

Report required pursuant to Section 3A(6) of Public Service Superannuation (Miscellaneous Provisions) Act 2004

1. Introduction

(i) Government Decision of 5 December 2017

- On 5 December 2017, the Government agreed that the compulsory retirement age of most public servants recruited before 1 April 2004 would be increased to age 70, and that additional service above the age of 65 for affected public servants should attract pension accrual in the normal way, subject to the existing statutory limit of 40 years' pensionable service.
- The Government further agreed that the new compulsory retirement age would not apply to certain groups who, due to the nature of their work, are required to retire early. Members of An Garda Síochána, the Permanent Defence Force, Firefighters and Prison Officers are the constituent groups in this category. It was agreed that retirement age for these groups can only be dealt with at sectoral level where the detailed policy, operational and manpower issues relevant to those groups can be appropriately considered.

Primary legislation was required to effect these changes and the General Scheme of a Bill was approved by Government in this regard.

- At the same time, the Government also approved the utilisation of existing retire/rehire arrangements to allow public servants recruited before 1 April 2004 who reached their compulsory retirement age of 65 after 5 December 2017 but before the commencement of the necessary legislation to bring the new compulsory retirement age of 70 into effect, to remain in employment until the age of qualification for the Contributory State Pension (66), such service not to benefit from additional pension accrual. It was not possible for the service to be pensionable because, prior to the enactment of the legislation, accrual of pension was not permitted beyond the age of 65.

(ii) Requirement for primary legislation

At the time of the Government Decision of 5 December 2018, the vast majority of public servants recruited prior to 1 April 2004 had a compulsory retirement age of 65, which was provided for either in primary legislation or in statutory pension schemes. The terms of the public service pension schemes applying to this cohort prohibited membership after the age of 65.

New primary legislation was, therefore, required for the changes referred to at Para 1(i) to be implemented. Prior to the enactment of the necessary legislation, the compulsory retirement age of 65 continued to apply and pre-2004 public servants reaching that age were required to retire. A copy of the Press Release issued following the Government Decision is at Appendix 1.

2. Interim Arrangements

In order to make some limited accommodation for the cohort of pre-2004 public servants who would reach the age of 65 before the new compulsory retirement age of 70 came into effect, temporary arrangements were put in place to apply in the period between the Government Decision of 5 December 2017 and the enactment of the legislation.

The interim arrangements used existing retire and rehire arrangements in the civil and public service to facilitate pre-2004 public servants to retire at 65 as required but to be rehired for one year, until they reached the age of eligibility for the State Pension (Contributory) (66). In the civil service, the terms of these arrangements were set out in Department of Public Expenditure and Reform Circular 21 of 2017, copy at Appendix 2. Equivalent arrangements were made available by way of Circular in each public service sector.

The basic details of the arrangements were as follows:

- Public servant retires at 65 years of age;
- Retirement Lump sum is paid;
- Pension is paid, subject to abatement rules;
- Public servant is rehired on a work pattern with the same or fewer hours, subject to any reduction in hours being consistent with the business needs of the organisation;
- No pension contribution is payable and no public service pension benefits are accrued during the period of retention;
- Salary to be paid at the minimum point of the pay scale, in line with existing retire and rehire protocols;
- No provision for retention beyond age of eligibility for the State Pension Contributory (66).

Public servants availing of the interim arrangements were required to sign an undertaking confirming that they accepted the terms of the one year extension, in particular confirming that they understood that retention under the Circular did not confer any rights to any new arrangement that might be provided for in future legislation in relation to compulsory retirement age.

Public servants who availed of the interim arrangements have retired (at 65) and received lump sum and pension, subject to abatement. The interim arrangements were not intended to and could not put these individuals in the same position as the public servants who are covered by the legislation. The temporary arrangements were welcomed in that context.

3. Public Service Superannuation (Age of Retirement) Act 2018

(i) Timing

On 7 December 2017, the Attorney General's Office was asked to prioritise the drafting of the Bill. The Bill was included on the Government's list of priority legislation for publication in the Spring/Summer Session 2018.

The Bill, which was drafted as an amendment to the Public Service Superannuation (Miscellaneous Provisions) Act 2004, was published on 9 July 2018. It completed all Stages in the Seanad on 17 July 2018, shortly before the summer recess. The Bill, with the co-operation of both Houses continued its passage through the Oireachtas in November and December 2018.

The Public Service Superannuation (Age of Retirement) Act 2018 was signed into law by the President on 26 December 2018 and came into effect immediately from that date.

(ii) Public servants covered by the Act

From the outset, the Government's intention was that the new compulsory retirement age of 70 would apply from the date the legislation came into effect and that it would apply only to serving

public servants who had not already retired on age grounds before that date. The legislation was promulgated, drafted, considered and enacted on that basis.

The public servants covered by the Act are termed “relevant public servants” defined in Section 2 of the Act. This includes the vast majority of public servants recruited prior to 1 April 2004, but specifically excludes, inter alia, those public servants who have already retired on age grounds before the enactment of the legislation, and who have been rehired on contract and are employed in a public service body on the date the legislation comes into effect. This includes the group of public servants who availed of the interim arrangements, whereby they were re-hired on contract for a period of 1 year, until the age of eligibility for the State Pension (Contributory) (66).

Notwithstanding the fact that those on the interim arrangements are rehired on contract until they reach the age of 66, legal advice is that to provide in legislation for an increase in the compulsory retirement age, does not affect the specific terms of a fixed term contract and would not confer on a person an entitlement to remain beyond the term of that contract up to the new retirement age.

(iii) Provisions of the Act

Primary legislation was required to increase the compulsory retirement age of the pre-2004 public servants covered by the legislation and to enable them to continue to accrue pension for the period up to age 70. On that basis, the Act provides for the following:

- that “relevant public servants”, a term defined in the Act and including the vast majority of public servants recruited before 1 April 2004, have a compulsory retirement age of 70;
- that the compulsory retirement age may be increased further by Ministerial order in the future under certain circumstances;
- that service up to the new compulsory retirement age of 70, or a higher age that may be determined in future by Ministerial order, will be reckonable for pension purposes;
- the amendment of all relevant public service pension schemes so that these schemes will allow relevant public servants to accrue pension benefits on their service between the age of 65 and 70;
- that any Statutory Instrument which sets a compulsory retirement age, which has been made under any enactment, should reflect the new compulsory retirement age of 70;
- the amendment of existing sectoral enactments which provide for a compulsory retirement age of less than 70 for a public servant or class or public servant so that these provisions are aligned with the compulsory retirement age of 70.

The practical effect of the Act is that any relevant public servant who had not already reached their compulsory retirement age before 26 December 2018 now has a new compulsory retirement age of 70. They have the choice to remain at work up to the age of 70 on existing terms and conditions, including pay and pension. Service between the ages of 65 and 70 continues to qualify for pension accrual, subject to the statutory limit of 40 years reckonable service.

Enactment of the legislation has no effect on public servants who, before 26 December 2018, had already reached the age of 65 and who had compulsorily retired on that basis. This includes the group of public servants who availed of the interim arrangements, whereby they were re-hired on contract

in a non-pensionable capacity, for a period of 1 year, until the age of eligibility for the State Pension (Contributory), which is 66.

4. Report under section 3A(6)

The new legislation amends the Public Service Superannuation (Miscellaneous Provisions) Act 2004. It inserts a new Section 3A(6) into that Act (referred to hereafter as Section 3A(6)), which provides that “the Minister shall, within three months of the passing of this Act, prepare and lay before the Oireachtas a report on the public servants who were forced to retire between 6 December 2017 and the commencement of this Act, due to reaching the age of 65 years and on potential remedies to assist this cohort of worker.”. This report is submitted to the Oireachtas in accordance with this provision.

While Section 3A(6) indicates that the report should cover the period from 6 December 2017, this report covers the period from 5 December 2017, as that was the date of the Government Decision and the date from which the interim arrangements became effective. During that period, the compulsory retirement age of 65 continued to apply and pre-2004 public servants reaching that age were required to retire in line with the statutory position at the time.

5. Figures relating to public servants covered by this report

Data in relation to public servants who were required to retire on age grounds, between the dates of 5 December 2017 and 25 December 2018, was requested from all public service employers. The public service covers a large and very diverse range of employers, comprising 17 Government Departments; statutory Offices, including some large offices such as the Office of the Revenue Commissioners; Local Authorities; the entire HSE organisation, hospitals and healthcare facilities; primary, secondary, tertiary and further educational institutions; and nearly 200 non-commercial state agencies operating across all sectors. While every effort was made to obtain accurate and complete data from all public service employers, due to the number of employers involved, data required and the time available for preparation of the report, the numbers provided in this report are indicative rather than definitive.

The following information was gathered:

- Number of pre-2004 public servants who retired at 65 in the period 5.12.2017 – 25.12.2018;
- Grades of those retirees;
- Years of service;
- Pensionable remuneration prior to retirement;
- Lump sums received;
- Number of specified retirees who availed of the interim arrangements;
- Grades of those retirees who availed of the interim arrangements;
- Years of service of those who availed of the interim arrangements;
- Lump sums received by those who availed of the interim arrangements.

Aggregate information was returned to the Department of Public Expenditure and Reform. Some information was collected by range (e.g. number of retirees who received a lump sum in the range €40,000 – €60,000). No personal/identifying information was collected.

The relevant points of information distilled from the data received are:

- **1,928** pre-2004 public servants compulsorily retired at age 65 in the period 5 December 2017 – 25 December 2018.

- The Health and Education sectors had both the greatest number of compulsory retirements in the period (684 and 614 retirements respectively) and the greatest number of retirees who availed of the interim arrangements (241 and 161 respectively).
- **646** (33.5% of the total cohort of 1,928) availed of the interim arrangements.
- At end March 2019, **152** (23.5%) of those who availed of the interim arrangements will have already reached their 66th birthday and ceased working.

The data did not indicate any particular trends among the cohort of retired public servants who chose to avail of the interim arrangements. Those who availed of the interim arrangements also reflected the grades and income and length of service levels (as indicated by retirement lump sums received) as the total cohort of retirees. This would imply that the decision to avail of the interim arrangements was highly personal to each individual public servant and was not determined by the level of salary earned or pension accrued.

6. Categories of affected groups covered by reporting requirements of Section 3A(6)

The public servants who retired at 65 in the specified period fall into three categories:

- Group A: Those who retired and ceased working;
- Group B: Those who retired, availed of the interim arrangements but have since ceased working following the expiration of that contract;
- Group C: Those who retired, availed of the interim arrangements and are still working under that interim arrangement contract.

In addressing the issues raised in the context of Section 3A(6), it is necessary to consider the different cohorts affected.

Group A Those who retired and ceased working in the public service

This group is no longer working in the public service, they have received their pension benefits and currently have no employer to employee relationship with their public service employer. Members of the group would have made the decision not to exercise their option to remain in work for 1 year under the terms of the interim arrangements. It was made clear to all public servants that the interim arrangements were for a 1 year period only and the choice not to avail of them was made on that basis. Some public servants reaching the age of 65 may not have been satisfied to avail of the terms of the interim arrangements (payment at minimum point of the salary scale, no pension accrual) for a single year extension to their employment. While it is open to speculation that their decision may have been different if the possibility of working to age 70 had been available, that option was not open to them.

It is estimated that there are approximately 1,282 people in Group A; 297 of whom at end March will have been retired for 1 year or more.

Group B Those who retired, availed of the interim arrangements, but have since ceased working following the expiration of their one year contract

This group are, again, no longer working in the public service since their interim arrangement contracts terminated at the age of 66. They have also received their pension benefits and currently have no employer to employee relationship with their public service employer. The interim arrangements

commenced with effect from 5 December 2017. Each interim contract was for a 1 year period until the public servant reached the age of 66. Those contracts have been expiring on an ongoing basis since 4 December 2018 and contracts continue to expire as these individuals reach the age of 66.

It is estimated that there will be approximately 152 people in Group B as at end March 2019. This group is increasing in size every day. For example, at end May 2019, there will be approximately 244 people in this group.

Group C Those who retired, availed of the interim arrangements, and are still working under their interim arrangements contract

This group again have retired from the public service under the terms of the then existing legislation, have received their pension entitlements but have been rehired on a fixed term contract by their public service employer for a period of one year up to age 66 in line with the interim arrangements introduced with effect from 5 December 2017 to 25 December 2018.

It is estimated that there will be approximately 494 people in in Group C as at end March 2019. This group is decreasing in size every day. For example, at end May 2019, there will be approximately 402 people in this group.

The positions of public servants in each of the three categories outlined above need to be considered in the context of this report.

7. Legal and Administrative Issues around enabling this cohort to remain at work to age 70

There are significant complexities associated with any measures to place this cohort in the same position as the public servants covered by the Public Service Superannuation (Age of Retirement) Act 2018.

(i) Primary Legislation

Primary legislation would be required to give these individuals the same rights in terms of status, pay and pension as applies in the case of the public servants covered by the Act.

(ii) Pay

Individuals who availed of the one year extension under the interim arrangements are paid at the minimum point of the pay scale, in line with existing policy for the rehire of retired public servants. This is consistent with existing pay policy across the public service, particularly evident in sectors like health and education where the rehire of retired staff to fill short term vacancies is widely used. In accordance with legal advice, any change in the pay regime for this retired cohort would serve to compromise the current public service wide policy of re-engaging retired public servants on the minimum point of the scale.

Any move which required the cessation of the minimum point policy in the rehiring of retired public servants would result in significant cost implications. The additional cost in the wider education sector alone, in the context of re-hiring retired staff to fill short-term teacher vacancies, has been estimated by the Department of Education and Skills at €7.8m per annum.

(iii) Pension Issues

(a) Lump sums

Public servants who retired at age 65 in the period in question have received pension benefits in line with the rules of the relevant pension scheme, including a once-off tax-free lump sum payment, up to a value of 1.5 times of salary on retirement. Were this cohort of retirees to be given the option of having their retirement “unravelling” retrospectively, they would be in the position of owing these lump sum payments to the Exchequer. This would raise significant issues:

- In so far as they would have received the retirement lump sum on the basis that they were retiring, the payment and receipt of the lump sum would represent the discharge of an Exchequer liability in advance;
- The potential requirement to pay back lump sums may present significant difficulty for the individuals themselves;
- The requirement to repay lump sums would represent an exposure to the Exchequer pending discharge of the amounts due, which might not be immediately possible for the individual.

(b) Pension Scheme

Those who retired and those who retired and were rehired in the period in question would all have been members of pension schemes that existed prior to the introduction of the Single Public Service Pension Scheme.

The Single Public Service Pension Scheme was established by the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. In general, the Single Scheme applies to everyone entering pensionable public service employment on or after 1 January 2013, whether for the first time or after a break of greater than 26 weeks. The Single Scheme has less favourable terms than the public service pension schemes from which this cohort would have retired.

Without legislative amendment, this group of retired public servants would join the Single Pension Scheme if they were reinstated as pensionable public servants.

(c) Treatment of interim period for pension purposes

During the interim period, this group made no pension contributions and accrued no pension benefits. Before the enactment of the recent legislation, the maximum age for membership of the pension scheme by pre 2004 public servants was age 65 and this cohort had all reached age 65. There is no mechanism to provide for the retrospective accrual of pension by this cohort.

(v) Workforce Planning

Many of the public servants who retired at age 65 in the specified period have already left their public service employment and will have been replaced by new employees. That includes all public servants in Groups A and B outlined in Para 6. They no longer have an employer/employee relationship with their former public service body. This would create serious manpower issues, particularly in smaller agencies and in local bodies such as schools and health care facilities.

While those public servants who availed of the interim arrangements may still be in their existing jobs, the understanding of their employers is that the extension was for one year only. It is likely that in many cases employers will have put plans in place for when those contracts end, whether by

advertising the position, beginning the process of recruiting replacement staff or by reorganising work within the organisation. As detailed in Para 5, the sectors with the greatest numbers of compulsory retirements and interim arrangements are Health and Education. Both of these sectors have a prevalence of small employers and non-standard working arrangements.

8. Potential Remedies

(a) Put in same position as those covered by the Public Service Superannuation (Age of Retirement) Act 2018

There is only one way in which this cohort can be put in the same position as the public servants who are covered by the terms of the Public Service Superannuation (Age of Retirement) Act 2018 and that is by way of amendment of the legislation. The legislation was necessary in order to make the statutory change to the compulsory retirement age for public servants and to ensure that the public servants involved were enabled to accrue pension benefits for those additional years. That cannot be achieved without legislation. The legislation would need to clearly define this group and to specify how they should be treated in terms of their status, pay and pension. The legislation would effectively be providing for a reversal of the retirements for this cohort. I am advised that, from a legal viewpoint, such legislation would be particularly complex given the fact that the parties concerned are pensioner members of their pension scheme, they are no longer making pension contributions and they have already drawn down their pension benefits, including payment of a lump sum.

(b) Possible Alleviation Measure

The possibility of extending the existing fixed term contracts for these individuals was also considered. It is an option which, in the absence of legislation, would enable the contracts for the interim cohort to be extended on their existing terms and conditions (minimum pay point and no pension accrual), until they reach the age of 70.

For all of the workforce planning issues outlined in Para 7(v), this is a solution that could only apply to the group of public servants whose contracts have not yet expired (Group C in Para 6). They are the only cohort who currently have an employer/employee relationship with the relevant public service body. To expect a public service body to re-engage a former contract employee who has exited the system is not a practical option. This measure would, therefore, apply to only one particular group but would not apply to much of the cohort covered by this report, particularly the group whose interim contracts had expired.

This measure would involve the extension of the interim contracts on their current terms and conditions. This would not address the issues of minimum pay point/no pension accrual for this cohort. Any change in the pay regime for this retired cohort would serve to compromise the policy justification current public service wide policy of re-engaging retired public servants on the minimum point of the scale, with the potential for significant cost implications.

9. Conclusions/Recommendations

The only way in which this issue could be fully resolved is to put all of the cohort covered by this report in the same position as those covered by the Public Service Superannuation (Age of Retirement) Act 2018. This could only be achieved by legislative change and I have no plans to introduce primary legislation to provide for this.

In relation to the potential remedy outlined in Para 8(b), having considered all of the issues, I consider that, in all the circumstances, this is not an acceptable or appropriate policy response for the following reasons:

- Acceptance of this option has the potential to undermine the policy justification for the current public service wide policy of re-engaging retired public servants on the minimum point of the scale, with the potential for significant cost implications;
- It could only apply to the individuals who are still working under fixed term contract under the interim arrangements on the date of the decision. It would, therefore, partially resolve the position for that particular group but would not offer any remedy to others who availed of the interim arrangements but whose 1 year contracts have expired.
- Whenever legislation is enacted to implement a change in policy, there has to be a dividing line between those who are affected by the change and those who are not. There are always people who will not benefit because they miss the deadline by a matter of days or weeks. A line must be drawn in terms of the application of any new policy. That line is generally drawn from the date of commencement of the legislation. That is a clear line supported by extensive legal precedent. For this reason, it is also the most equitable place to position the line.
- To adopt a solution that would apply only to individuals who are currently on fixed term contracts would be to introduce a new arbitrary line which would disadvantage those whose 1 year contracts had expired in the days or weeks before this decision was taken and who would feel they had been treated harshly if a solution was found only for those whose interim contracts were still in place. It would not represent a fair and reasonable response to the issue.
- I made special arrangements for the cohort of public servants who reached their compulsory retirement age after the Government Decision because, while they would have been aware of the Government's decision, they would be unable to avail of it. That special arrangement, clearly conveyed to all concerned, permitted these individuals to retire and be rehired for a period of 1 year until they reached the age of eligibility for the State Pension (Contributory). Without that special arrangement, they would have been required to cease working on reaching the age of 65.

Having considered all of the issues, I am satisfied that the temporary arrangements implemented in the public service were an appropriate temporary policy response at the time of the Government Decision pending enactment of the legislation. The terms of those arrangements were clear, unambiguous and made known to those who availed of those arrangements. Accordingly, I do not propose to make any changes to those terms.



Paschal Donohoe TD
Minister for Public Expenditure and Reform
26 March 2019

Minister Donohoe secures Cabinet approval to increase Compulsory Retirement Age for Public Service Workers

Bill will give public servants recruited before 1 April 2004 option to work until 70

The Minister for Finance and Public Expenditure and Reform, Paschal Donohoe T.D. yesterday (5th December 2017), secured Government approval for an increase in the compulsory retirement age from 65 to 70 for public servants recruited before 1st April 2004.

The minimum pension age (the earliest date at which someone can retire and receive their pension) will not be affected by the new arrangements.

Legislation will be necessary to effect these changes and the General Scheme of a Bill was also approved by Government. The Minister indicated that he would ask the Attorney General to prioritise the drafting of this legislation so that the new compulsory retirement age would become effective as soon as possible.

In the meantime, the Minister announced that he had agreed with sectoral public service employers some limited interim arrangements to apply in the period between the Government Decision and the commencement of the necessary legislation. The interim arrangements will allow public servants who reach the age of 65 in that period and who wish to remain working, to retire and be re-hired so that they remain in employment up to the state pension age, which is currently 66.

In announcing the decision, Minister Donohoe pointed to the difficulties being experienced by this group of public servants who are obliged to retire at age 65 but are not eligible for the State Pension (Contributory) until their 66th birthday.

Minister Donohoe said: 'Many pensioners feel that they have earned their pension and should not have to "sign on" as a jobseeker in order to receive a portion of it. Many would prefer to continue to work to normal State pension age, rather than engage in this process, which is likely to become more protracted as the age of eligibility for the State Pension increases in 2021 and 2028.'

He also pointed out that: "some people want to continue to work beyond the age of 65 because they are fit and healthy and feel they have more to contribute. By extending the compulsory retirement age to 70, I am addressing both of these issues, while at the same time bringing the compulsory retirement age of this group into line with that of new recruits since January 2013 who are members of the Single Pension Scheme"

The uniformed pension fast accrual group (Gardaí, Permanent Defence Forces, Firefighters and Prison Officers), who are currently required to retire early due to the nature of their work, will not be covered by the new arrangements.

Public Servants recruited after 1 April 2004 are not affected by the change. They either already have a retirement age of 70 (Single Pension Scheme members) or they have no compulsory retirement age (those recruited between April 2004 and December 2012).

ENDS

Notes for Editors

The age of compulsory retirement in the public service is generally determined by the date of recruitment of the individual public servant, and for the most part, is provided for in primary legislation. Details of the legislative provisions are set out in the table below:

Overview of Retirement Ages in the Public Service

Group	Recruitment Date	Description	Pension Integrated with Contributory State Pension?	Compulsory Retirement Age
A	Pre-6 April 1995	* Modified PRSI	*No	65
B	6 April 1995 to 31 March 2004	Full PRSI	Yes	65
C	1 April 2004 to 31 Dec 2012	"New Entrants" – 2004 Act Full PRSI	Yes	No
D	On or after 1 Jan 2013	Single Scheme members – 2012 Act Full PRSI	Yes	70

* with some exceptions

On foot of the [Report of the Interdepartmental Group on Fuller Working Lives](#), the Department of Public Expenditure and Reform, with public service employers, was tasked with reviewing the current statutory and operational considerations that give rise to barriers to extended participation in the public service workforce, up to and including the current and planned age of eligibility for the Contributory State Pension.

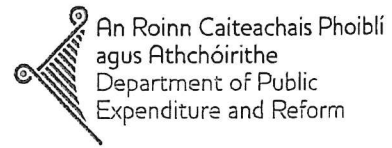
A Report of the review is available [here](#).

The proposals approved by the Government will require primary legislation in order to be implemented. The General Scheme of a Bill to give effect to the new compulsory retirement age and related matters was also approved by the Government yesterday.

Under the interim arrangements, which will operate between now and the commencement of the necessary legislation, public servants who choose to remain in employment up to the age of eligibility for the State Pension (Contributory) will not accrue additional public service pension benefits in respect of that period. These public servants will be paid at the minimum point of the relevant scale and their pension entitlements will be subject to abatement in accordance with normal practice.

Once the necessary legislation has commenced, pre-2004 public servants who opt to remain in employment after their 65th birthday will continue to accrue public service pension benefits in the normal way, subject to the statutory limit of 40 years pensionable service. Once the 40 year threshold is reached, there will be no further pension accrual but pension contributions will continue to be paid by the employee, in accordance with normal practice.

Appendix 2 – DPER Circular 21 of 2017



Circular Number: Circular 21/2017

Circular Title: A Temporary Circular to allow for certain Civil Servants to be retained beyond their Compulsory Retirement Age of 65 years until they reach the age of eligibility for the Contributory State Pension.

To: All Government Departments and Offices employing Civil Servants

I am directed by the Minister for Public Expenditure and Reform to advise you of the arrangements set out in this Circular for certain Civil Servants to be retained beyond their Compulsory Retirement

Age of 65 years until they reach the age of eligibility for the Contributory State Pension, which is currently age 66 but is due to increase to age 67 on 1/1/2021 and to age 68 on 1/1/2028.

Circular Application: All Civil Servants, other than Prison Officers

Date: 15th December 2017

Purpose: To clarify the position in relation to the temporary retention of certain Civil Servants beyond the Compulsory Retirement Age of 65 years.

Relevant Legislation: Civil Service Regulation Act 1956
Public Service Superannuation (Miscellaneous Provisions) Act 2004
Public Service Pensions (Single Scheme and Other Provisions) Act 2012

**A TEMPORARY CIRCULAR TO ALLOW FOR CERTAIN CIVIL SERVANTS TO BE RETAINED
BEYOND THEIR COMPULSORY RETIREMENT AGE OF 65 YEARS UNTIL THEY REACH THE AGE OF
ELIGIBILITY FOR THE CONTRIBUTORY STATE PENSION**

1. Retirement Ages in the Civil Service

(a) Civil Servants Appointed Before 1 April 2004

In the case of civil servants appointed prior to 1 April 2004, section 8(1) of the Civil Service Regulation Act 1956 provides for a retiring age of 65. Section 8(3) provides that every civil servant shall retire on attaining the retiring age.

(b) Civil Servants Appointed on or after 1 April 2004

In the case of public servants, including civil servants, appointed on or after 1 April 2004 but before 1 January 2013, section 3(1) of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 removed the compulsory retirement age and section 8 of the Act of 1956 was amended accordingly in respect of civil servants who are new entrants appointed on or after 1 April 2004.

(c) Civil Servants Appointed on or after 1 January 2013

In the case of public servants, including civil servants, appointed on or after 1 January 2013, section 13 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 makes provision for a maximum retirement age of 70, subject to a limited number of exceptions.

**2. Interaction between Civil Service Pension and the Department of
Employment Affairs and Social Protection Pension**

The cohort of civil servants appointed between 6 April 1995 and 31 March 2004 are subject to both compulsory retirement at 65 and coordinated pension arrangements. A coordinated pension means that the employee receives the Contributory State Pension (CSP), subject to meeting eligibility requirements, from the Department of Employment Affairs and Social Protection and receives the balance of their pension from their employer. While this cohort is required to retire at 65, they are not eligible for the CSP until their 66th birthday and the age of eligibility for the CSP is due to rise to 67 in 2021 and then to 68 in 2028.

3. Purpose of this Circular

The Government recently agreed to increase the compulsory retirement age to age 70 for public service employees recruited before 1 April 2004, other than the uniformed pension fast accrual group (Gardaí, Prison Officers, Firefighters, Permanent Defence Force) and to the drafting of legislation to give effect to that decision. The Government also agreed that, in advance of the legislation coming into effect, interim arrangements could be introduced for serving public servants affected by that decision who reach the age of 65 between the date of the Government Decision and the coming into effect of the necessary legislation, to enable them to remain in place until they reach the age of eligibility for the CSP (age 66 at present, rising to age 67 on 1 January 2021 and to age 68 on 1 January 2028). The purpose of this Circular is to detail the nature of those interim arrangements.

4. Application of this Circular

(a) This Circular applies only to civil servants recruited prior to 1 April 2004 who have a compulsory retirement age of 65 and who reach the age of 65 in the period between the Government Decision on Compulsory Retirement Age in the public service (ref S28603B of 5 December 2017) and the commencement of the necessary primary legislation to give effect to that decision. The Circular applies equally to pre 1 April 2004 civil servants appointed before and after 6 April 1995, regardless of the fact that civil servants appointed before 6 April 1995 will not be eligible for the CSP. For the avoidance of doubt, where a civil servant has already retired before the effective date of this Circular, retention under the terms of this Circular will not be possible.

(b) This Circular is designed to apply to civil servants only. Government Departments/ Offices should, however, ensure that the terms of the Circular, adapted as required, are made available to the public service bodies under their aegis.

5. Procedure for Retention under this Circular

(a) The sanction of this Department is not necessary in order for a retention to be approved under the terms of this Circular. Before a retention is approved, the Government Department or Office should, however, be satisfied that the officer's health, conduct and performance is satisfactory and that a business need exists to warrant the retention, i.e. that a continuing role is available for the applicant for the duration of the period up to the age of eligibility for the CSP. Subject to these conditions, an application for retention on the basis of this Circular should be considered favourably by the Government Department or Office concerned.

(b) Any civil servant who wishes to apply for retention under the terms of this Circular should apply to the appropriate person at least 8 weeks before reaching the age of 65, using the application form at Appendix A of this Circular. This 8 week requirement does not apply to civil servants reaching the age of 65 within the 8 weeks following the date of this Circular.

(c) Any civil servant whose retention is approved under this Circular must sign the undertaking at Appendix B of this Circular indicating that he/she accepts the terms and conditions of retention as set out in this Circular before the retention is commenced, and in particular their understanding that retention under this Circular does not confer any rights on the individual civil servant to any new arrangement that may be provided for in future legislation in relation to compulsory retirement age, whether or not the officer is still retained under the terms of this Circular on the date of commencement of that legislation.

6. Retention Arrangements

The following arrangements will apply to a civil servant who is accepted for retention under the terms of this Circular:

- Civil Servant retires at 65 years of age;
- The officer's lump sum is paid;
- Pension abatement rules will apply;
- Civil Servant is retained in an unestablished capacity;
- Civil Servant is retained on a work pattern with the same or fewer hours, subject to any reduction in hours being consistent with the business needs of the organisation;

- No pension contribution is payable and no public service pension benefits are accrued during the period of retention;
- If the salary of the individual civil servant is based on the PPC scale prior to retirement, following retention they will be placed on the non-PPC scale (to take account of the fact that no pension contribution is payable);
- PRD will still be payable;
- Salary for all civil servants retained under this Circular to be paid at the minimum point of the non-PPC pay scale, adjusted for work pattern as required;
- Class A PRSI will apply;
- No applications for retention beyond the age of eligibility for the Contributory State Pension will be entertained.

Any queries from Departments/Offices relating to this Circular may be directed to csrecruitmentpolicy@per.gov.ie . Queries from individual officers should be directed to the HR Sections of their own Departments/Offices.

Mise le meas,

David Cagney

Chief Civil Service Human

Resources Officer

Appendix A

Application for Retention for a period of up to 1 year under Terms of Circular
21/2017

Any civil servant who wishes to apply for retention under the terms of Circular 21/2017 should submit this application to the appropriate person 8 weeks before reaching the age of 65.

To be completed by applicant

Name	
Address	
Date of Birth	
Date of reaching age 66 (current age of eligibility for the Contributory State Pension [CSP])	
Department	
Section	
Grade	
PPSN	
Personnel No.	

Signed: _____ Date: _____

Appendix B

Acceptance by management and undertaking by staff to be signed where retention is approved under the terms of Circular 21/2017

Section A: to be completed by appropriate person:

I am satisfied that the officer's health, conduct and performance is satisfactory. I am also satisfied that a business need exists to warrant the retention, i.e. that a continuing role is available for the applicant for the duration of the approved retention period. Retention is approved for a period of 1 year from the officer's 65th birthday to the age of eligibility for the CSP, which is currently age 66.

Signed: _____

Date: _____ Department/Office: _____

Section B: to be completed by applicant

I accept the terms and conditions of retention as set out in this Circular. In particular, I understand that retention under this Circular does not confer any rights on me to any new arrangement that may be provided for in future legislation in relation to compulsory retirement age, whether or not I am still retained under the terms of this Circular on the date of commencement of that legislation. I understand that retention is for a maximum of one year from the date of my 65th birthday until I reach the age of 66 (the current age of eligibility for the CSP). I also understand that retention under the terms of this Circular is at the minimum point of the relevant pay scale and that pension abatement rules will apply.

Signed: _____

Name [Block Caps]: _____

Date: _____