

## ABOLISHING MANDATORY RETIREMENT

### Introduction

Every year in Ireland older workers are forced out of their job for no other reason than they turn 65. This is possible because Irish law permits employers to impose mandatory retirement ages in their employee's contracts, in effect, facilitating ageism and creating a set of second-class employment rights for older workers.

According to the latest Census (2011) there are currently more than **530,000** people aged over 65 and just **128,000** over the age of 85. By 2046, **1.4 million** will be aged 65 and over, and **470,000** will be over the age of 85.

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.

This Age Action briefing paper sets out the legal and policy context for mandatory retirement clauses in Irish law and argues for their abolition.

### 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".<sup>1</sup>

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

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".

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

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.

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 clearly into line with the directive and subsequent ECJ jurisprudence.

## 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.*”<sup>2</sup>

<sup>2</sup> National Positive Ageing Strategy 2013. Page 24. [http://health.gov.ie/wp-content/uploads/2014/03/National\\_Positive\\_Ageing\\_Strategy\\_English.pdf](http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf)

It 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.<sup>3</sup>

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.* ”<sup>4</sup>

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.

## The International Context

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.<sup>5</sup>



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.* ”<sup>6</sup>

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*”.<sup>7</sup>

<sup>3</sup> Ibid. Page 20.

<sup>4</sup> Report on Smart Ageing. 2015. Page 73. [http://www.taoiseach.gov.ie/eng/News/Taoiseach's\\_Press\\_Releases/Report\\_on\\_Smart\\_Ageing.pdf](http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Press_Releases/Report_on_Smart_Ageing.pdf)

<sup>5</sup> Wood, Robertson and Wintersgill. Department of Work and Pensions 2010. Page 32. *A comparative review of international approaches to mandatory retirement.*

<sup>6</sup> World Report on Ageing and Health. WHO 2015. Page 190. <http://www.who.int/ageing/events/world-report-2015-launch/en/>

<sup>7</sup> Madrid International Plan on Ageing. UN 2002. Page 22. [http://www.un.org/en/events/pastevents/pdfs/Madrid\\_plan.pdf](http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf)

# The Case for Abolishing Mandatory Retirement

It is important to be clear about the impact of mandatory retirement. People who want to work, to put some money aside, 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 to 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 65<sup>th</sup> birthday?

## Youth Employment

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 in reality 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.<sup>8</sup>

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.*”<sup>9</sup>

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 that was matched by a corresponding increase in employment for younger workers.<sup>10</sup>

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.*”<sup>11</sup>

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.*”<sup>12</sup>

<sup>8</sup> <https://data.oecd.org/emp/employment-rate-by-age-group.htm>

<sup>9</sup> <http://wol.iza.org/articles/effect-of-early-retirement-schemes-on-youth-employment.pdf>

<sup>10</sup> Page 7. <http://wol.iza.org/articles/effect-of-early-retirement-schemes-on-youth-employment.pdf>

<sup>11</sup> Page 29. <https://www.imf.org/external/pubs/ft/wp/2008/wp0830.pdf>

<sup>12</sup> Live Longer, Work Longer. OECD 2006. Page 13. <http://www.oecd.org/employment/emp/36218997.pdf>

A different OECD report refers to what it calls the 'lump-of-labour' fallacy, the argument that fixed numbers of jobs can be 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 "*positive and highly significant in statistical terms*".<sup>13</sup> 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 to €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.<sup>14</sup>

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.<sup>15</sup>

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.

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.<sup>16</sup>

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

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.

As well as financial reasons, there are sound social arguments for abolishing mandatory retirement ages. Research by the Chartered Institute for Personnel and Development in Britain found that 41 per cent of workers planning to work past the Default Retirement Age cited social interaction in the workplace as the reason for doing so and another 34 per cent referred to self-esteem.<sup>18</sup>

### 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.<sup>17</sup>

<sup>13</sup> Paying for the Past, Providing for the Future: Intergenerational; Solidarity. OECD 2011. Page 13. <http://www.oecd.org/els/public-pensions/47712019.pdf>

<sup>14</sup> <http://www.budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf>

<sup>15</sup> <https://www.kildarestreet.com/wrans/?id=2015-06-09a>.197

<sup>16</sup> 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.

<sup>17</sup> Active Ageing. Special Eurobarometer 378. Pages 71-72. [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_378\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_378_en.pdf)

<sup>18</sup> Barrett and Sargeant. International Law Journal. March 2015. Page 78. *Working in the UK without a Default Retirement Age: Health, Safety and the Oldest Workers*.

## Voices of Older Workers

“ 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

“ 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

## Next Steps

In 2014 Deputy Anne Ferris introduced the Employment Equality (Abolition of Mandatory Retirement Age) Bill.<sup>19</sup>

The Bill would abolish mandatory retirement ages in Ireland for people who are able and willing to continue working. It includes a number of exceptions for professions related to security, such as An Garda Síochána, or public safety, such as the fire service.

The Bill passed Second Stage in the Dáil on 9 October 2015 with cross-party support and was referred to the Select Committee on Justice, Defence and Equality.

The committee held hearings on the Bill in November and in December published a report expressing unanimous support for the legislation. The Bill has been stalled since the General Election.

Age Action urges members of the Oireachtas and particularly members of the Select Committee on Justice and Equality to take this Bill forward to Committee Stage.

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