**LAHIFFE & ASSOCIATES  
 Public Affairs & Political Communications** 

**OIREACHTAS REPORT FOR APTI**

**February 26 - 28, 2019**

**PENSION ISSUES**

**Dail**

Tuesday, February 26.

**Written Questions**

**State Pensions**

***Deputy Robert Troy****asked the Minister for Finance the efforts he has made to ascertain the number of persons in receipt of the Qualified Adult Dependant increase on the State Pension (Contributory) affected by a ruling of the High Court of 29 June 2018 who are the beneficial owners of the income and therefore entitled to PAYE tax credit and increased rate band; if all recipients are being contacted in relation to same; and if his Department has issued refunds; the number of persons who had pension statements amended and refunds issued for qualifying years (details supplied).*

***Deputy Robert Troy****asked the Minister for Finance the rationale for amending Section 126(2)(b) of the Taxes Consolidation Act 1997 with effect from 1 January 2014 in view of the fact the Department of Social Protection regarded a Qualified Adult Dependant as income of the beneficiary of the State Pension and therefore neither the PAYE credit nor increased rate band were due to the dependent in respect of the income from this date*

[**Minister for Finance**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/)**:** The Social Welfare Consolidation Act 2005 provides for the payment of an increase in the amount of weekly State Pension where the beneficiary has a Qualified Adult Dependent.Section 126 of the Taxes Consolidation Act (TCA) 1997 deals with the tax treatment of certain benefits payable under the Social Welfare Acts.

By way of context, although the Qualifying Adult portion of a pension is paid directly to the ualified adult, this payment is premised on there being an entitlement to the pension in the first instance. As stated in Section 112 of the Social Welfare Consolidation 2005 Act, the Qualified Adult portion is an “increase” in the pension and is payable in respect of a spouse/civil partner/cohabitant who is being financially maintained and whose income is not greater than a specified amount. Finance (No.2) Act 2013, inserted Subsection (2B) into Section 126 with effect from 1 January 2014. Subsection (2B) provides that for all the purposes of the Income Tax Acts, any increase in the State Pension in respect of a Qualified Adult Dependent is treated as if it arises to and is payable to the beneficiary of the pension, that is, the person who qualifies for the pension. The intention behind the change to s.126 in s.12 of Finance Act (No. 2) 2013 was to put beyond doubt that the beneficiary of a Department of Social Protection pension is assessable on the aggregate of the pension and the amount by which the pension is increased for a qualified adult. Consequently, for the tax years 2014 onwards, one employee (PAYE) tax credit only is available in respect of the pension, including the Qualified Adult Dependent increase, and there is no entitlement to any increase in the amount charged to income tax at the standard rate as a result of the Qualified Adult Dependent increase.

In the details supplied, the Deputy refers to the ruling of the High Court on 26 June 2018, which determined that (prior to the enactment of Finance (No.2) Act 2013) a Qualified Adult Dependent for the purposes of the Contributory Pension was beneficially entitled, in his or her own right, to the amount of the increase of the pension payment. The High Court case in question was a Case Stated of a determination of the Tax Appeals Commission which found in favour of the taxpayer’s claim that an additional, second employee (PAYE) tax credit and extended standard rate income band were due to the taxpayer for 2012 and 2013 in relation to the receipt of the Qualifying Adult Dependent increase in the pension.

There was a review of Revenue’s systems for the relevant years prior to 2014 to identify valid claims for refunds. In accordance with Section 865 of the TCA 1997, a valid claim is made where a person furnishes a statement or return within a period of four years following the tax year to which the claim relates. Some 370 cases with valid claims were identified in respect of the issue determined by the High Court. The cases in question were reviewed and refunds of the order of €0.7m, including interest, were processed. A small number of cases are still being finalised.

**Pension Contributions**

***Deputy Willie Penrose****asked the Minister for Employment Affairs and Social Protection the position in relation to a teacher in circumstances (details supplied); if such persons that commenced in 1991 are not allowed to change their PRSI contributions and opt for a class A contribution; if so, if the person was to resign their post before 56 years of age and move to the private sector by which they would be compelled to pay a class A contribution would this then qualify them for a percentage of their current pension and the State pension; and if she will make a statement on the matter.*

[**Minister for Employment Affairs and Social Protection**](https://www.oireachtas.ie/en/members/member/Regina-Doherty.D.2011-03-09/)**:** Prior to 6 April 1995, civil and public servants were insurable under the PRSI system as modified rate contributors. This meant that they and their employers paid a lower rate of PRSI and, as such, were insurable for a limited range of social welfare benefits. Currently, Class D contributors are insured for Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension, Occupational Injuries Benefit, Carer's Benefit and Guardian's Payment (Contributory).

Civil and public servants appointed since 6 April 1995 are insurable at Class A. They and their employers pay a higher rate of PRSI and they are eligible for all social welfare benefits. It is not possible for modified rate contributors to opt to pay the full Class A contribution.

In general, teachers retiring with only a PRSI Class D contribution paid receive a pension benefit from the Department of Education and Skills based on pensionable service and this is called an "un-co-ordinated pension". Teachers retiring with only a PRSI Class A paid receive a pension benefit from the Department of Education & Skills based on their retirement salary up to a threshold of 3.33 times the single rate of the State Contributory Pension. This is called a "co-ordinated pension". Teachers who pay Class A PRSI contributions do not receive separate State and occupational pensions based on those same contributions. It is also possible for a teacher to have, at the time of their retirement, a mixture of both PRSI classes of A and of D. This is called a "split pension“.

The State Pension (Contributory) is a pension paid to people who reach 66, rising to 67 in 2021 and to 68 in 2028. Since its introduction in 1961, entitlements have been based on a Yearly Average calculation, where the number of reckonable weekly PRSI contributions are divided by the number of years between entering social insurance and State Pension age. Provisions also exist for the award of a mixed insurance pro rata State Pension, where a person has substantial periods of PRSI coverage that are not reckonable for pension purposes. Whether or not such a pro-rata pension is more advantageous to a person with significant Class D contributions will depend upon their individual circumstances.

The Government intends to change the calculation method used for the State Pension (Contributory) by introducing a Total Contributions Approach (TCA) to establishing the level of entitlement for all new State Pension (Contributory) claims from 2020 onwards. The Department received almost 300 responses from individuals and organisations including open written submissions. Those submissions outlined the views of respondents on a number of issues, including the number of years required for a full pension, as intended as part of the consultation process. An analysis of the views expressed in this consultation was recently submitted to me. When I have considered this analysis, I will bring a proposal for the full design of a TCA to Government for its consideration.

**State Pension Data**

***Deputy Éamon Ó Cuív****asked the Minister for Employment Affairs and Social Protection the number of cases that have been reviewed under the new TCA method for assessing pensioners that became eligible for the State Pension after September 2012; the number of such cases in which the payment has increased; and if she will make a statement on the matter.*

[**Minister for Employment Affairs and Social Protection**](https://www.oireachtas.ie/en/members/member/Regina-Doherty.D.2011-03-09/)**:** My Department has written to pensioners in Q4 2018 to explain the review process. That letter also informed pensioners that where possible, the Department would use the information already held to complete their rate reviews but that some pensioners would be required to provide additional information and these pensioners would be contacted again as required.

In January 2019, almost 24,000 requests for additional information were issued. These requests included details on how to provide the required information using the Department’s online services, with a dedicated telephone number provided to support and assist pensioners making their applications. Provision has also been made for those who do not have access to a personal computer, or the internet, who can use the dedicated line to request paper forms, which have commenced issuing from this week. Outcomes will issue to all pensioners in writing when their review is completed and the first of these have begun issuing to pensioners from 13 February. Where due, increased payments will be made without delay and will include arrears of pension back to the 30 March 2018, or the pensioner’s 66th birthday if later than that. Where pension rates do not increase as a result of this review, they will continue to be paid at their existing rate of entitlement. Of those who were asked for further information, thousands have already returned their details via the online service and continue to do so successfully.

As of the week ending Friday, 22 February, 1,138 reviews have been completed and of these, 86% have resulted in an increase in their payment and 14% will continue on their existing payment. Reviews will continue to be processed until all identified pensioners receive a review outcome in writing.

Wednesday, February 27

**Written Questions**

**TCA**

***Deputy Catherine Martin****asked the Minister for Employment Affairs and Social Protection the way in which the pensions of pre-2020 entrants will be affected by the move to a TCA in 2020; when a calculator for the total contributions pension will be in place via the Pensions Authority;* *and if she will make a statement on the matter.*

[**Minister for Employment Affairs and Social Protection**](https://www.oireachtas.ie/en/members/member/Regina-Doherty.D.2011-03-09/)**:** The required primary legislative provisions are contained in the Social Welfare, Pensions and Civil Registration Act 2018, enacted on 24 December 2018. All the necessary regulatory and system changes have now been made to allow the increased payments to begin.

My Department is now reviewing the pension payments of approximately 91,000 pensioners who were awarded less than the maximum rate of pension since September 2012. Given the number of pensioners involved, this work will take a number of months to complete. The increased payments will also include arrears to the 30th March 2018, or the pensioner’s 66th birthday if later. The Department is using information it already has to complete these reviews. However, in quite a number of cases, additional information is required from the pensioners concerned about gap periods in their social insurance records and my Department will be in touch with each of those pensioners individually to get that information.

As regards the TCA model that will apply for all new pensioners post-2020, a number of workshops were held on the day to elicit views and feedback. The consultation was open for over 3 months and the Department received almost 300 responses from individuals and organisations. Those submissions outlined the views of respondents on a number of issues, including the number of years required for a full pension, as intended as part of the consultation process. I have recently been provided with an analysis of the views submitted in the consultation. Having considered this analysis, I intend bringing a proposal to Government shortly, setting out the proposed details of the scheme. When the Government has agreed the approach to be taken, I will initiate the work required to introduce this reform. Following the replacement of the existing Yearly Average approach with the TCA, the calculation of benefit levels under the State Pension (Contributory) should become significantly less complex, and it is intended to review, at that stage, the provision of information regarding future entitlements.

Regulation and supervision of State Pensions does not come under the remit of the Pension Authority. Therefore it has no role in the provision of information in relation to the State Pension. The Pensions Authority regulates occupational pension and private pensions.

Thursday, February 28

#### Priority Oral Question

**FSPO**

***Deputy Pearse Doherty****asked the Minister for Finance his views on whether Sections 44(2) and 50(3) of the FSPO Act 2017 are in need of amending (details supplied).*

[**Deputy Pearse Doherty**](https://www.oireachtas.ie/en/members/member/Pearse-Doherty.S.2007-07-23/)**:** I am concerned about the interpretation of this Act which means that any court proceedings at all involving a consumer is enough for the FSPO to wash its hands of the complaint. I know of a case where proceedings were struck out by the court. Those proceedings were not related to the specific complaint made to the FSPO, but the FSPO could not investigate the claim because of the interpretation of the Act. There is a need for this Act to be amended.

[**Minister**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/) **for Finance:** One of the functions of the FSPO is that he may advise and, as appropriate, make recommendations to the Government in respect of any proposed legislative changes concerning financial services or pensions.

I sought the FSPOs observations on Section 44(2) and Section 50(3) and he has not identified any difficulty with the operation of either Section. Section 44(2) of the Act, among other things, prescribes that a complainant may not make a complaint to the FSPO where the conduct giving rise to the complaint is or has been the subject of legal proceedings before a court or tribunal. I need to stress that it is the conduct giving rise to the complaint that is referred to here. This is considered to be the right approach, as it would not be appropriate for the FSPO to become involved in an issue which has already been, or still remains, before the courts.

The FSPO provides an avenue for resolution of complaints about the conduct of financial service providers or pension providers as an alternative to the courts. It cannot undertake investigations in parallel to an issue which is being litigated or has been litigated before the courts. Subsections (1) and (2) of Section 50 provide a counterbalance to this restriction. These allow the FSPO to investigate a case where he believes the provider has initiated legal proceedings to frustrate an investigation. Section 50(3) prescribes that the FSPO shall not investigate or make a decision on a complaint where "*there are or have been proceedings (other than where the proceedings have been stayed under Section 49) before any court in respect of the matter that is the subject of the investigation*".

[**Deputy Pearse Doherty**](https://www.oireachtas.ie/en/members/member/Pearse-Doherty.S.2007-07-23/)**:** I do not accept the FSPOs position. I find it quite surprising. I have worked with that office and I have introduced and passed legislation that impacts on that office. I am referring to a situation where a consumer has taken a complaint to the FSPO. The complaint concerns PPI, and completely different from what was before the courts. What was before the courts was also struck out. It was not adjudicated upon. In response to the complainant, the FSPO stated that although it noted the proceedings were struck out, nevertheless it took the position that the matter had been subject to legal proceedings. The PPI issue was not subject to legal proceedings and was not part of that case. An issue concerning this individual's mortgage was before the court, and because of that, it was deemed, under these Sections of the Act, that the PPI issue was before the courts. That was the case even though PPI issue was never adjudicated upon. It was simply struck out. It is unacceptable that where the courts have not ruled on the substance of an issue, the FSPO is locked out from engaging with the complainant.

[**Minister**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/) **for Finance:** Given the work the Deputy has done with the office of the FSPO, I hope he is aware, and I am sure he is, of how seriously that office takes its responsibilities and the important work it does in this area. The office has indicated to me that it does not believe there is a need for this change to the Act. All I have in the details supplied as part of this question is information on the policy issue as opposed to the particular case referred to by Deputy Doherty. If the Deputy, however, would be willing to share with me the specific details of the case, I will be happy to raise it with the FSPO and get a more detailed answer for him. From the work I have done with the FSPO, and what that office has shared with me regarding how it does its work, I think it gets the balance right on the vindication of the rights of consumers and citizens. If the Deputy believes the office of the FSPO is being frustrated in its work in not following up on an issue that the Deputy takes seriously, I would be surprised by that and I will be happy to investigate the matter further for him.

[**Deputy Pearse Doherty**](https://www.oireachtas.ie/en/members/member/Pearse-Doherty.S.2007-07-23/)**:** I appreciate that and I will take up that offer from the Minister. This is a serious issue and not an isolated one. It is part of a broader concern. We are familiar with this legislation. I believe it was pushed, to a certain extent, to catch up with my own legislation at the time. It may have been slightly rushed. I think there is an issue with what is in the Act. Let us look, however, at the case and see how that applies. I am also conscious that the FSPO is under significant pressure. I hope it has the resources to help it deal with the cases before it. We learned last week, through a PQ, that it has 1,200 tracker mortgage cases to deal with. About half of those cases are live and the other half are awaiting the outcome of an Independent Appeals Process. That will put a huge burden on the FSPO, given the number of cases to be dealt with at one time. I will give the details of this case to the Minister. If this is going to be the approach of the FSPOs office to cases, then I am concerned. Legitimate claims to the FSPO may be frustrated.

**Minister for Finance:** I have three points in response. Regarding the resources available to the office of the FSPO, I recently visited its new facilities located around the corner from the Houses of the Oireachtas. Those new facilities allow the FSPOs office to meet citizens and follow up on issues raised. It will also be possible for the FSPO to be involved in mediation on important issues brought to the office.

Turning to the substantive issue raised by the Deputy, it is not unusual for the FSPO, and similar bodies, to state that it will not adjudicate on issues that are either in the courts or have been dealt with by the courts. That is because one of the roles of the FSPO is to try to provide alternative ways to resolve issues apart from having to go to court.

Third, as I have said, if the Deputy will give me the details, as he has said he will do, I will follow up on the matter. In my engagement with the FSPOs office, I have found that it takes and discharges its responsibilities very seriously. I discussed with the FSPOs office the specific consequences that may affect the organisation in trying to deal with the tracker issue.

**Written Questions**

**Public Sector Pension Data**

***Deputy Noel Grealish****asked the Minister for Finance the cost of income tax relief provided in the public service pension related deduction by Section 790C of the Taxes Consolidation Act 1997 in each of the years 2015 to 2017; and if he will make a statement on the matter.*

[**Minister for Finance**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/)**:** The Public Service Pension Related Deduction (PRD) was not separately declared on tax returns, therefore the data requested by the Deputy for the years 2015 to 2017 are not available. For the Deputy’s information, the Additional Superannuation Contribution (ASC) replaced the PRD from 1 January 2019, and the income tax relief is provided for under section 790CA of the TCA 1997.

Since 1 January 2019, Revenue has introduced a new PAYE reporting system for employers. Under this system, employers are required to submit data in relation to emoluments paid and deductions made each time they run their payroll and this provides for the reporting of additional data not previously recorded. Information on the cost of relief arising from the ASC will be available later in 2019 once the new system has bedded down and the data are available for analysis.

**Seanad**

Tuesday, February 26

No relevant business

Wednesday, February 27

No relevant business

Thursday, February 28

No relevant business

**Oireachtas Committee**

No relevant business

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