

# Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024 General Scheme

## Contents

Head 1 – Short Title and Commencement.....	2
Head 2 – Application of Bill and definitions.....	3
Head 3 – Restriction on enforceability of contractual references to mandatory retirement age .....	4
Head 4 – For whom this Bill has no effect.....	6
Head 5 – Avoidance of doubt on application of Employment Equality Acts .....	7
Head 6 – Non-interference with pension schemes.....	8
Head 7 – Amendment of Unfair Dismissals Act 1977 .....	9
Head 8 – Avenues of redress.....	11

## **Head 1 – Short Title and Commencement**

- (1) This Act may be cited as the Employment (Restriction of Certain Mandatory Retirement Ages) Act 2024
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

### **Explanatory Note:**

This is a standard provision dealing with short title and commencement.

## Head 2 – Application of Act and definitions

(1) This Act shall have effect in relation to clauses in contracts of employment, whether express or implied, which require an employee to retire before he or she attains the pensionable age.

(2) In this Act –

“contract of employment” means -

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with a person carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 to do or perform personally any work or service for another person (whether or not the other person is a party to the contract),

whether the contract is express or implied and, if express, whether oral or written.

“State pension” means the State Pension (Contributory) or the State Pension (Non-Contributory) as defined in the Social Welfare Consolidation Act 2005 as the case may be.

“pensionable age” has the meaning conferred on it by section 2 of the Social Welfare Consolidation Act 2005

“Minister” means the Minister for Enterprise, Trade & Employment

### **Explanatory Note:**

This Head provides that this Act will apply to clauses included in contracts of employment which oblige an employee to retire at an age which is below the age at which the employee can first access the State Pension.

There are also definitions for:

Contract of employment

State Pension,

Pensionable age

Minister.

### **Head 3 – Restriction on enforceability of contractual references to mandatory retirement age**

- (1) Where an employee does not consent to the enforcement of a mandatory retirement age in a contract of employment earlier than the pensionable age, that clause shall be deemed to prescribe the mandatory retirement age as –
  - (a) the pensionable age, or
  - (b) where the employee consents to retire at an age which is later than the mandatory retirement age but before the pensionable age, as that age.
- (2) Where an employee does not consent to retire at the mandatory retirement age, he or she shall notify the employer in writing of that fact not less than three months prior to the date on which he or she would have been required to retire, or, where the employer has specified a different notice period (which may be shorter than three months and shall not exceed six months) in their employee handbook, circular or the employee's contract of employment, not less than the period so specified.
- (3) Where the employee notifies the employer in writing, the employer shall not retire the employee before a date to which the employee consents or before the employee has attained the pensionable age, whichever first occurs.
- (4) Where the employee does not make the notification referred to at subsection (2), the employer may take it that he or she does consent to retire at the mandatory retirement age.
- (5) An employee may withdraw a notification under subsection (2) at any point but he or she must give the employer notice as set out in his or her contract of employment or as set out in the Minimum Terms of Notice and Terms of Employment Act 1973.

#### **Explanatory Note:**

In response to the Pensions Commission Recommendations and Implementation Plan the Government committed to a range of pension reforms which includes a commitment relating to contractual mandatory retirement age. The policy objective is to introduce measures which allow, but does not compel, an employee to stay in employment until pensionable age. Pensionable age is defined in the Social Welfare Consolidation Act 2005 as 66.

This Head creates a specific link between mandatory retirement clauses in contracts of employment and the pensionable age.

Subsection (1) provides that in circumstances where an employee does not consent to a mandatory retirement age clause which is lower than the pensionable age, then that clause shall be read as though the age referred to is the pensionable age, or alternatively it shall be read as an age that the employee consents to retire which is later than the mandatory retirement age but is before the pensionable age. For example, a contract might prescribe a retirement age of 62, and the employee might agree to retire at 65. In that case, the contract is to be read as though the mandatory retirement age is 65.

Subsection (2) sets out that the employee must serve written notice to the employer if they do not consent to the mandatory retirement age. This notice must be given not less than three months before the date they would have been required to retire in accordance with their contract of employment. If the employer has established different notice periods, for example by way of notice periods set out in contracts of employment, employee handbooks or circulars the employee must give no less notice than that specified period, but this notice period must not exceed six months.

Subsection (3) provides that in circumstances where the employee provides written notice to the employer that they do not consent to the mandatory retirement age, the employer must not retire the employee before a date to which they do not consent to retire or before the pensionable age, whichever is the earlier date.

Subsection (4) confirms that in circumstances where the employee does not provide written notice to the employer that they do not consent to the mandatory retirement age, the employer may take it that the employee consents to the retirement age as set out in their employment contract.

Subsection (5) sets out that employee may withdraw their notification that they do not consent to the mandatory retirement age in their employment contract but must adhere to the notice periods set out in their employment contract or in accordance with the provisions of the Minimum Notice and Terms of Employment Act 1973. This is an important provision because if an employee is entitled to make a notification that they do not agree to the retirement age in their contract, they should be entitled to withdraw that notification. The provision includes notice periods to give the employer reasonable time to plan their workforce requirements.

#### **Head 4 – For whom this Act has no effect.**

Nothing in this Act shall operate to restrict or alter the application of any Act or statutory instrument for the time being in force which prescribes a mandatory retirement age for a person or class of persons below pensionable age.

#### **Explanatory note:**

Certain exemptions to this measure are required, particularly in relation to statutory retirement ages which apply to some public servants.

This Head provides that this Act does not impact or change any retirement age which is set out in law. For example, the nature of the military service and the essential requirement to impose restrictions on the retirement age in employment in the Defence Forces is expressly recognised in equality legislation and is provided for in Section 37(6) of the Employment Equality Act 1998. Furthermore, the Public Service Superannuation (Miscellaneous Provisions) Act 2004 imposes specific retirement ages for An Garda Síochána, certain members of the Irish Prison Service and the Fire Service. These provisions will continue to operate as normal.

The matter of mandatory retirement ages in respect of uniformed grades under the remit of the Department of Justice (Irish Prison Service and An Garda Síochána), the Department of Housing, Local Government and Heritage (Full-time Firefighters) and the Department of Defence (Permanent Defence Force) is currently being considered by the Interdepartmental Working Group on Fast Accrual Pension terms.

This General Scheme has been drafted so as not to alter any current statutory retirement ages and to ensure it does not interfere with or override the outcome of any review.

## Head 5 – Avoidance of doubt on application of Employment Equality Acts 1998

(1) This Act shall not restrict the operation of the Employment Equality Act 1998 as amended.

(2) Where –

- (a) an employee has made a valid notification under Head 2(2),
- (b) notwithstanding the notification, the employer has dismissed the employee, and
- (c) the employee makes a complaint under section 77 of the Employment Equality Act 1998 as amended,

the employer may not rely on the exception provided for in section 34(4) of the Employment Equality Act 1998 as amended unless he or she establishes that he or she has considered the matters set out in paragraphs (a) and (b) of that subsection with relation to the individual employee concerned.

### Explanatory note

Subsection (1) provides that the operation of the Employment Equality Acts will not be restricted.

Under equality legislation an employer is permitted to set a retirement age but only in circumstances where it can be objectively and reasonably justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. Equality legislation does not specify any age, and there is no link with the State Pension Age, and it will continue to operate as normal. This means that employees over the State Pension age may continue to invoke the protection of the Employment Equality Acts if their employer seeks to compulsorily retire them.

Subsection (2) provides in situations where:

- an employee has provided notification to their employer that they do not consent to retire at the mandatory retirement age set out in their contract,
- even with that notification of non-consent the employer has dismissed the employee at the mandatory retirement age set out in the employment contract,
- the employee seeks redress by referring a complaint under section 77 of the Employment Equality Act 1998

the employer cannot then rely on the exemption which is set out in section 34(4) of the Employment Equality Act 1998 unless they can establish that the dismissal was justified by the existence of a legitimate aim, and that the means of achieving that aim are appropriate and necessary in relation to the *individual* employee concerned (as distinct from a general class of employee).

There may be some risk in seeking to amend the construction of this provision as the general trend is to require the objective justification to be made on an individual basis – however, it is considered prudent to specify this having regard to the outcome in *Transdev Light Rail Limited v Michael Chrzonowski* (DEC- E2016-070).

## **Head 6 – Non-interference with pension schemes**

Nothing in this Act shall affect any pension scheme.

### **Explanatory note:**

This Head provides that this Act does not impact or change any pension scheme.



## Head 7 – Amendment of Unfair Dismissals Act 1977

The Unfair Dismissals Act 1977 is amended –

- (a) in section 1 (Definitions), by the insertion of the following after the definition of “Minister” –  
“pensionable age’ has the meaning conferred on it by section 2 of the Social Welfare Consolidation Act 2005”  
and
- (b) in subsection (1) of section 2 (Exclusions), by the substitution of the following subsections for subsection (b) -

“(b) an employee who is dismissed and

(i) who on or before the dismissal date he or she had reached the normal retirement age for employees of the same employer in similar employment being an age greater than the pensionable age, or

(ii) the employee had attained the age prescribed in law as the retirement age for the class of employees concerned,

(bb) an employee who is dismissed and who, on the date of his or her dismissal had not attained the age of 16 years,”

### Explanatory Note:

The Unfair Dismissals Act 1977 currently provides at section 2(1)(b) that the Act does not apply to an employee who is dismissed and who on or before the date of their dismissal they had reached the normal retirement age for employees of the same employer in similar employment. Essentially a dismissal in such circumstances is deemed to be fair and not subject to the provisions of the Unfair Dismissals Act.

This Head amends section 2(b) of the Unfair Dismissals Act 1977 and provides that the Unfair Dismissals Act will not apply to employees who are dismissed and –

- who on or before that dismissal date they had reached the mandatory retirement age set out in their employment contract and that age is greater than the State Pension Age,  
**or**
- in circumstances where the employee had reached a retirement age which is set out in law for the relevant class of employees, for example Defence Forces, An Garda Síochána.

The objective of subsection (i) of the Head is to provide that the Unfair Dismissals Act 1997 does not apply to employees who are dismissed at a retirement date which is greater than the State Pension Age. Accordingly, the effect of that is the provision ensures that the Unfair Dismissals Act will apply to employees who are forced to retire at an age which is below the State Pension age without their consent and such employees will have the right to seek the relevant redress under that Act.

Subsection (ii) sets out that the Unfair Dismissals Act 1977 will not apply to a situation whereby an employee is dismissed and they had reached a retirement age which is set out in law. This recognises that there is a requirement for specific retirement ages for certain public sector employments which

may be lower than the State Pension Age. These retirement dates are set out in law and such dismissals are deemed to be fair.

Subsection (bb) is required because the relevant provision is currently bundled with the exclusion relating to retirement.

## **Head 8 – Avenues of redress**

Where an employee is dismissed prior to the pensionable age by reason of attaining a contractual retirement age which is lower than the pensionable age, having made a valid notification referred to in Head 3 to his or her employer, he or she may take a case seeking redress under the Unfair Dismissals Act 1997 or the Employment Equality Act 1998 but not both.

### **Explanatory Note**

Section 101 (4A) of the Employment Equality Act 1998 provides that if a person takes a case or a claim under the Employment Equality Act 1998 and a claim for redress under the Unfair Dismissals Act then the claim under the Employment Equality Act shall be deemed to have been withdrawn.

This Head further clarifies that an employee may take a case to the Workplace Relations Commission under the Unfair Dismissals Act 1977 or the Employment Equality Act 1998 but cannot take a case under both Acts.