



Paper of

Ms. Emily Logan

Irish Human Rights and Equality Commission

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**Pensions, Income and Retirement:
Human Rights and Equality Considerations**

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**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

Introduction

The Irish Human Rights and Equality Commission ('the Commission') is Ireland's national human rights and equality institution. Our purpose is to protect and promote human rights and equality in Ireland and to build a culture of respect for human rights, equality and intercultural understanding in the State. The Irish Human Rights and Equality Commission was established on 1 November 2014, as an independent public body with a mandate under the Irish Human Rights and Equality Commission Act 2014 (IHREC Act 2014). The IHREC Act 2014 gives the Commission a range of statutory powers for the protection and promotion of human rights and equality.

The Commission is made up of 15 members who were appointed by President Michael D. Higgins on 31 October 2014, following a resolution by both Houses of the Oireachtas. The Commission operates entirely independently of the Government, and this institutional independence is guaranteed in the Commission's establishing legislation, which provides for accountability of the Commission to the Oireachtas.

In its submission, the Commission noted that the question of an ageing population gives rise to matters of equality and human rights. For example, age-related discrimination is prohibited by equality law in the context of employment and in accessing goods and services.¹ The submission also noted international efforts to strengthen the human rights of older persons, particularly by the United Nations General Assembly, which established the Open-Ended Working Group on Ageing in 2010 to consider whether the existing international framework is fit for purpose.²

In its submission, the Commission also outlined some of the human rights and equality issues facing older persons in Ireland, including access to pensions, and provided information on how the State may advance age equality and ensure better protection for the human rights of older persons.³ Further to our submission, the Commission welcomes the opportunity to brief the Citizens' Assembly on human rights and equality considerations with respect to pensions, income and retirement in advance on its second meeting on the topic of 'how we respond to the challenges and opportunities of an ageing population'. In order to assist the Citizens' Assembly in its deliberations during its Second Meeting, this paper focuses on access to pensions and inequality, particularly gender inequality. This paper is structured as follows:

- Human rights and equality issues of concern related to pension policy
- Gender inequality and access to pensions
- Using the public sector duty to human rights and equality proof pension policy

¹ The *Employment Equality Acts 1998 to 2015* prohibit discrimination in work-related areas such as pay, vocational training, access to employment, work experience and promotion. The *Equal Status Acts 2000-2015*, prohibit discrimination in the provision of goods and services, the provision of accommodation and access to education. Administrative consolidations of these Acts are available here: <http://revisedacts.lawreform.ie/revacts/alpha#E>.

² Resolution adopted by the General Assembly on 21 December 2010 on Follow-up to the Second World Assembly on Ageing, A/RES/65/182, available:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/182&referer=/english/&Lang=E.

³ Available: <https://www.ihrec.ie/app/uploads/2017/05/Submission-to-the-Citizens-Assembly-in-its-consideration-of-How-we-respond-to-the-challenges-and-opportunities-of-an-ageing-population-19-May-2017-003.pdf>

Human rights and equality issues of concern related to pension policy

Human rights and equality framework in relation to social security

While there is no explicit right to social security in Irish law,⁴ Article 45 of the Constitution of Ireland sets out guiding principles for legislators ‘to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged’. The right to social security is however, recognised in a number of international human rights instruments, including Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Access to pensions is primarily regulated by the *Social Welfare Consolidation Act 2005* and the *Pensions Act 1990*.⁵ Under Irish equality law, it is unlawful to discriminate directly or indirectly in relation to occupational pensions on the grounds of age.⁶ Direct discrimination may arise where a person, who is protected by one of the equality grounds⁷, is treated less favourably than another person in a comparable situation. Indirect discrimination may arise where an apparently neutral provision would put a person protected by an equality ground at a particular disadvantage compared with other persons.

Human dignity as an underpinning principle of the right to social security

According to the UN Committee on Economic, Social and Cultural Rights:

the right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.⁸

The Committee has also stated that the principles of human dignity and non-discrimination must be fully respected in order to ensure that benefits are adequate in amount and duration to realise the right to an adequate standard of living, as protected by Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR).⁹

Although the payment rates for both the State Pension (Contributory) and the State Pension (Non-Contributory) remained largely unchanged in the aftermath of the recession, the Commission has

⁴ *Minister for Social, Community and Family Affairs v. Scanlon* [2001] 1 IR 64. However, it was recognised in *In re Article 26 and the Health (Amendment) Bill 2004* [2005] IESC 3 that a statutory right to certain social security measures can be deemed to be a property right if a person meets the eligibility criteria and is entitled to assert his or her right to payment

⁵ Available at: <http://www.irishstatutebook.ie/eli/2005/act/26/enacted/en/html> and <http://www.irishstatutebook.ie/eli/1990/act/25/enacted/en/html>.

⁶ Part VII of the *Pensions Act 1990*, as amended by section 22 of the *Social Welfare (Miscellaneous Provisions) Act 2004*.

⁷ Section 3(2) of the Equal Status Acts 2000-2015.

⁸ UN Committee on Economic, Social and Cultural Rights (2004) *GENERAL COMMENT No. 19 The right to social security (art. 9)*, para. 1.

⁹ UN Committee on Economic, Social and Cultural Rights (2004) *GENERAL COMMENT No. 19 The right to social security (art. 9)*, para. 22.

expressed concern that changes made to the following secondary payments have reduced the effectiveness of the State Pension:¹⁰

- in 2012, the period of payment of the Fuel Allowance was reduced from 32 weeks to 26 weeks, resulting in a reduction of €120.00 per year;
- in 2013 the Telephone Allowance was reduced from €26.00 to €9.50 per month, resulting in a reduction of €234 that year;
- in January 2014 the Telephone Allowance was abolished, resulting in a reduction of €114 in each of the remaining years of the reporting period; and
- in January 2013 the Electricity allowance was changed to €35 per month, and the effect was a reduction of approximately €105 per year.¹¹

From September 2012 the number of payment bands was increased from four to six (through the division of the second band into three bands), and reductions were made to the amount of payments made to new recipients in all the bands below the second band. Data on the impact of this change demonstrates that one-third of new recipients of the State Pension (Contributory) were affected.¹² The Commission has expressed concern about the impact of changes to the payment bands, noting that these reductions were imposed on those among the new recipients who were least able to take reductions in the levels of pension.¹³

The UN Committee on Economic, Social and Cultural Rights has also stated that ‘qualifying conditions for benefits must be reasonable, proportionate and transparent’.¹⁴ In 2014 the age at which the State pensions are, in practice, paid was increased from 65 to 66, and it will increase to 67 in 2021 and 68 in 2028. The Commission has expressed concern that the law does not adequately protect workers from compulsory retirement at an age before they are entitled to receive a State pension.¹⁵

Implications of the averaging system

In 2010 the National Pensions Framework recognised ‘the way in which eligibility for State Pension (Contributory) is calculated is complicated and can give rise to anomalies’¹⁶. The Minister for Social Protection has confirmed that officials are currently developing proposals on a new “Total Contributions Approach” (TCA), as recommended by the National Pensions Framework, which should replace the yearly average approach for new pensioners from 2020.¹⁷

It has been reported that the averaging system for access to the State Pension (Contributory) system can place people with broken insurance records at a disadvantage including women who have had career interruptions and returning emigrants and missionaries who have worked in Ireland in their

¹⁰ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 27, available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070b755>

¹¹ See: ‘2011 Income Scenarios: Pensioner Couple, Aged 66–69 – Urban’:

http://www.budgeting.ie/download/legacy/2011_Urban_folder/2011_urban_income_folder/Pensioner_Couple.pdf

¹² Maureen Bassett (2017) *Towards a Fair State Pension for Women Pensioners*, Dublin: Age Action, page 15, available https://www.ageaction.ie/sites/default/files/attachments/briefing_paper_3_reverse_the_2012_state_pension_cuts.pdf.

¹³ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 26.

¹⁴ UN Committee on Economic, Social and Cultural Rights (2004) *GENERAL COMMENT No. 19 The right to social security* (art. 9), para. 24.

¹⁵ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 25.

¹⁶ http://www.welfare.ie/en/downloads/nationalpensionsframework_en.pdf

¹⁷ Response to Parliamentary Question, 10 May 2017, available: <https://www.kildarestreet.com/wrans/?id=2017-05-10a.324>

early life.¹⁸ It should also be noted that access to the State Pension (Non-Contributory) is subject to the habitual residence condition, which also applies to returning Irish emigrants. The Commission has previously expressed concerns that the averaging system gives rise to gender inequality and that the habitual residence condition can have a negative impact on particular groups such as Travellers and migrants.¹⁹

¹⁸ MeI Cousins and Associates (2008) *Green Paper Consultation Report*, p. 107, available: http://www.ebl.ie/Green_Paper_Consultation_Report_Final_Report.pdf

¹⁹ IHREC (2015) *Ireland and the Ireland and the International Covenant on Economic, Social and Cultural Rights*, section 7.1, available: https://www.ihrec.ie/app/uploads/download/pdf/icescr_report.pdf

Gender inequality and access to pensions

In its report to the UN Committee on the Elimination of Discrimination Against Women, the Commission highlighted its concerns about the gendered nature of the Irish social security system. Pensions form part of the social security system and a number of studies have demonstrated that gender inequality persists within the Irish pension system.²⁰ For example, a European Commission study published in 2016 has found that there is a 19 per cent gap in pension coverage between men and women in Ireland.²¹ The 2016 study estimates that the current gender pension gap is 41 per cent in Ireland, which is just above the EU average of 40 per cent.²²

According to statistics published by the Central Statistics Office, women over the age of 65 are more likely to depend on the social security system as their primary source of income in the form of a non-contributory pension.²³ The statistics published by the Department of Social Protection also demonstrate that the proportion of women who are in receipt of the State Pension (Contributory) was significantly lower than the number of men in recent years but that it has been rising.²⁴ Another study also reveals that women are less likely to be in receipt of either an occupational pension or a contributory State pension.²⁵

A number of factors have contributed to the gender pension gap including the gender pay gap, career interruptions and women being overrepresented in precarious, part-time and unpaid care work.²⁶ Interruptions to a woman's career are often due to caring responsibilities. It has been stated that 'the gendered division of care labour is deeply embedded in the legislative and policy fabric of Irish society'.²⁷

The Commission has recommended that the unpaid care work of women be recognised through the provision of adequate social supports.

Many women in Ireland experienced career interruptions due to the so-called 'marriage bar' which required women in public service jobs to leave their employment upon marriage.²⁸ During its 2016

²⁰ Irish Human Rights and Equality Commission (2017) Ireland and the Convention on the Elimination of All Forms of Discrimination *against Women*, p. 92.

²¹ http://ec.europa.eu/justice/gender-equality/files/documents/150618_men_women_pensions_en.pdf

²² http://ec.europa.eu/justice/gender-equality/files/documents/150618_men_women_pensions_en.pdf

²³ Central Statistics Office (CSO) (2013) *Survey on Income and Living Conditions (SILC): Thematic Report on the Elderly 2004, 2009, 2010 (revised) and 2011*, Cork: CSO, p. 6, available:

<http://www.cso.ie/en/media/csoie/releasespublications/documents/silc/2011/elderly040910and11.pdf>

²⁴ Department of Social Protection (2013) *Statistical Information on Social Welfare Services 2012*, at page 30, available at http://www.welfare.ie/en/downloads/Social%20Stats%20AR%202012_Final.pdf; Department of Social Protection (2014) *Statistical Information on Social Welfare Services 2013*, at page 34, available at

<http://www.welfare.ie/en/downloads/Social-Stats-AR-2013.pdf>; Department of Social Protection (2015) *Statistical Information on Social Welfare Services 2014*, at page 61, available at <http://www.welfare.ie/en/downloads/Statistical-Information-on-Social-Welfare-Services-2014.pdf>; Department of Social Protection (2016) 'Number of Recipients of State Pensions by Age and Sex, 2015' [online spreadsheet] at sheet B4, available at www.welfare.ie/en/downloads/Statistical_Reports/Section_B_Pensions_V1.0.xlsx

²⁵ Organisation for Economic Cooperation and Development (OECD) (2014) *OECD Reviews of Pensions System: Ireland*, Paris OECD Publishing, available <http://www.welfare.ie/en/downloads/oecd-review-of-the-irish-pensions-system.pdf>

²⁶ Bassett, M. (2017) *Towards a Fair State Pension for Women Pensioners*. Dublin: Age Action, p. 6, available:

https://www.ageaction.ie/sites/default/files/attachments/final_towards_a_fair_state_pension_for_women_pensioners.pdf

²⁷ TASC (2016) *Cherishing All equally*: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

²⁸ The marriage bar ended in 1973 when Ireland joined the European Union (then the European Economic Community).

public consultation on gender equality and women's rights, access to pensions arose as a key issue of concern, particularly in relation to the continued impact of the marriage bar.²⁹

In 1994, the Homemaker's Scheme was introduced. This allows up to twenty years out of the workforce to be discounted from the pension assessment. While this scheme has benefitted women who may have had career interruptions in order to care for families, it has not been of equal benefit to all as only those who took career breaks after 6 April 1994 are covered by this scheme.

The Commission has recommended that the Homemaker's Scheme be applied retrospectively by the State, in order to ensure equitable access to the contributory State pension.³⁰

²⁹ This is discussed further below and in Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 93. See further: Irish Human Rights and Equality Commission (2017) *What is life like for women in Ireland in 2016? IHREC's Consultation on the Convention on the Elimination of All Forms of Discrimination Against Women*, p. 15, available:

<https://www.ihrec.ie/app/uploads/2017/02/What-is-life-like-for-women-in-Ireland-in-2016.pdf>

³⁰ IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 93.

Using the public sector duty to human rights and equality proof pension policy

The Public Sector Duty, as set out in section 42 of the *Irish Human Rights and Equality Commission Act 2014* requires all public bodies in the performance of their functions, including budgetary functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights.³¹

In relation to the budgetary functions of public bodies, the Commission has welcomed efforts to put institutional arrangements in place to support equality and human rights proofing at both governmental and parliamentary level.³² In June 2016, the Commission appeared before the Select Committee on Arrangements for Budget Scrutiny, where it advised parliament of the recommendations of the UN Committee on Economic, Social and Cultural Rights to Ireland in relation to ensuring that the State uses its maximum available resources for the protection of human rights and equality.³³

The UN Committee on Economic, Social and Cultural Rights has recommended that direct or indirect discrimination may result from the difference in the average life expectancy of men and women, and therefore States must take such factors into account in the design of pension schemes.³⁴ A recent analysis of the gender impacts of changes to the eligibility criteria for the State Pension (Contributory) introduced in 2012 demonstrates the case for gender proofing.³⁵

In order to fulfil the public sector duty obligation, public bodies are required to assess human rights and equality issues relevant to their functions in their strategy statements and must report on their activities in each annual report. In its Statement of Strategy 2016 to 2019, the Department of Social Protection, identified the public sector duty as one of the key challenges and opportunities in their operating environment.³⁶

The Commission recommends that the Department of Social Protection, in line with its public sector duty obligations, conduct a comprehensive assessment of the human rights and equality implications of social welfare law and policy.

³¹ Section 42(1) of the *Irish Human Rights and Equality Commission Act 2014*. The duty came into effect on 1 November 2014 when the legislation was commenced. See also:

https://www.ihrec.ie/app/uploads/2016/09/ihrec_public_duty_booklet.pdf

³² *Programme for a Partnership Government*, p. 6, available:

http://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme_for_partnership_government.pdf

³³ Select Committee on Arrangements for Budget Scrutiny,

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/CAB2016062100002?opendocument#A00100>. See also: 'IHREC attends Select Committee on Arrangements for Budgetary Scrutiny' [press release] 21/06/2016, available: <https://www.ihrec.ie/ihrec-attends-select-committee-on-arrangements-for-budgetary-scrutiny/>

³⁴ UN Committee on Economic, Social and Cultural Rights (2004) *GENERAL COMMENT No. 19 The right to social security (art. 9)*, para. 32.

³⁵ Bassett, M. (2017) *Towards a Fair State Pension for Women Pensioners*. Dublin: Age Action.

³⁶ Department of Social Protection (2017) *Statement of Strategy 2016 to 2019*, p. 5.