

PUBLIC CONSULTATION - CITIZENS' ASSEMBLY ON GENDER EQUALITY 2020

QUESTIONNAIRE

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| CA30071 | Name with Secretariat |
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Theme 1: Gender norms and stereotypes

Gender norms and stereotypes as barriers to gender equality

Fixed ideas about what women and men should do in the home or at work are learned by girls and boys in early childhood and throughout their lives. These ideas or gender stereotypes affect their choices in school and as they enter careers and contribute to a lack of progress toward equality between women and men. This limits not only the jobs that women and men consider or are available to them, but also can exclude women and men from social roles and tasks.

- Please outline what you see as the key barriers/ obstacles and challenges to gender equality under this theme in law, policy and practice.

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- Please identify the steps to be taken to address the issues raised and who should address them (e.g. the state, private sector, education system etc.)

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Theme 2: Work: Occupational segregation by gender, gender discrimination and the gender pay gap

Women and men are often concentrated into different kinds of jobs and within the same occupations, women are often in work that is less well paid and has less opportunities for career advancement. Women often work in areas where they can work part-time so as to fit in with their caring responsibilities. While many men work in low paid jobs, many professions dominated by women are also low paid, and professions that have become female-dominated have become lower paid. This worsens the gender pay gap (the average difference between the wages of women and men who are working).

- Please outline what you see as the key barriers/ obstacles and challenges to gender equality under this theme in law, policy and practice.

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| Irish pension law currently allows for favourable discrimination in occupational pension benefits to married families over one-parent families, in the event of death of the parent |
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(Part VII of the Pensions Act, 1990) - Legislation summary extract is quoted below at bottom of submission.

Approximately 86% of One Parent Families are mothers ([Census 2016](#)).

I am a single working parent heading a One Parent Family household with zero care input from my child's father by father's choice. Here is how this legislation plays out in my workplace/pension:

I am a member of my employer pension scheme, that offers an ADDITIONAL Death in Service Benefit [REDACTED] to employees who have a spouse or civil partner, but denies this additional benefit to unmarried parents, despite the fact that the dependants of a one parent family would be MOST in need of assistance on the death of the sole potential income provider in such families. While the employer has done nothing illegal, this law enables what amounts to a de facto discrimination against children, based on the civil status of their parents.

It means that employers are allowed to provide less favourable pension benefits to 218,817 One Parent Family households, of which 189,112 (86%) are headed by women, 14% by men.

LEGISLATION:

Legislation

(a) Part 7, section 72 (2) of the Pensions Act 1990 (as amended by the Social Welfare (Miscellaneous) Act 2004) (the Pensions Act) states as follows:

It shall not constitute a breach of the principle of equal pension treatment on the marital or family status ground for a scheme to provide more favourable occupational benefits where those more favourable benefits are in respect of any person in respect of whom, under the rules of the scheme, a benefit is payable on the death of the member, provided that this does not result in a breach of the said principle on the gender ground.

(b) It follows that a breach of the principle of equal pension treatment on the marital or family status ground is permissible.

- Please identify the steps to be taken to address the issues raised and who should address them (e.g. the state, private sector, education system etc.)

I believe the state/ Oireachtas should address this anomaly in pension law via Law Reform Commission to ensure that the dependants of one parent families are not

allocated less benefit than dependents of married parents due to the Death in Service of their parent.

Benefit should be framed / allocated around 'financial dependency' rather than 'civil status'.

I have already raised this issue with various agencies (Pensions Authority, IHREC, One Family & PILA – Public Interest Law Alliance/FLAC), some Oireachtas members & my employer.

Workplace Relations Commission is not appropriate given there is no breach of law.

Helpfully, One Family via Public Interest Law Alliance (PILA) had a barrister look over current legislation in this regard (see additional document) but their resources are extremely limited in pursuing this.

Theme 3. Care, paid and unpaid, as a social and family responsibility

Care -- the social responsibility of care and women and men's co responsibility for care, especially within the family

Women remain disproportionately responsible for unpaid care and often work in poorly paid care work. For working parents or lone parents, balancing paid work with parenting and or caring for older and dependent adults presents significant challenges. Women are most disadvantaged by these challenges, yet men also suffer from lack of opportunities to share parenting and caring roles. Despite recent legislation and policy initiatives to support early years parental care, inequalities in the distribution of unpaid care continue between women and men. The cost of childcare has been identified as a particular barrier to work for women alongside responsibilities of caring for older relatives and dependent adults.

- Please outline what you see as the key barriers/ obstacles and challenges to gender equality under this theme in law, policy and practice.

- Please identify the steps to be taken to address the issues raised and who should address them (e.g. the state, private sector, education system etc.)

Theme 4: Women's access to, and representation in, public life and decision making

The uneven burden of care (voluntary and involuntary primary care of children and parents) between men and women is the fundamental barrier to equality.

This erects barriers to even the most determined woman to self-determination, ability to progress a career, have a voice in decisions and participate in public life.

- Please include any further comments or observations you may have here.

Supplementary Document will be sent

ARTHUR COX

Memorandum

TO: Mary McDermott, One Family
FROM: Arthur Cox
COPY: Rachel Power, Public Interest Law Alliance (“PILA”)
DATE: March 2019
SUBJECT: Legal Opinion - Death in Service benefits that exclude families outside marriage or civil partnership

1. Introduction

- 1.1 We have been asked by PILA to prepare a legal opinion on whether a death in service benefit payment that excludes families outside marriage or civil partnership is discriminatory.
- 1.2 PILA was contacted by One Family, an organisation that supports people parenting alone, sharing parenting, separating, and those experiencing a crisis pregnancy. It promotes policies that positively impact on one-parent families.
- 1.3 One Family is concerned about what it perceives to be the unequal treatment of lone parents with regard to Death in Service Benefits under a pension scheme.
- 1.4 One Family was contacted by a lone parent who is a member of an employer pension scheme. The employer pension scheme has a death in service benefit that is offered to all employees. There is an additional lump sum death in service benefit offered to all employees who have a spouse or civil partner.
- 1.5 This additional benefit is not available if you are unmarried with children even if the need for such a benefit is greater. The lone parent contacted the Pensions Authority who informed them that such a practice is legal and permissible.
- 1.6 One Family have requested an opinion on whether such a practice is discriminatory. The opinion is to form the basis of One Family’s advocacy and policy objectives and the lone parent does not wish to take legal action.
- 1.7 We have reviewed what we understand to be a redacted extract from the member’s explanatory booklet, in respect of the lone parent’s employer’s death in service benefit.

2. Legal position

2.1 Legislation

- (a) Part 7, section 72 (2) of the Pensions Act 1990 (as amended by the Social Welfare (Miscellaneous) Act 2004) (the Pensions Act) states as follows:

It shall not constitute a breach of the principle of equal pension treatment on the marital or family status ground for a scheme to provide more favourable occupational benefits where those more favourable benefits are in respect of any person in respect of whom, under the rules of the scheme, a benefit is payable on the death of the member, provided that this does not result in a breach of the said principle on the gender ground.

- (b) It follows that a breach of the principle of equal pension treatment on the marital or family status ground is permissible.

2.2 Principle of Equal Pension Treatment

- (a) The Principle of Equal Pension Treatment between men and women in occupational benefit schemes is well established. On 1 January 1993 the Government introduced Part VII of the Pensions Act, 1990. The effect of the legislation was to prohibit any discrimination, on the basis of sex (gender) in respect of any matter relating to an occupational benefit scheme and in relation to the manner in which an employer affords his employees access to an occupational benefit scheme.
- (b) It should be noted that differences in treatment are permitted. The general principle is that if there is a breach of the Principle of Equal Pension Treatment on one of the discriminatory grounds it is actionable, but there are certain exceptions contained in the legislation which operate to exclude certain factors in determining whether there has been a breach of the Principle of Equal Pension Treatment on one of the nine discriminatory grounds. Discrimination in favour of married individuals is one of the permitted exceptions.

2.3 Permitted Discrimination

- (a) Pursuant to the Pensions Authority's "A Brief Guide to Equal Pension Treatment" published in February 2015, the Pensions Act (as amended) permits different dependants' benefits and allows positive discrimination in favour of married people

e.g. it is permissible to pay a spouse's death in service benefit but to provide no equivalent benefit for unmarried or same-sex partners.

3. **Extract from the member's explanatory booklet**

3.1 We have reviewed Page 13 of the redacted member's explanatory booklet, in respect of the lone parent's employer's death in service benefit, which states as follows:

If you are a married Member or you have entered into a lawfully registered civil partnership, an additional lump sum benefit equal to 6 times your salary recalculated at the date of death, which will be used to purchase a pension for one or more of your Dependants.

3.2 This clause contained in the member's explanatory booklet is legally permissible pursuant to s 72 (2) of the Pensions Act 1990 and is not in contravention of the principle of equal pension treatment.

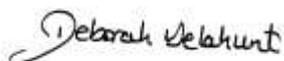
4. **Legal Opinion**

4.1 The practice of positively discriminating in favour of a married couple is legally permissible under Irish law. There is no direct discrimination under the employer's death in service benefit, as what is provided for (as outlined at section 3.1 above) is a permissible discrimination in favour of married individuals which is within the parameters of s72 (2) of the Pensions Act 1990.

4.2 There is no Irish case law on this point as it is accepted as a matter of law that the practice of positively discriminating in favour of a married couple, with respect to the principle of equal pension treatment, is legally permissible under Irish law.

If you have any further queries in relation to the above, please do not hesitate to contact me.

Yours sincerely



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