



Mr Daniel Hurley
Clerk to the Joint Committee
Joint Committee on Enterprise, Trade and Employment
Leinster House
Dublin 2

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22 February 2023

Industrial relations (Provisions in Relation to Pension Entitlements of Retired Persons)

Dear Clerk to the Joint Committee,

I refer to the Committee's request for detailed briefing on matters discussed at your meeting on 25 January 2023. This meeting was convened in relation to the Committee's post-second stage scrutiny of a Private Members Bill, sponsored by Deputy Brid Smith TD, entitled 'Industrial Relations (Provisions in Relation to Pension Entitlements of Retired Persons) Bill 2021'.

The purpose of the Private Members Bill is stated as being to amend and extend certain rights and protections of retired persons and certain representative associations in relation to industrial relations and trade disputes and for that purpose to amend the Trade Union Acts 1871 to 1990 and the Industrial Relations Acts 1946 to 2019, to make provision for enhanced representation of retired workers in relation to the administration of certain pension schemes, to amend the Pensions Act 1990 and to provide for related matters

This Bill passed second stage in June 2022. At the time, the Government did not oppose the Bill but requested a 12-month timed amendment to allow for officials to consider and consult with stakeholders on the novel provision of this Private Members Bill.

During this time, officials of this Department have consulted with colleagues in the Department of Social Protection (policy responsibility for pensions acts) and the Department of Public Expenditure and Reform. They have also consulted with conciliation experts and social partners as well as carried out a public consultation in April 2022. Full submissions with regards the outcome of the public consultation can be found here [Public consultation on retired workers access to industrial relations mechanisms for pension related issues - DETE \(enterprise.gov.ie\)](#) For a summary, please see annex 4.

Please see annex 3 for more detail on occupational pension schemes in Ireland.

What Does this PMB Propose?

- 1) This legislation is intended to enable retired persons (or their representative groups) to negotiate with their former employers, in circumstances where their occupational pension schemes may be impacted by changes that would affect their accrued pension benefits, in workplace negotiations alongside trade union and employer representatives.
- 2) To provide retired persons with this representation at conciliation, it is proposed to include a new category of 'retired persons' as parties to Ireland's industrial relations legislation.
- 3) This would include giving retired persons' representative groups new rights in relation to collective bargaining with unions and employers, enabling them to be party to any negotiations which impact their occupational pensions.
- 4) It would also give retired persons access to the WRC to seek redress when they are dissatisfied with not being consulted sufficiently, or to seek redress if unhappy with decisions taken which may reduce their occupational pensions.

It therefore appears that this Bill is designed to address a perceived mischief in law that suggests that retired persons have no voice and or rights with regards to their pension entitlements, on the premise that pension rights are somehow exposed or at risk simply because they are not covered by industrial relations processes. This perception is far from correct. Please see annex 2. Accrued pension entitlements represent property rights protected by the Constitution and the Pensions Acts. Pensioners also already have available to them a range of recourses to vindicate their pension rights, for example, under relevant provisions of the Pensions Act 1990 or through the offices of the Pensions Authority, the Financial Services and Pensions Ombudsman, and the Courts.

With regards to retired persons pensions rights in industrial relations disputes, it should be noted that while industrial relation negotiations relate to matters in the workplace, pension entitlements may form an aspect of the matters to be considered. Trustees of pensions schemes must always be consulted if a collective agreement refers to a pension matter and their agreement of the proposal is necessary for it to form part of an agreement. Trustees have a fiduciary and statutory duty to all members of a scheme and are not entitled to treat one category of members in a more favourable manner.

The Joint Committee is asked to note that pension scheme trustees already have duties and responsibilities under trust law, under the Pensions 1990, as amended, and under other relevant legislation. The duties of pension scheme trustees include administering the scheme in accordance with the law and the terms of the trust deed and scheme rules as well as ensuring compliance with the requirements that apply to these schemes. Trustees must act in the best financial interest of all scheme members, whether active, deferred or retired, and must serve all beneficiaries of the scheme impartially.

Policy considerations for the Joint Committee when considering the necessity of the proposed changes to the Industrial Relations Acts:

1. If passed, this Bill would create a 'third category' in industrial relations, contrary to international practice of industrial relations. Introduction of a third party to collective bargaining procedures (even if limited to issues connected to pension rights) has the potential to create significant disharmony in the industrial relations system. The Department has been unable to find another jurisdiction where such a 'third category' has been introduced to industrial relations.
2. The 'third category' created is not regulated and would not require a negotiating license. This could cause a proliferation of 'representative' groups, sometimes with competing demands. It would make it impossible for employers to identify who they should be negotiating with. For the first time also, the interests of a group of retired workers would be put against those of current workers in the industrial relations sphere creating significant disharmony. A position may arise where certain retired workers representatives are at odds with trade unions representing deferred members.
3. The 'third category' created would essentially have no clear 'negotiating position'. Trade unions negotiate with for example productivity, flexibility, and the withdrawal of labour, but retired representatives would have no such fall-back position. This would lead to open ended negotiations with representative groups who could keep negotiations open for as long as they wish. Without clarity on this point, the proposed requirement to be heard and consulted in industrial relations disputes may prove to be essentially meaningless.
4. Asking the WRC to adjudicate against the interests of current workers in the case of a disputed pension fund adjustment might put the conciliation service in an untenable position. The WRC and the Labour Court are established to vindicate the rights of workers and maintain industrial harmony in workplaces. For the first time, if this Bill is passed, the interests of retired workers would be pitted against those of current workers.
5. At present, the WRC negotiations mechanisms work on a voluntary basis where parties come to the WRC to resolve industrial disputes to their mutual benefit. It is not clear what would motivate an employer to attend such negotiations.
6. Policy consideration ought to be given on whether the introduction of the measures in the Private Members Bill disincentive employers from providing occupational pensions as a voluntary benefit to employees. It is a concern that an entitlement for retired persons to engage in collective bargaining with employers would be a considerable disincentive to employers to offer any pension above the legal minimum obligation. Is there a risk that this Bill may have an unintended consequence of unfairly penalising primarily younger and lower paid workers who may not have pension entitlements at this time?

7. Finally, the measures in the PMB could severely undermine the existing dispute resolution bodies which are provided to retired workers to vindicate their rights including the Pensions Authority. It would require a complete rewrite of the legislation governing the role of trustees as guardians of pensions funds on behalf of retired workers. The separation of powers between trustees and employers has been deliberately put in place by the State over many years to safeguard the rights of retired workers to their pension funds and to provide independent and transparent governance of these funds. If the relationship between retired workers and trustees is to be replaced by a direct relationship with former employers, this would require major changes to the entire pension system in Ireland and necessitate removal of a number of these safeguards.

Why can an occupational pension be affected by collective bargaining between employers and workers?

The witnesses before the Joint Committee are all active members (i.e. in receipt of a pension) of a Defined Benefit (DB) occupational scheme. A DB scheme is where the retirement benefit entitlement received is defined by reference to earnings, length of service, an index, or a fixed amount. In DB schemes, the contributions may have to be varied from time to time to make sure that the fund can meet the level of benefits. Some schemes allow the employer to top up the fund if necessary. DB pension schemes are considered to be more generous than the defined-contribution equivalent. They offer an additional income upon retirement, linked to final salary and in line with inflation, regardless of the performance of the fund's investments.

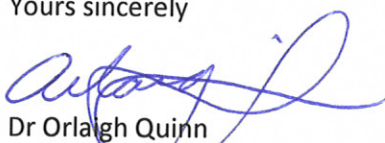
The witnesses all agreed that they have seen a decline in their pension rights and attribute this, at least in part, to 'not having a voice' and 'no rights' in industrial relations negotiations.

Under the law, DB scheme benefits are not guaranteed. If the scheme's assets are not sufficient to pay the benefits, and the employer is not able to meet the shortfall, promised benefits may have to be reduced. Please see annex 1. Funded DB schemes can be subject to amendment if the scheme assets fall short. Such amendments are subject to the trust agreement and pensions law.

Every pension scheme is governed by a set of legal documents where these terms and conditions are laid out, including a trust deed or equivalent document, which sets out how the scheme is governed and the rules of the scheme, which defines the terms and conditions of the scheme. Pension trustees are legally obliged to make this information available to all members of the scheme.

I trust this information is of use to the Committee. Department officials will be happy to provide further information on any aspect which may be required to assist with the Committee's detailed scrutiny of the Bill.

Yours sincerely



Dr Orlaigh Quinn
Secretary General

Annex 1: Current regulatory framework governing Defined Benefit Occupational Pensions for Retired Workers

Under Irish law, defined benefit scheme benefits are not guaranteed. If the scheme's assets are not sufficient to pay the benefits, and the employer is not in a position to meet the shortfall, promised benefits may have to be reduced. This has happened in a small number of cases in Ireland, such as Waterford Crystal.

Dissatisfaction with the process for this negotiated reduction in benefits is the key aspect driving the demand for this PMB.

A funded pension scheme may be wound up if the employer (1) goes into liquidation; (2) is bought by another company that decides not to continue the scheme; (3) fails to make contributions to the scheme within a set period; or (4) notifies the trustees that it intends to stop contributing to the scheme.

In these circumstances the Pensions Act, 1990 as amended requires trustees to wind up a scheme without undue delay. The Act also requires that pension benefits be paid in the following order (where the employer itself is not insolvent at the date of the wind-up):

Single Insolvency Order – if the employer is solvent

This order of payment applies where the defined benefit scheme is insolvent but the employer is solvent. The first priority to be paid is additional voluntary contributions and defined contribution benefits.

The second priority is the pensions payable to current pensioners but there are now limits on the amounts to which priority is attached as follows:

- The first €12,000 annually of pension
- 90% of pensions between €12,000 and €60,000 with a minimum of €12,000
- 80% of pensions over €60,000 with a minimum of €54,000

The next priority is 50% of the pensions of future pensioners. After that, the priority is:

- The remaining pension of current pensioners
- Remaining pensions of future pensioners
- Any other remaining benefits

This means that existing pensioners could have their current pensions reduced. Pensions under €12,000 may not be reduced. The maximum reduction is 10% of pensions under €60,000 (but they cannot be reduced to less than €12,000) and 20% of pensions over €60,000.

Double insolvency order – if the employer is insolvent

A double insolvency order takes place if the employer is insolvent. The priority in the winding up of a defined benefit pension scheme in such cases is as follows:

1. Additional Voluntary Contributions (AVCs) and defined contribution benefits
2. 50% of current pensioner and future pensioner benefits

3. Pensioner benefits up to €12,000 a year
4. Remaining benefits for current pensioners
5. Remaining benefits for future pensioners

Where the scheme does not have enough funds to pay 50% of pensioner and future pensioner benefits and pensioner benefits up to €12,000 a year, the Minister for Finance must provide the necessary funding.

Annex 2: Existing Rights for Retired Workers, including rights to consultation

The contention that retired workers are not consulted and have no legal protection in relation to their defined benefits occupational pensions may be misplaced, given the number of bodies specifically tasked with these duties, as provided for below. The Department of Social Protection is the lead Department to advise on this issue.

However, If this is found to the case, DETE is of the opinion that the correct way to remedy this situation is not through the creation of a new 'third category' within the Ireland's industrial relations legislation but through amending the existing legislative framework relating to retired persons as outlined below.

Pensions Authority

The Pensions Authority is the regulatory body for occupational pensions in Ireland and occupational pension schemes must register with the Authority. The Pensions Authority provides for the proper administration of pension schemes and the protection of pension rights for people living in Ireland. The Authority is the regulatory body for occupational pension schemes and Personal Retirement Savings Accounts (PRSAs) and also has a role in the development of pension policy in general.

The Authority provides information to members of pension schemes about their rights under the legislation. If necessary, the Authority has extensive powers to inspect the scheme's books and records, to enter premises and to require people to give explanations regarding the fund. It may apply to the High Court to have pension scheme trustees replaced in order to protect the interests of the members.

Among its responsibilities, the Pensions Authority monitors the financial strength of funded defined benefit pension schemes through the operation of the funding standard requirements under the Pensions Act, 1990, as amended. If a funded defined benefit scheme would not meet its funding standard liabilities and additional risk reserve on wind-up, the trustees must submit a funding proposal to the Pensions Authority that explains how they propose to deal with the deficit over the following three years. In certain circumstances, the Pensions Authority can allow the trustees more time to rectify the scheme's funding.

In most cases, the terms of a pension scheme may be amended. Details regarding the power of the employers and trustees to amend a scheme are generally specified in the scheme's trust deed and rules and are summarised in the member's booklet.

A scheme may be amended because an employer wishes to change the benefits provided. An employer may in certain cases wish to improve the benefits provided by the scheme, however scheme amendments often reflect difficulties in maintaining the level of funding required to support the existing benefits provided by the scheme, and result in a reduction in benefits or a closure of the scheme to new members or cessation of future benefits for existing members.

Trustees

At present, if a person is in receipt of an occupational pension, their relationship is with the trustees of the pension fund and they no longer have an employment relationship with their former employer.

Trustees have statutory and fiduciary duties to act in the best interests of all scheme members, whether active deferred or retired, and must serve all beneficiaries of the scheme impartially. Trustees must always be consulted if a collective agreement refers to a pension matter and they cannot violate their fiduciary and legal duties in this regard.

The proposed PMB would seek to change this so that pensioner members could be appointed as trustees in order to put pensioner interests above other cohorts. The effect of the proposed legal amendments in the Bill could result in a number of pensioner representative member being selected to the trustee board, to the exclusion of other member cohorts; having significant detrimental implications for them and making it impossible for impartial decisions to be made effectively.

One of the most important rights as a member of a pension scheme is the right to information and the right to be involved in the scheme. The trustees of the scheme must legally provide information to members, prospective members, their spouses, people entitled or prospectively entitled to benefits under the scheme and to representatives of trade unions.

Consultation process already in place when a restructuring of defined benefits is proposed

Where a restructuring of benefits is proposed, the employer and the trustees of a pension scheme are required to notify scheme members, beneficiaries and authorised trade unions. Changes made to the Occupational Pension Schemes (Section 50 and 50B) Regulations in 2015 require trustees to also notify groups representing the interests of pensioners and deferred scheme members in these situations. This affords the representative groups an opportunity to make a submission to the trustees of a pension scheme in advance of any proposed changes taking effect. These changes facilitate engagement between groups representing the interests of pensioner (and deferred) scheme members, the Pensions Authority and the trustees of a person scheme. **Therefore, it is incorrect to state that retired workers have no right to make their views known in relation to changes to their defined benefit pensions** (though they may not agree with the agreed outcome of the process).

Specifically, before the trustees of a scheme make a section 50 application to the Pensions Authority which could involve reductions to pension payments payable under a scheme, they must consult with the employer, the scheme member, with pensioners and with the authorised trade union representing members.

Trustees must undertake a comprehensive review of the scheme with a view to the long-term stability and sustainability of the scheme. In advance of any application, the trustees must notify all members of the scheme, including pensioners, in writing of –

- The circumstances giving rise to the proposed application and the reasons why the trustees believe an application is in compliance with their fiduciary duties,
- The proposed benefit reductions which are to apply to each category of member or other person and the reasons for treating one or more categories of member or other person differently,
- The fact that the trustees have requested additional contributions from the employers to avoid the necessity for a reduction in benefits and the response of the employers, and

- General examples of the projected impact of the reduction(s) on members using such assumptions as the actuary deems appropriate.

The pension scheme trustees must tell retired workers if more than 5% of the scheme's assets are invested in the employer's business or in any one investment. When a scheme is wound up, trustees must transfer each member's benefits into a new pension scheme; or purchase an approved assurance policy with a life assurance company on behalf of each member (a buy-out bond for active members and deferred members or an annuity for pensioners); or transfer each member's benefits into a PRSA, subject to certain conditions.

Indeed, the recently introduced EU (Occupational Pension Schemes) Regulations, 2021 further bolsters the obligations of trustees of occupational pension schemes, increasing the obligations of trustees to pension members.

In summary, trustees must act in the best financial interest of all scheme members whether active, deferred or retired, and must serve all beneficiaries of the scheme impartially. The PMB fails to take this into consideration and contains proposals that could undermine the law in this matter.

A fundamental concern with the proposed PMB is that it proposes shifting the relationship from the retired worker with the pension trustees to one of undefined 'representatives' negotiating directly with the former employer.

This would create serious legal uncertainty and hazard as the entire pensions legal infrastructure has been established to ensure pension funds are managed independently by the trustees so that there is no conflict of interest for employers, and they cannot mismanage or misappropriate the established funds.

The Financial Services and Pensions Ombudsman

The Ombudsman is the body responsible for dealing with complaints against pension providers and regulated financial service providers. It acts as an independent and impartial means of resolving complaints alleging financial loss occasioned by an act of maladministration and disputes of fact or law in relation to occupational pensions schemes and Personal Retirement Savings Accounts.

The Ombudsman provides a free mediation service to complainants and there is no cost for bringing a complaint. A pension provider may be directed to pay compensation to a complainant, following the formal investigation of a complaint. The Ombudsman will investigate complaints informally at first by talking to the complainant and pension provider with the help you to reach an agreement with your provider through mediation.

If the complaint is not resolved through mediation, the complaint continues to a formal investigation and a decision on the complaint. This decision is legally binding, which means that it can be appealed only to the High Court.

If a complaint is upheld, substantially upheld or partially upheld by the Ombudsman, he may direct the provider to pay compensation to the consumer or he may direct the provider to rectify or correct the issue. If a complaint is rejected, no action will be directed by the Ombudsman.

The investigation of a complaint, leading to legally binding decision is a formal process following which either party to a complaint can appeal the Legally Binding Decision to the High Court, within 35 days of the decision. This is a statutory appeal and the orders that can be sought from the High Court are set out in s64 of the Financial Services and Pensions Ombudsman Act 2017, as amended.

Annex 3 Occupational Pension coverage in Ireland

Occupational pension schemes are set up by employers and can provide a tax-free lump sum within certain limits, and pension income in retirement. These benefits are based on final or career earnings, or on the value of the retirement fund. The advantage of these schemes for workers is that the employer helps pay towards the cost of the benefits; a worker will receive tax relief on their own contributions and the lump sum at retirement is also tax free up to certain limits.

Such pensions are offered as a voluntary additional benefit by employers as part of an employment package. If an employer does not provide a worker with access to an occupational pension scheme, or if certain restrictions apply to their scheme, then a worker must be provided with access to a Standard Personal Retirement Savings Account (PRSA).

There is no legal obligation on employers to provide occupational pension schemes for employees. Due to the significant costs involved, in general, large employers in Ireland have occupational pension schemes, but many smaller employers do not.

According to the Central Bank (Occupational Pension Funds in Ireland- What do we know | Central Bank of Ireland), as of 2021, there were 74,866 Defined Contribution and 597 Defined Benefit active funds in the Irish pension fund sector.

Funds are overseen by trustees and range from a few very large funds with 5,000 active members and billions of euro in assets, to a significant number of very small funds with a single member and assets in the thousands of euro. The top ten pension funds account for approximately 30 per cent of the sectors assets.

In recent years, the Pensions Authority has indicated a transition away from defined benefit funds (a fall of 50 per cent in number of active schemes since end-2009). As such, many defined benefit funds are now closed to new members as employers face higher costs, and underfunding challenges compounded by a low interest rate environment.

In a defined benefit pension fund, any shortfall in funding must be met through increased contributions to avoid a reduction in promised benefits. With a defined benefit scheme, the employer holds all the risk associated with the retirement benefits. Where there is a difference between what your employer has promised and what's available in the pension fund, the employer has a liability to make up for the difference unless it is considered impossible for the business to remain operational or it is already insolvent.

This is why defined benefit schemes are becoming increasingly uncommon, in favour of less risky defined contribution schemes, which shift the pension risk onto the employee.

Conversely, for defined contribution pension funds, the member's income in retirement is dependent on asset performance. The structural change from defined benefit to defined contribution pension funds has shifted investment risk from the corporate sector to households.

It is a concern that a entitlement for retired persons to engage in collective bargaining with employers would be a major disincentive for employers to offer any pension above the legal minimum obligation. It would also add significantly to the administrative burden of the employer, who would now need to negotiate with retired persons on an open ended basis.

According to the most recent CSO figures¹, just over a quarter (25%) of workers in the 20 to 24 years age group have supplementary pension coverage. Supplementary pension coverage increases with age, with almost 74% of the oldest age group surveyed, persons aged 55-69 years, having supplementary pension cover. Most supplementary pension cover is with defined contribution (69% of pensions) rather than defined benefit (28% of pensions).

As stated previously, fewer employers are now willing to offer defined benefit schemes to their employees. Therefore, rates of defined benefit occupational pension cover is far higher for older age groups, with 48.2% of females and 44.3% of males in the 55 to 69 years age group having a defined benefit occupational pension in their current employment. By comparison, of employees aged 25 to 34 years, just 26.8% of males and 31.5% of females had a defined benefit occupational pension from their current employment, as did just 27% of males and 36.3% of females in the 35 to 44 years age group².

It is state policy to increase the number of younger workers who can access occupational pension programmes with their employer so that they have greater future protection. It is usually the lowest paid workers who would benefit most from such a pension provision from their employer. The measures in this PMB would clearly have the unintentional consequence of further reducing the access of the lowest paid and most vulnerable workers to such beneficial pensions going forward.

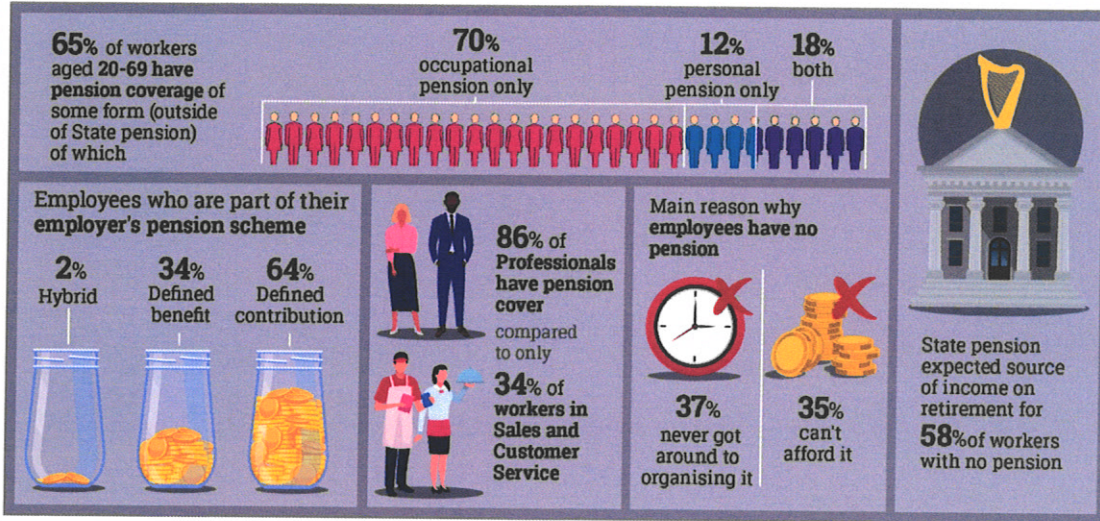
Employers are already moving away from the voluntary provision of defined benefit pensions for their employees, The provisions would act as a serious further disincentive to employers to provide such pensions and they may find such pension schemes impossible to effectively manage with the role of the trustees sidelined and negotiations now opened directly with an unspecified number of retired persons representatives on an open-ended basis.

There are serious concerns that the proposed measures would negatively affect a very large number of current workers, in order to enhance the pensions of a relatively small number of retired persons; a serious moral hazard. This is at a time when state policy is to increase the number of employees in Ireland with access to pension cover.

Indeed, there would seem to be a significant moral hazard in strengthening the bargaining rights of a small number of retired persons who already receive significantly in excess of the state pension at the cost of future generations of low paid workers who may wish to access an occupational pension scheme in the future.

¹ [Press Statement Pension Coverage 2021 - CSO - Central Statistics Office](#)

Pension Coverage 2020



Annex 4: DETE Consultation Process

At the Second Stage Oireachtas debate on the Bill, the former Minister of State for Business, Employment and Retail, Damien English TD, outlined the Department of Enterprise, Trade and Employment's concerns in relation to the proposed Bill.

However, to ensure that the views of all stakeholders were considered in relation to this issue, the Department ran a consultation process in March 2022, the purpose of which was to seek views on the introduction of a statutory right for retired persons to be included in collective trade disputes. In addition, the Minister met with a wide range of stakeholders individually, including several representatives of different groups of retired workers.

All submissions received in the consultation process have been published on the Department's website.

Submissions were received from:

- Dublin Port Pensioner's Association
- ESB Retired Staff Association
- ICTU
- Ibec
- Irish Senior Citizens Parliament
- Retired Aviation Staff Association (RASA)
- RTE RSA/Retired Semi States Association
- Social Democrats
- Unite Retired Members Branch
- 12 private submissions were also received from retired workers from Eircom/Telecom (5); Vodafone (1); Waterford Crystal (2); Aer Lingus (1) and undeclared (3).

The majority of submissions were seeking the following, in relation to defined benefit occupational pensions:

1. Retired workers must have a greater 'voice' in what happens to occupational pensions schemes which they are members of, outside of the role which they already are entitled to with pension trustees. This negotiation should take place on a collective basis directly with former employers and current workers by retired worker representative groups.
2. This additional consultation and negotiation process be facilitated by the industrial relations mechanisms of the State, including the right to take a case to the WRC when occupational schemes are affected or there are proposed changes which could affect their benefits.
3. A new category of 'retired persons representatives' should be created in industrial relations in order to enable retired workers and tie representatives to be included in talks between trade unions and employers which have effects on their occupational pension schemes.

4. It is stated that retired workers would have no desire to interfere with the collective bargaining process outside of issues which affect their occupational pensions, though no information is given as to how this could be defined in law and who would enforce such a measure.

In contrast, Ibec stated that it believes that the proposed measures would strongly discourage its members from offering defined benefit schemes. It fears that the inevitable outcome of the PMB would be industrial disharmony and ongoing negotiation, despite there not being any dispute between employer and current workers.