



Irish Senior Citizens Parliament

Pre Meeting submission.

The Bill (*Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021*)

Introduction:

My name is Sue Shaw & I am the CEO of the Irish Senior Citizens Parliament (ISCP). The ISCP welcomes and thank the Oireachtas Committee for the opportunity to engage and outline our views on the Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021. I will be joined by my colleagues to address key elements of the proposed Bill

The ISCP has at the core of its work the issue of equality and rights for older people. We work to ensure the implementation of policy commitments pertinent to ageing and older people. A fundamental element of this work relates to securing the rights of retired workers relating to pension provision. This refers to

- a) security of the state pension to act as an adequate secure income
- b) access to rights relating to the occupational pension of retired workers.

It is the latter we seek to address with you today.

We believe strongly in the rights of retired workers to continue to contribute to society in all areas, including policy development. In the last few years, we have drawn together many retired worker/staff associations with a similar experiences and concerns relating directly to their pension provision and the lack of the access to address these concerns. The network under the auspice of the ISCP represents over 500.000 retired workers.

“Nothing about us Without us” is the catch cry of many social movements and so it is with the retired worker representatives addressing you today. They are speaking to you as both constituents and as retired workers. They appreciate the time afforded by the Committee to listen to their lived experience and why this Bill is crucial in supporting the rights of retired workers to be represented and to defend their pension in payment benefits after they have retired.

The Bill when passed into legislation will give

1. The Bill (*Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021*) gives a voice to retired workers over what happens to their occupational pension schemes after they have left their employment. **At present**, thousands of retired workers who have worked for decades in the private, public and civil service sectors find that once they have left their job, any changes that impact their pension schemes can happen with little notice or negotiation with them.
2. The Bill will give retired workers and their representative associations the right to go to the WRC when their pension in payment are affected or there are proposed changes that could impact their benefits. **At present**, if these changes happen more than six months after a worker has retired, they have no rights to access the WRC.
3. The Bill will give rights to retired workers associations to be party to discussions and negotiations, when talks between trade unions and employers may have direct effects on pension in payment benefits. **At present**, retired workers are excluded in industrial relations disputes that may impact their pensions.
4. Retired workers can often struggle to have their voice heard on their scheme's Trustee Board. **At present**, no positions are currently reserved for retired members, therefore the proposed Bill will copper fasten a position for retired workers
5. Retired workers and their associations cannot access the WRC at the moment because of the definition amongst others, of a trade dispute in legislation, this means even where substantial cuts or changes have happened to their pension in payment benefit, **At Present** retired workers have no effective forum.

This Bill will change all of the above allowing a fairer representation of retired workers. This is all the Bill seeks.

Former Minister English in his statement to the DAIL in 2021 acknowledged the grievances experienced by retired workers, *I appreciate there is an argument that the necessity for this inclusion in collective representation is based on the belief that*

pension entitlements are a form of deferred wages and that any changes affecting pension schemes are unfair to the retired workers. The then Minister also acknowledged the need to address these issues and sought the deferral of the Bill to allow time to meet with a range of stakeholder including retired workers. *I will get a chance during the time allowed under the amendment to engage further with them on this issue.*

We are now passed this one-year period and as yet have not seen sight of a report based on these consultations nor recommendations/amendments that would address the concerns the Minister had in relation to the proposed Bill. The ISCP welcome and are open to amendments to move this Bill forward.

The Minister sought to address what he saw as *'the inclusion of a third category of participants with narrow singular interests in the collective bargaining process and may distort the interests of those parties for whom the process was originally designed.* As all workers will be retired into the future the proposed Bill seeks to protect both active and retired workers so the concern re a singular narrow focus seems hard to understand.

Currently, we are looking at proposals for auto enrolment and the need for active workers to have access to a pension scheme that will protect their income into retirement. Surely, it is the current system whereby retired workers have no rights that will discourage participation in pension schemes.

Minister English also referenced the current provision for retired workers to take their grievances to for support and resolution. Unfortunately, as the experience of many retired workers can attest to, these structures are not designed to support the problems arising. Also, in some cases they require legal representation which is more often than not beyond the financial resources of many pensioners. Accessing rights should not depend on our financial capacity to do so.

These systems are also designed for the 'individual' to turn to as opposed to addressing the collective position of many retired workers who need conciliation and arbitration for concerns between pensioner representatives and pension providers. In the past, these concerns have given rise to major cuts to pensions, freezing of pensions and lack of notice for key changes. All to the detriment of a retired workers income. None of the mechanisms listed by the Minister can do this.

All of the organisations ISCP and the Collective Network represent, have experience of battling the injustice of having no inclusion at the table when negotiations regarding their income took place. This Bill seeks to address this in real and concrete terms. It is the first time any proposal to address the absence of rights of retired workers in the decision-making process has come before the DAIL. Yet this issue has been ongoing for well over 10 years. For many retired workers there is a concern that they will not live to see their rights vindicated, if the Government continues to remain inactive on this key problem. To date they have lost colleagues who will not see their activism on this issue realised and for some, they fear that the delay in moving this Bill through the stages is exactly that; a cynical ploy to outlast their voice.

However, this Bill concerns current workers as they too will become retired workers and this Bill offers them protection when they reach retirement so we believe that the issue will not go away. The speakers you will hear at the Committee stage, sharing their expertise and very real lived experience speak not only for today's retired workers but for future retired workers also.

We again thank you for your time and look forward to meeting you all.

Content of inputs by each speaker, the following are the full content however based on the time constraints each speaker will address only the key points, however please use this content to seek further clarity on any point.

Sue Shaw Introduction

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It is the latter we seek to address with you today.

We believe strongly in the rights of retired workers to continue to contribute to society in all areas, including policy development. In the last few years, we have drawn together many retired worker/staff associations with a similar experiences and concerns relating directly to their pension provision and the lack of the access to address these concerns. The network under the auspice of the ISCP represents over 500.000 retired workers.

(The Collective Network full list of members is attached to this document)

“*Nothing about us Without us*” is the catch cry of many social movements and so it is with the retired worker representatives addressing you today. They are speaking to you as both constituents and as retired workers. They appreciate the time afforded by the Committee to listen to their lived experience and why this Bill is crucial in supporting the rights of retired workers to be represented and to defend their pension provision after they have retired.

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Alliance of Retired Public Servants

Alliance of Retired Public Servants

We are a group of retired employees who have withdrawn from our workplace position/occupation from our active working life because of old age or ill health.

Many of us were trade union activists, team players and working in partnership during our working life.

Financial security is the key to and individuals' independence as it provides freedom to make choices.

On retirement many of us became aware that we no longer 'had a voice' with regard our income and how pension increases are determined.

Retired workers contributed to the recovery of the "Financial/Banking Crisis" via retired the FEMPI legislation, pension levies, cut backs in welfare, prescription charges etc.

We now find themselves in the situation that they are 'included out' when decisions are being made with regard to determining our income.

We are seeking is a forum where pension-related issues can have an independent third-party hearing regarding pension related issues. The shortfall with existing arrangements is:

- Only individuals defined as 'workers' are covered by existing arrangements for follow up /protections. If an individual is/was not regarded as a worker, they

are outside the protections set out in current legislation. Only individual defined as 'workers' are covered by existing protections. If an individual is/was not regarded as a worker, they are outside the protections set out in current legislation, and under the 1990 ACT when we retire we are not covered as we are not deemed to be a worker under the above ACT, which is wrong.

- Issues required to be addressed may not have been identified within the six-month time limit currently provided for (e.g. fixed vs variable allowances, payments regarded as reckonable for pension purposes etc.)
- There is no one forum for retired workers to have pension related matters heard.
- Existing arrangements places an unfair burden on retired workers in the supply of information to support claims.

We are asking Government and All Party support for this Bill with a view to seeking to ensure:

- A change policy/legislative approach to how retired workers pension related are resolved.
- To address the gap in current law by providing retired workers a forum where pension related issues are taken on board.
- Bring into the legislative process and ensure retired workers get a hearing;
- To respond to topical public and media concerns about how cost of living increases affects older people (who tend to spend a larger proportion of their money on food and heat)
- To attract publicity for the plight older and vulnerable members of society.

Eileen Sweeney

Retired Aviation Staff Association [RASA] –

Lived experience of being excluded from an Industrial Relations process that reduced pensioners occupational Defined Benefit pension in payment income of up to 22.53%.

Retired Aviation Staff Association represents pensioners who worked in significant state companies and who are pensioner members of the DAA [former Aer Rianta] and Aer Lingus occupational Defined Benefit Superannuation Scheme.

- This Bill is an important piece of legislation and vital for income protection and security in retirement i.e., during the draw-down phase from their defined benefit superannuation fund.

- The current legislative environment does not provide for this protection and security based on what happened in practice during the 'draw-down' phase in the multi-employer Cross Border Defined Benefit occupational pension of employees in large significant semi-state aviation companies.
- RASA made a submission in response to a Ministerial/ Government request for views on this proposed legislation in April 2022. This has been circulated to members of this committee in advance for consideration.
- The lived experience of DAA/Aer Lingus pensioners is that their pension in payment income has been reduced for nearly 15 years now. Their occupational Defined Benefit Superannuation Scheme last paid a cost-of-living increase in 2007. In addition, a Government Stamp Duty Pension Levy, effective 2011-2015, continues to be deducted each month. There is no restoration and the State has received c€39m in respect of this pension levy.
- RASA has been fighting to protect pensioners monthly pension income determined at the time of retirement in an environment where pensioners are deliberately isolated and excluded.
- Occupational pensions are deferred wages. Retired Aviation Staff Association pensioners, for up to a period of 45 years, deferred a percentage of their pay during their working life as a contribution to their defined benefit occupational pension scheme towards their pension income in retirement. Following actuarial calculations this salary-based percentage rate of contribution increased during the accumulation period in order to maintain and protect this accrued post-retirement defined benefit pension. This benefit is established at date of retirement and paid for life during the post-employment decumulation phase.
- This accrued pension benefit post-employment relationship lasts longer than 6 months from date of draw-down of their accrued pension benefit.
- At the end of January 2015 RASA pensioners, whose average age at the time was 72 years [now 80 years], were individually advised by letter that their current defined benefit monthly pension income established at date of retirement was being unilaterally reduced further from the beginning of the month by up to 20%.
- This reduction to their income followed on from a four-year plus Industrial Relations process and negotiations. Pensioners were not allowed to be at the Industrial Relations table where these negotiations took place as this Industrial Relations process excludes pensioners.
- This reduction used a "point in time" minimum actuarial funding calculation-based assumptions and metrics which established a debt to be charged on pensioners monthly income in payment.
- Pensioners' former Employers/Trade Unions along with Trustees and State supported by significant legal, actuarial teams engaged in extensive coordinated Industrial Relations negotiation process to bring in changes that reduced the occupational pension scheme pension in payment monthly

income of pensioners. This pension was determined and fixed as an annuity for life at the time of retirement age i.e. c65 years of age.

- In January 2015 the implementation of the decision taken as part of this Industrial Relations process immediately reduced their pension in payment. This is a payment that pensioners, whose average pension is €13,500, have been receiving every month since their retirement and c€48m has been taken from their income from January 2015 to the end of December 2022.
- Numerous requests to all parties to be included in this process were refused.
- After receiving notification of their individual pension in payment reductions effective from 1 January 2015 pensioners spent the next 5 years going through the High Court, at a cost of just under €3m, to defend their accrued Defined Benefit current pension in payment determined on retirement.
- The Bill under scrutiny today matters to those who are not permitted to be at the negotiating table where decisions that affect them are taken and where they have suffered significant financial loss by not being at the table.
- This is just an example of the lived experience of DAA/Aer Lingus pensioners exclusion from current Industrial Relations and other processes where occupational pension issues are being negotiated and addressed. They are not permitted to be at the table where decisions were taken and they were targeted to have their monthly income reduced by up to 20%.
- Pensioners received no compensation/mitigation for this decision that reduced their income in an Industrial Relations process that excluded them and impacted them negatively. Neither has there been any restoration of benefit reductions.
- They are living in fear and anxiety that the same thing can happen again – tomorrow, next day, next year!

In summary, this proposed legislation comes against the above backdrop. This reinforces the need to provide for greater income security and protection for retired workers and provide access to the State's Industrial Relations mechanism for pensioners where they can protect their accrued pension benefits and income in retirement.

The speedy passing of this Bill under consideration today will address this exclusion for pensioners.

Nothing about us without Us.

Presentation to Committee. John Nugent. National Pensioners Federation.

My name is John Nugent and I am currently a Vice Chairman of the National Federation of Pensioners Associations. I believe that I am well placed to speak on and support this bill put forward by Bríd Smith on the rights of retired workers. I was a former director of ESB, a permanent member of the ESB's Joint Industrial Council for twelve years which dealt with I.R. disputes including pensions,

President of the ESB Officers Association which was the largest Trade Union in ESB during my term of office.

Those experiences have given me valuable insight into pensions from a Corporate, Trade Union and IR procedures perspective from which I can only conclude that the provisions of the Bill before the Dáil is long overdue and has the full support of ISCP, NFPA, Age Action Ireland and all their affiliates representing hundreds of thousands of pensioners, many of whom are experiencing pension poverty for the first time.

Why Pension Poverty?

I contend it's because of the abuse of power by Pension Providers and Trade Unions to the exclusion of pension representation with equal rights at the negotiating table when pension issues are being negotiated. Here are three examples from my experience:-

(a) Governance of DB Schemes, (b) Industrial negotiations and (c) MFS negotiations.

Governance

In her recent High Court Judgement Ms Justice Pilkington, on the case involving members of the Irish Airlines (General Employees) Superannuation Scheme and the State, acknowledged collaboration between stakeholders other than pensioner representatives. This collaboration is widespread. For example in ESB the governance of the Scheme was negotiated between the Company and the ESB Group of Unions in 2010 to the exclusion of pensioner representation. Currently the ESB Retired Staff Association represent nearly 70% of the membership of the Scheme. In fact there is no mention in the rules of the Scheme in regard to the procedures and appointment of the Trustees. Unusually for a Defined Benefit Scheme there is a Superannuation Committee comprising ten members with absolutely no representation from pensioners. In 2010 also an interview process was introduced for election of staff trustees, a totally undemocratic process denying the rights of pensioners to put their names forward on the ballot paper for election. Currently the Trustees of the Scheme refuse to meet with the ESB RSA.

INDUSTRIAL RELATIONS NEGOTIATIONS

Again, clearly across the whole spectrum of pension provision pensioners are excluded from the negotiations table. Unlike their colleagues who are members of Trade Unions they have no access to the States I.R. procedures currently resulting in a two tier membership of Schemes (a) one for contributing members and (b) one for pensioners. Trustees have a fiduciary duty to ensure that all members of the Scheme are treated equally. How can Trustees carry out their duties given the existence of such a two tier system?

MINIMUM FUNDING STANDARD

As you are aware DB Pension Schemes are required to submit a Minimum Funding Standard to the relevant Minister and the Pensions Authority for approval periodically. In some instances the pension providers (i.e. employers) and Trade Unions negotiate a MFS to the exclusion of pensioners representation. Again pensioner representatives have to be at the table when pension issues are being negotiated.

Finally, I want to say a few words about corporate control of DB Pension Scheme.

In 2007 I had just been appointed to the Board of ESB when the 2006 actuarial review of the DB Pension Scheme was presented to the Board. I queried the fact that an unprecedented additional four years longevity assumption had been applied resulting in an actuarial deficit in the fund rather than an actuarial surplus. Incidentally I pose the question why is there not a standard actuarial assumption for longevity in the Republic of Ireland. During the banking crisis of 2008 an actuarial review of the Scheme was brought forward by one year resulting in a larger actuarial deficit. All trustees of the ESB Defined Benefit Scheme are appointed by the Board of the Company. Pensioners are major stake holders in such Schemes and must be at the table during negotiations and have I.R. Procedures proposed by this Bill.

Critique of IBEC/ICTU submission

Response ICTU

We welcome the broad support of ICTU to the Bill. With regard to the licensing for collective bargaining we have set out in our submission that we do not wish to interfere with the normal bargaining between Trade Unions and Employers with the exception of Pension issues that impact on the livelihood of pensioners. We have to be at the negotiation table. We have to have the same rights as members of Trade Unions (members of the same pension scheme) in regard to procedures including conciliation and arbitration.

With regard to licensing, my understanding is that the legislation is nearly 80 years old. Pension provision has moved on considerably since then. For instance, I would refer you to the Garda Representative Association website, which clearly sets out their right '*to control or influence the pay and conditions of employment.*

Response to IBEC

The submission for IBEC focusses mainly on the influence of another party to the collective bargaining process between Trade Unions and Employers. They also claim that the action will '*distort the interests of existing workers*'. The ISCP Collective Network is seeking only to be involved in procedures of negotiations conciliation and arbitration where pension schemes are involved. To have the same rights as active members of Trade Unions. It should be noted that trustees of Pension Schemes have a fiduciary duty to ensure that ALL members of a pension scheme are treated equally, which of course give them access to the procedures enjoyed Trade Union members.

IORP11 European legislation have increased the responsibility of trustees to ensure that ALL members of a pension scheme are equally. Trustees of most pension schemes are appointed by the pension providers and are not a party to the negotiation/ arbitration process. It is disturbing to note, that at present Employers and Trade Unions are negotiating on pension provisions without pensioners being at the negotiation table, particularly where pensioners considerably outnumber active members of the scheme.

At present retired staff continue to have a relationship with their employers as pension provision is still part of their terms and conditions of employment.

In paragraph two (2) of their submission, IBEC states *Once an employee retires or leaves the employment, the employer no longer budgets for persons external to the business, nor should they have to, nor do these employers take part in any further benefit negotiations as they have no consideration to offer*. Not so, in regard to Defined Benefit schemes the employer continues to have responsibility e.g. cost of living increases and many others. In relation to Defined Contribution Schemes pensioners may have issues with the employer; contributions and the individual investment structure. IBEC admit that there is an obligation to provide access to at least one standard PRSA. ISCP Collective Network understand that the Government are soon to introduce mandatory Pension Schemes mainly in the private sector. If there are no negotiation/ conciliation/arbitration procedures in place beyond the current provision of 6 months, leaving pensioners with no rights in this area, then we forecast a strong resistance to such mandatory schemes.

IBEC refer to the '*inevitable outcome is industrial action*' ISCP Collective Network would point out that is not possible for pensioners to engage in industrial action.

Presentation to ETE Joint Oireachtas Committee Wednesday 25th January 2023

**Tony Collins,
Chairman, National Executive, ESB Retired Staff Association**

I wish to thank the members of the Committee for the opportunity to make this presentation regarding **the Industrial Relations Provisions in Respect of Pension Entitlements of Retired Workers Bill 2021** and to outline the reasons why this Bill is vital to ensure equality of representation for retired workers.

While ESB Retired Staff Association is a member of the Collective Network of Retired Workers under the auspices of the Senior Citizens Parliament, this presentation is being made, drawing on the lived experience of our Association with ESB, as sponsoring Employer, and as members of ESB Defined Benefit Pension Scheme, and to demonstrate how ESB responsibilities in relation to the Pension Scheme are intertwined with the ongoing operations of the Scheme.

Why This Bill is Needed

Retired workers do not have a voice, nor do not have any Body or Organisation to refer to with grievances once they're retired longer than 6 months.

WRC

We believe that access to the Industrial Relations Machinery of the State is a basic right for workers and former workers, however, retired workers can only refer grievances that they may have with their former employer, up to 6 months post retirement.

This Bill would eliminate that 6-month time restriction and give retired workers equality of treatment under the law.

We cannot be expected to accept that only employee members of a pension scheme have a right to representation with the sponsoring employer and if necessary, the WRC, and retired workers do not.

Pensions Ombudsman

The role of the ombudsman is limited to complaints made by *individual* pensioners, and only in respect of maladministration by the trustees of a scheme, and only after the fact. They won't accept a complaint from pensioners acting collectively or represented by the body of their choosing.

This leaves the sponsoring employers out of the picture entirely and in no way addresses the concerns of pensioners which are far wider than any narrow issue of maladministration by the trustees of a scheme.

Pensions Authority

The Pensions Authority remit under the Pensions Acts concerns itself almost exclusively with Trustees' compliance with the Pensions Act. This remit excludes individual pensioners or groups of pensioners and offers nothing by way of arbitration or direct assistance.

Equality Tribunal

The Equality Tribunal also has a 6-month time restriction post retirement as I and my colleagues in ESB discovered many years ago when we took a case to the Tribunal, which was overruled and failed on the 6-month time limit. The case was never heard. An appeal to the Labour Court produced the same ruling.

Section 50 Pensions Act

Section 50 of Pensions Act provides for a one-month consultation period for pension Scheme members where the Trustees intend to restructure a Pension Scheme and reduce benefits. This one-month consultation period for members is totally inadequate, and of no practical value as the only recourse that Pensioner representative groups would have during this period would be to the courts, a very costly exercise, for which retired workers have no financial resources .

With all of the aforementioned options virtually closed to retired workers, it is of the utmost importance that legislation is introduced without further delay to give pensioner groups a voice and a right to representation & arbitration procedures at the WRC.

Sponsoring Employer

In the context of ESB Defined Benefit Pension Scheme, ESB, as sponsoring Employer has financial obligations to the Pension Scheme, appoints the Scheme Actuary & approves the appointment of the Pension Scheme Trustees. ESB also has full control of Pension Scheme rules & approves changes thereto, and in some instances negotiates changes to Pension Scheme Governance without retired workers being party to the process.

During 2022 there were two examples of ESB holding a consultation process with employee members only on Pension Scheme rule changes. Retired worker members of the Scheme were excluded from this process, even though the Scheme rules apply to ALL members.

When they retire, workers have completed the terms of their contract of employment but the employer's pension promise delivery only commences when the employee retires where the pension scheme is a defined benefit scheme. It follows that the employer must support the scheme if the scheme is otherwise unable to meet the employer's pension promise, at least in respect of already retired members.

An employer that engages under industrial relation processes with employee members only of a scheme should not be permitted to impose reduced terms on already retired former employees unless pensioners are made a part of the industrial relation engagement process alongside employee members of the pension scheme.

This was not the case when in 2010 an agreement on pensions, between ESB Trade Unions and Management, excluded retired workers, nor did they have a vote on the terms of the pensions agreement which directly affected retired workers. This agreement has had, and continues to have, a serious impact on their future financial security.

Retired workers have no forum within which to challenge this unfair and inequitable practice of changing the terms & conditions of their retirement. This Bill will give retired workers that right, i.e. to challenge any changes to their pension rights.

Pensioners are not seeking to participate in general IR matters, but only on those issues related to pensions. Any IR process dealing with pension issues should be confined to pension issues only and should not embrace other matters. This would ensure that pensioner involvement would not creep outside of the limited scope of the bill which is to create equality of representation for pensioners with employee members of a scheme on pensions issues only.

Redress mechanisms for retired workers?

- DB Pension Schemes are collective funds for all scheme members
- Employers engage with employee members collectively on pension issues but do not engage with pensioner members.
- This can have very significant adverse consequences for pensions in payment.
- At this level there are NO redress mechanisms.
- Creating equality of representation for all members of a scheme is what this bill is about.

- The pension promise, as a condition employment, is the pension promised by the employer and not that of the pension scheme/trustees. The pension scheme is the vehicle for delivering on the employer's pension promise.
- As retired ESB workers we have no right to representation with ESB on pension issues, nor do we have access to the state's industrial relations machinery for dispute resolution, while employee members of the same pension scheme have both.
- This Bill is designed to rectify this exclusion of retired members and to provide for equality of representation **for all members** of the scheme, which is the very least one should expect where the pension fund is a **collective** fund.
- I want to emphasise that this does *not* go beyond issues involving the pension scheme and will not otherwise encroach on employer/employee relations in any other area.

In the words of the Chief Commissioner of the Irish Human Rights and Equality Commission

***“The principle of participation underpins human rights and equality – making sure that the voices of those who are most affected by any issue, are part of any discussion or action on it. And not just a bit part, but a meaningful one where they are listened to and heard, in an accessible way, with respect and transparency.*”**

We thank you for taking the time to read through this and we look forward to meeting you and answering questions on the 25th January



NATIONAL FEDERATION OF PENSIONERS' ASSOCIATIONS

