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Deireadh Fómhair 2023

Joint Committee on Social Protection, Community and Rural Development and the Islands

Report on the pre-legislative scrutiny of the General Scheme of the Social Welfare (Amendment) Bill 2023

October 2023

33/JCSPCRI/019

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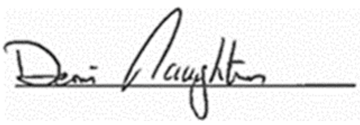
Cathaoirleach's Foreword

The Social Welfare (Amendment) Bill 2023 is an important piece of legislation which will seek to amend the Social Welfare (Consolidation) Act 2005 (as amended). The Commission on Pensions was established in November 2020 to examine the sustainability and eligibility issues in relation to State pension system and the Social Insurance Fund. The Commission's report was published in October 2021 setting out its recommendations to address these issues. In September 2022, following consideration of the report, the Government issued its response and implementation plan. The General Scheme represents the legislative provisions required to implement a number of the key elements of this response.

This legislation would introduce voluntary deferral of State Pension (Contributory) to allow people reaching age 66 from 1 January 2024 to choose to defer access to the State Pension (Contributory) and to access the pension at any point between age 66 to 70. It also seeks to provide for enhanced pension provision for long-term carers to cover gaps in their contribution record for the purposes of the State Pension (Contributory) and provide for the phasing out of the Yearly Average method of calculating entitlement to the State Pension (Contributory), and the full transition to the Total Contributions Approach for calculating such entitlements.

The Committee endorses the recommendations of the Pension Commission and welcomes the general scheme of this proposed legislation.

In its pre-legislative scrutiny of this Bill, the Committee held a meeting with Officials from the Department of Social Protection and invited submissions from interested groups and individuals. I would like to thank the Officials for their valuable engagement with the Committee, the organisations who made written submissions, and the Members for their hard work. I would also like to acknowledge the assistance of the Committee Secretariat in preparing this report.



Denis Naughten T.D.

Cathaoirleach to the Committee

October 2023

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Introduction and Witnesses

This is the report on pre-legislative scrutiny of the General Scheme of the Social Welfare (Amendment) Bill which seeks to implement recommendations from the Commission on Pensions. This report summarises the engagements, submissions and the key points considered by the Committee when drafting the recommendations set out in this report.

Purpose of the Bill

The Social Welfare (Amendment) Bill 2023 seeks to amend the Social Welfare (Consolidation) Act 2005 (as amended). The General Scheme of this Bill aims to deal with a broad range of pension related measures, including:

- the introduction of new flexibilities to the pension age of 66;
- provision for people to be given the choice to work until the age of 70 in return for a higher rate of State pension;
- a move to the total contribution approach exclusively over a ten-year period when calculating the rate of State pension, which was recommended by the pension commission;
- the introduction of a contributory State pension provision for long-term carers of more than 20 years, for the very first time;
- a commitment to explore a new scheme to support people who cannot continue to work in their early 60s and;
- the long-term sustainability of the State pension system to be addressed through gradual, incremental increases in social insurance rates.

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 174A, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

Background

The Commission on Pensions was established in November 2020 to examine the sustainability of the State Pension system and the Social Insurance Fund (SIF). This was done in fulfilment of a Programme for Government commitment. The purpose of establishing the Commission was to review the evidence as to the necessity for changes to the State Pension system and, if it determined that such changes were required, to give its recommendations as to the precise nature of those changes.

The report of the Commission on Pensions was published on 7 October 2021. The Social Welfare (Amendment) Bill 2023, seeks to introduce three key measures in the reform of the State Pension which are as follows:

1. Provide for the introduction of voluntary deferral of State Pension (Contributory) to allow people reaching age 66 from 1 January 2024 to choose to defer access to the State Pension (Contributory) and to access the pension at any point between age 66 and 70. During deferral, a person will be entitled to an actuarially increased rate of pay for each additional year they defer. A person who defers will also be able to make additional social insurance contributions to increase their contribution record or meet the eligibility requirements for State Pension (Contributory). Changes are also required for access to short-term social welfare payments during deferral.
2. Provide for enhanced pension provision for long-term carers of incapacitated dependents by attributing the equivalent of paid contributions for long-term carers to cover gaps in their contribution record for the purposes of the State Pension (Contributory). In order for the contributions to be counted, they must reach a total of 1040 (20 years) contributions.
3. Provide for the phasing out of the Yearly Average method of calculating entitlement to the State Pension (Contributory), and the full transition to the Total Contributions Approach over a 10-year period.

Referral

The general scheme of the Social Welfare (Amendment) Bill 2023 was referred to the Joint Committee on Social Protection, Community and Rural Development and the Islands on 3 August 2023.

Meeting

The Committee held one meeting on the general scheme,

Date	Witnesses
27 September	*Officials from the Department of Social Protection* • Tim Duggan, Assistant Secretary Pensions • Colum Walsh, Principal Officer, Pensions Policy • Orlaith Mannion, Principal Officer, Legislation and Planning

A link is to the transcript of this meeting is available here.

Recommendations

1. The Committee recommends that the actuarial calculation for Pension enhancement over 66 years be applied to the Qualified Adult Allowance.

2. The Committee recommends that the cut off age of 70 be replaced with 75 and that the enhanced pension would keep increasing until the individual starts drawing down their pension or reaches 75, in light of the fact that life expectancy has increased from 65 to 82 years old.

3. The Committee recommends that periods on Farm Assist should be treated retrospectively similar to Jobseekers Allowance. The Committee also recommends that a credited contribution should be granted for all years a farmer was on Farm Assist. This is to facilitate people approaching pension age who will not have an entitlement to contributory pensions, such as small

farmers and fishers who had been in receipt of farm assist or fish assist payments.

4. The Committee recommends that home caring credit should cover the full period of all children reaching 12 years old rather than the 20-year block proposed in the general scheme. This is to avoid a situation whereby if there is a gap of greater than eight years between the birth of the oldest and the youngest child, the stay-at-home carer loses out on the benefit because of the children's age gap.

5. The Committee recommends that provisions be put in place to allow foster carers to avail of long term foster care credit, similar to carers.

6. The Committee recommends that all new measures be implemented from the date of enactment of this Bill.

7. The Committee recommends that the Total Contribution Calculation be based on 30 years as opposed to 40 years' worth of contributions.

8. The Committee recommends that the Department of Social Protection should introduce an awareness campaign regarding pension entitlements for people who may have periods where they have not made pension contributions, such as carers, and ensure they are aware of the pension implications.

9. The Committee recommends the reinstatement of a retrospective process where partners actively working on farms will be eligible to make PRSI contributions for a contributory pension.

Consideration of the General Scheme

Heads 1 and 6

Head one provides for the introduction and amendment of definitions for the purposes of this Bill to give effect to the Government Decision for the changes required to introduce pension deferral for those who reach pensionable age and choose to defer drawing down their pension payment up to the age of 70 and for the introduction of attributed contributions for long term carers.

Head 6 provides for multiple amendments to section 108 of the Principal Act which sets out the provisions for eligibility for State Pension (contributory) and the relevant interpretation provisions that apply to Chapter 15. This Head expands the eligibility criteria for State Pension (contributory) beyond those who reach pensionable age (66) to include those who apply for their State Pension (contributory) up to the age of 70 to draw an actuarially increased rate at their relevant age of claiming (67,68,69 or 70).

The Head also provides that such a deferred claim will be subject to additional conditions under section 109, which will have the effect of modifying access to the actuarially increased pension rate if during the deferral period they are in receipt of another social welfare payment: the State Pension (non-contributory), a specified contingency social welfare payment or is a person in respect of whom an increase for qualified adult on another social welfare payment is being paid.

Pension Deferral

In this general scheme, the Minister proposes that the State Pension age would remain at 66 but provided flexibility with accessing the State Pension (contributory) to be introduced from 1st January 2024 to allow people reaching age 66 to defer access to the State Pension (contributory) and to access it at any point between the ages of 66 and 70, inclusive.

The Committee raised the issue of deferring the pension at the meeting in public session with the Department of Social Protection[1]. One matter raised was whether a

[1] JCSPCRI Meeting Transcript available here

person who reaches the age of 66 and wishes to continue working and defer their pension to 70, is there a mechanism to stop an individual drawing down their pension and continuing to work. It would appear that there is no provision connecting the entitlement to a pension and continuing to work.

The Committee raised concerns around the proposed enhanced state pension, where if an individual had the full State pension, they would be taking a gamble as to whether they would live longer than 83. This is the crossover point where individuals would have recouped what they lost in the years during which they did not draw down their pension by the enhancement. The Committee asserted that this may not be of a significant value for men, who statistically do not tend to live as long as women.

The Department informed the Committee that the proposal behind the enhanced rate is that it is an actuarially enhanced rate and is not intended to enrich people, instead it is intended to be as cost neutral as possible. Department Officials also told the Committee that it is around 83 that the balance is struck, but it also works the other way in the sense that if you live longer than 83, you will gain significantly because an individual would be on this significantly enhanced rate.

The Committee want to note that that the impression is not given that if you defer it, there is an enhancement for everybody. That could mean a very significant loss for some people, and the closer to 66 you die, the greater the loss if you defer pension drawdown.

Recommendation 1

The Committee recommends that the actuarial calculation for Pension enhancement over 66 years be applied to the Qualified Adult Allowance.

The Committee also raised concerns around the cut off for retirement being at 70. With regards to the fact that the life expectancy today is 82 years of age, in comparison with the life expectancy in 1960 being 65, the Committee feel this should be reflected in the cut off for retirement. While there would not be a huge benefit from an actuarial point of view, there would be a benefit if there was someone who had a mixed contribution record, who is in good health and wants to continue working beyond their 70th birthday. This would be beneficial for people who have not reached the 40-year threshold at this stage.

Recommendation 2

The Committee recommends that the cut off age of 70 be replaced with 75 and that the enhanced pension would keep increasing until the individual starts drawing down their pension or reaches 75, in light of the fact that life expectancy has increased from 65 to 82 years old.

Class S PRSI

In their submission to the Committee, the Irish Farmer's Association[2] raised concerns regarding a farmer's liability for Class S PRSI. In most cases, farmers between the ages of 16 and 66 years of age with earnings of €5,000 or more per annum are liable for Class S PRSI, at a rate of 4% taxable income (subject to no upper limit) or €500, whichever is the greater.

A significant number of farmers are in receipt of Farm Assist, and their farming incomes may not exceed €5,000. Consequently, farmers must be making voluntary contributions to keep their records up to date. For people making voluntary contributions, it is important that the minimum amount required to pay remains at €500 and not increased beyond this level. Farmers in receipt of farm assist pre-2007, were precluded from paying self-employed social insurance contributions.

The Committee are in agreement with the submission from the Irish Farmers Association, that Farm Assist should be treated as a qualifying payment for social insurance contributions, similar to Jobseekers Allowance. The main groups now approaching pension age who will not have an entitlement to contributory pensions

[2] IFA submission, Page 2, available here

are small farmers and fishers who were in receipt of farm assist or fish assist payments.

Recommendation 3

The Committee recommends that periods on Farm Assist should be treated retrospectively similar to Jobseekers Allowance. The Committee also recommends that a credited contribution should be granted for all years a farmer was on Farm Assist. This is to facilitate people approaching pension age who will not have an entitlement to contributory pensions, such as small farmers and fishers who had been in receipt of farm assist or fish assist payments.

Long-term Carers Contributions

The Programme for Government acknowledges the important contribution that carers provide and is fully committed to supporting them in that role. The current State Pension (contributory) system gives significant recognition to those whose work history includes an extended period outside the paid workplace, often to raise families or to provide another full-time caring role. This occurs through the award of PRSI credits, the Homemaker's Scheme and the Home Caring periods. Notwithstanding these measures, barriers still exist for long-term carers of incapacitated dependents in accessing the State Pension (contributory).

To address those issues, the general scheme of this Bill provides for an enhanced State Pension provision for people who have been caring for incapacitated dependents for over 20 years. It is proposed in the general scheme that this will be done by attributing the equivalent of paid contributions to long-term carers to cover gaps in their contribution record for the purposes of the State Pension (contributory).

Recommendation 4

The Committee recommends that home caring credit should cover the full period of all children reaching 12 years old rather than the 20-year block proposed in the general scheme. This is to avoid a situation whereby if there is a gap of greater than eight years between the birth of the oldest and the youngest child, the stay-at-home carer loses out on the benefit because of the children's age gap.

As stated under Head 6, "long-term carer's contribution" means a contribution reckonable in respect of a person for State pension (contributory) purposes. The conditions for this contribution include the person must have a minimum of 1040 contribution weeks, an insurable employment, or self-employment, of up to 18.5 hours per week.[3]

The Committee raised concerns on the home caring credits, specifically regarding the 18.5 hours rule. The concern is on the creation of a cliff-edge for those working just over the 18.5 hours. Cliff-edges often create a disincentive to work for individuals in this case, in terms of their contributions and pensions.

The Committee raised the point that caring responsibilities rise and fall over a person's lifetime. When discussing a 20-year period, the person being cared for may go through periods of good health and periods of worsening health, which may be difficult to keep track of. The Committee are concerned about how this may be meaningfully translated into this pension provision at the end of this 20-year period so that people do not feel trapped within that situation, and when the caring needs are less, are able to get out to work more without feeling they have stepped over that cliff edge.

The Committee considered an example of the above where a parent, will be caring for a child with a disability full time up to the age of five. When that child then begins attending school, they will be in the school for 28 hours a week, but the mother can only work for 18.5 hours. When that child then goes on to secondary school, the hours they are in school increase again, and if the child then goes into a training centre after their 18th birthday, the threshold goes up again. The Committee makes the point that where there is legitimate provision of care through education or

[3] General Scheme, Head 6, Page 16, available here

training, there should be flexibility beyond the 18.5 hours. While the level of care will remain constant, the hours of care will alter over time.

The Committee also wanted to account for foster carers in this discussion. The Committee feels that foster carers are caught between provisions. They are not actively contributing to the workforce and they are not going to be able to make those PRSI contributions but they are providing a very valuable service to society as a whole. It is the firm view of the Committee that this legislation would also incorporate provision for long-term foster carers as well as long-term carers.

Recommendation 5
The Committee recommends that provisions be put in place to allow foster carers to avail of long term foster care credit, similar to carers.

Transition to the Total Contributions approach

Head 6 also provides for the insertion or amendment for the purposes of interpretation of the Chapter to address each of the changes flowing from the Government decision that are required for State Pension (contributory) (deferral, long-term carers contributions and the transition to the Total Contributions Approach (TCA)).[4]

Over the next ten years, the yearly averaging method of calculating State Pension will be phased out and replaced by the TCA approach. During the 10-year transition period a person's pension will be calculated using two methods and the person will be granted a pension using the higher of the two calculations:

- The first method will use the full TCA approach whereby a person will require 40 full tears of reckonable contributions to receive a full pension.
- The second method will, in the first year of operation, calculate what a person's pension would be under the existing yearly average approach. The

[4] General Scheme, Head 6, Page 12, available here

pension rate of payment will then combine 90% of this yearly average rate with 10% of the TCA rate. The proportion accounted for by the yearly average rate will then reduce by 10% over each of the subsequent 10 years until the pension calculation is fully based on the TCA method only.

The person will then receive the higher of the two amounts calculated either under (i) TCA only calculation or (ii) the combined TCA and yearly average calculation.

Recommendation 6

The Committee recommends that all new measures be implemented from the date of enactment of this Bill.

In their opening statement to the Committee[5], the Department discussed the recommendation of The Pensions Commission which stated that the current model of Interim Total Contributions Approach should become the definitive Total Contributions Approach, which equates to 40 years or 2,080 contributions required to qualify for a maximum State Pension (Contributory) payment rate. This includes provisions for 10 years of PRSI credits and 20 years of Home Caring periods, but with a cap of 20 years of combined PRSI Credits and Home Caring periods.

The Committee feels that the 20-year caring periods for children rule seems to discriminate against spread-out families. If you have three or four children and there is more than eight years between the first and the last, you cannot get the full value of the home caring credit. The Committee also feel that the Total Contributions Approach calculation should be based on 30 years of contributions rather than 40 years, as it can be challenging for some people to reach the 40 years or equivalent contributions.

Recommendation 7

[5] Opening Statement, Page 1, available [here.](here)

The Committee recommends that the Total Contribution Calculation be based on 30 years as opposed to 40 years' worth of contributions.

Pension entitlements for Farmers/Fishers

In their submission to the Committee Irish Creamery Milk Suppliers Association[6] (ICMSA) raised fears regarding entitlements to contributory pensions for small farmers and fishers in receipt of farm assist or fish assist payments, specifically stating how the means test rules for these people can be overly punitive. The Committee feel that the means test for the State Pension Non-Contributory should be adjusted with higher thresholds of income allowed before a lower payment is made along with a change of the means of assessing capital.

In their submission to the Committee, the ICMSA raised concerns regarding female farmers. Female farmers make up 16,100 of the 137,100 family farms in Ireland, but there are currently 71,700 women working on farms which is one quarter of all workers on Irish Farms. Most of these women are not entitled to a contributory pension however due to lack of available information around the current rules or the current rules not taking account of their involvement in the family farm, they have been excluded from the scheme

Recommendation 8

The Committee recommends that the Department of Social Protection should introduce an awareness campaign regarding pension entitlements for people who may have periods where they have not made pension contributions, such as carers, and ensure they are aware of the pension implications.

The Committee supports ICMSA's proposal that a solution be put in place to regularise these farm families in terms of receiving a pension. There should be a

[6] ICMSA Submission, Page 3, available here

retrospective process whereby those that are close to pension age can avail of the contributory pension to recognise their hours dedicated to the family farm and recognition needs to be provided for those farm families where one partner who was working equally on the farm without adequate contributions should be included.

Recommendation 9

The Committee recommends the reinstatement of a retrospective process where partners actively working on farms will be eligible to make PRSI contributions for a contributory pension.

Conclusion

The Committee welcomed the opportunity to scrutinise this general scheme and put forward its recommendations to the Department of Social Protection. The Committee endorses this piece of legislation and requests that the Minister for Social Protection report back to the Committee on the implementation of the recommendations contained within this report.

APPENDIX 1 – Orders of Reference

Scope and Context of Activities of Committees (DSO 84 and SSO 70)

DSO 94

1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;

3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;

4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

Functions of Departmental Committees (DSO 84A and SSO 70A)

1) The Select Committee shall consider and report to the Dáil on-
    a. such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
    b. European Union matters within the remit of the relevant Department or Departments.
2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such
    a. Bills,
    b. proposals contained in any motion, including any motion within the meaning of Standing Order 187,
    c. Estimates for Public Services, and
    d. other matters

    as shall be referred to the Select Committee by the Dáil, and

    e. Annual Output Statements including performance, efficiency and effectiveness in the use of public moneys, and
    f. such Value for Money and Policy Reviews as the Select Committee may select.

4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
    a. matters of policy and governance for which the Minister is officially responsible,
    b. public affairs administered by the Department,
    c. policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
    d. Government policy and governance in respect of bodies under the aegis of the Department,
    e. policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
    f. the general scheme or draft heads of any Bill
    g. any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
    h. statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
    i. strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
    j. annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (*d*) and (*e*) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
    k. such other matters as may be referred to it by the Dáil from time to time.
5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

   a. EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
   b. other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
   c. non-legislative documents published by any EU institution in relation to EU policy matters, and
   d. matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
   a. members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
   b. members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
   c. at the invitation of the Committee, other members of the European Parliament.
8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
   a. such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
   b. such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess

periods) of the report being laid before either or both Houses of the Oireachtas.

APPENDIX 2 – Links to Submissions and Opening Statements

Submissions

	Name of organisation	
1	Caitríona Nic Mhuiris on behalf of Kinship Care Ireland	Available here
2	Irish Farmers Association	Available here
3	Irish Creamery Milk Suppliers Association	Available here

Opening Statement

	Name of organisation	
1	Tim Duggan, Assistant Secretary, Department of Social Protection	Available here

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