of Work and Pensions.

⁷ WHO World Report on Ageing and Health 2015. Page 190.
http://apps.who.int/iris/bitstream/10665/186463/1/9789240694811_eng.pdf?ua=1

⁸ Madrid International Plan on Ageing. Page 22.
http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf

5. The case for abolition

It is important to be clear about the impact of mandatory retirement.

People who want to work, to put some money aside for their pensions, to ensure comfort and dignity in retirement by working a few additional years are forced out of their jobs.

Instead of continuing to work and to pay tax, older workers are forced to go on Jobseeker's Benefit or try to find a new job in their mid-60s.

Getting rid of mandatory retirement clauses is not about forcing people to stay working forever, it is about choice, about giving older workers the same job security as their younger counterparts and allowing them to decide when they wish to stop working.

Why should someone who is willing and able to do their job be forced out on their 65th birthday?

Youth unemployment

An argument frequently cited by proponents of a mandatory retirement age is that it is necessary to facilitate youth employment. Indeed, this is defined as one of the "legitimate aims" referred to in the EU directive and in ECJ case law.

But the evidence indicates that reducing labour force participation among older people does not lead to increased employment for young people.

Iceland, New Zealand, Sweden and Norway are among the top ten countries in the world for youth employment and simultaneously for the employment of older people.⁹

A 2014 report from the IZA World of Labour research institute found that:

"There is no trade-off in the employment of young and old workers: Higher employment for older workers coincides with higher employment for younger workers...Reducing the employment of older persons does not provide more job opportunities for younger persons."¹⁰

⁹ <https://data.oecd.org/emp/employment-rate-by-age-group.htm>

¹⁰ <http://wol.iza.org/articles/effect-of-early-retirement-schemes-on-youth-employment.pdf>

The report also found that measures introduced in Denmark and France that reduced labour force participation for older workers saw drops in youth employment over the same period.

In the French example pension system reforms introduced between 1971 and 1993 led to lower rates of employment for older workers and during this period employment rates for younger workers likewise fell.

Subsequent reforms reversed this trend, leading to an increase in employment for older workers between 1993 and 2005 matched by a corresponding increase in employment for younger workers.¹¹

Similarly, a comprehensive 2008 IMF working paper on the effects of early retirement on youth unemployment in Belgium found that:

“We could not observe any positive link between early retirement and youth employment. On the contrary we observe a negative link indicating that the activity rates of both young and elderly workers are sensitive to business cycles.”¹²

The link has also been comprehensively dismissed on repeated occasions by the OECD:

“It is important to dispel a number of myths in this area...the claim that fewer jobs for older workers results in more jobs for younger workers, though unfounded, is proving especially stubborn.”¹³

A different OECD report refers to what it calls the ‘lump-of-labour’ fallacy, the argument that fixed numbers of jobs can be simply reshuffled between workers of different ages as a result of Government policy.

The report goes on to argue that the relationship between employment among younger and older workers is “is positive and highly significant in statistical terms”.¹⁴

¹¹ Page 7. <http://wol.iza.org/articles/effect-of-early-retirement-schemes-on-youth-employment.pdf>

¹² Page 29. <https://www.imf.org/external/pubs/ft/wp/2008/wp0830.pdf>

¹³ Page 13. <http://www.oecd.org/employment/emp/36218997.pdf>

¹⁴ Page 13. <http://www.oecd.org/els/public-pensions/47712019.pdf>

Put simply, the more older workers in employment, the better for the economy and the better for youth employment rates.

Instead of setting older and younger workers against each other, we should be trying to maximise the valuable contribution older workers provide to the economy, including making full use of the skills, experience and wisdom of older workers to train in younger and newer employees.

Benefits of longer working lives

Spending on pensions in the Social Protection budget was expected to amount €6.98 billion in 2016, constituting 35.5 per cent of total current expenditure by the Department of Social Protection and more than 13.7 per cent of total gross current expenditure.¹⁵

The task of financing increased pension spending will fall to a diminishing share of the working population as demographic projections indicate the ratio of working age to older people will decrease from 5.3 to 1 at present to 2.1 to 1 by 2060.¹⁶

A worker forced into retirement at the age of 65 is entitled to a Jobseeker's Benefit of €188 at the maximum rate until he or she turns 66, creating a situation where there are more people claiming Jobseekers' Benefit at the age of 65 than at any other age.¹⁷

Enabling older workers to continue working reduces the cost to the State of payments to older workers currently forced to retire at the age of 65, but ineligible for their pensions until they are 66.

If, instead, that worker was able and willing to work, on a salary of €40,000 he or she would be contributing almost as much through income tax, the universal social charge and PRSI contributions.¹⁸

¹⁵ www.budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf

¹⁶ <https://www.kildarestreet.com/wrans/?id=2015-06-09a.197>

¹⁷ Department of Social Protection figures

¹⁸ After the age of 66 older workers do not make PRSI contributions but would continue to contribute to the State through other forms of taxation.

Financially, it makes sense for an older worker to continue to contribute to the Exchequer instead of to receive payments.

Mandatory retirement reduces the income of older people and so reduces their spending power. The less they have to spend, the less they can contribute to stimulating the domestic economy, further driving job creation and the economic recovery.

Popular support

Public opinion also supports the abolition of mandatory retirement ages. A 2012 Eurobarometer survey on ageing issues found that across the EU 61 per cent of respondents felt that people should be allowed to continue working past the official retirement age.

The average rises to 65 per cent in EU15 states and was higher again in Ireland at 73 per cent.¹⁹

6. The voices of those affected

“The frustration of losing my job for no other reason than because I had turned 65 years of age was exacerbated by the financial hardship this policy of mandatory retirement inflicted on me. I was trying to pay a mortgage to the bank and a loan to the credit union at the same time. It was very difficult to keep going. I had to cut right back.”

Angela Gallagher

“I have made a request to my company to continue working until pension age, which for me is 66, but the company is refusing to discuss this issue with me or my union representative, making it clear that the retirement age is 65 years. I am sure I will be replaced by someone on a lower wage and with a zero-hour contract.”

Kathleen O’Toole

¹⁹ Special Eurobarometer 378 *Active Ageing*. Pages 71-72.
http://ec.europa.eu/public_opinion/archives/ebs/ebs_378_en.pdf

“There was no objective reason for my retirement. I was still rated fit for purpose by the Medical Council and was physically fit, as demonstrated by being able to run distances from 10 km to the marathon...The forced retirement of experienced, able and willing workers is commonplace and represents an enormous waste of human resources.”

Dr Enda Shanahan

“I work as a dental nurse for the HSE. It makes no sense for a skilled, competent and widely experienced dental nurse to be asked to cease employment based on a mere number on the calendar. Given my knowledge and experience, my compulsory retirement would be particularly disadvantageous to the service.”

Margaret Haughton

7. Ageism in employment

We would also urge the department to include in the Action Plan for Jobs 2018 a serious examination of 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.²⁰

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.²¹

²⁰ <http://banda.ie/wp-content/uploads/william-fry-employment-report-age-in-the-workplace.pdf>

²¹ Workplace Relations Commission Annual Report 2016

But while older unemployed workers need assistance in surmounting these obstacles, there is a lack of focus from the Government on supporting these individuals.

The recently published *Action Plan for Jobless Households* from the Department of Employment Affairs and Social Protection contains one of two headline targets focused on people aged between 18 and 59, ignoring completely unemployed workers in their 60s.²²

8. Conclusion

Age Action is grateful for the opportunity to make a submission to the Action Plan for Jobs 2018 and to discuss this matter with the Minister for Business, Enterprise and Innovation on 4 September.

We would encourage the Department to include the Action Plan for Jobs 2018:

- Setting out the roadmap for the abolition of mandatory retirement clauses;
- Measures to tackle ageism in employment;
- A review of Government activation measures to end the exclusion of older unemployed workers.

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

²² https://www.welfare.ie/en/downloads/Action_Plan_for_Jobless_Households.pdf