



Circular Number: Circular 16/2020

Circular Title: Internal Dispute Resolution (IDR) procedure for pension appeals in relation to beneficiaries/disputed beneficiaries of pre-existing civil service pension schemes and of certain public service pre-existing pension schemes

To: HR officers in Government Departments, Offices and Public Service Bodies

A Dhuine Uasail

I am directed by the Minister for Public Expenditure and Reform to set out the Internal Dispute Resolution (IDR) procedure for pension appeals in relation to beneficiaries/disputed beneficiaries of pre-existing pension schemes¹ in:

- the civil service; and
- the public service where it is specified in either the governing legislation establishing the body, or in the pension scheme rules, that the Minister for Public Expenditure and Reform (or formerly Minister for Finance²) is responsible for making the determination.

Additionally Section 2 and 3 of this Circular provide information applicable to all civil and public service pension disputes, regardless of scheme.

Date: 09 October 2020

File Reference: P037-004-2018

Purpose: This Circular outlines Internal Dispute Procedures for pension appeals in relation to beneficiaries/disputed beneficiaries of pre-existing pension schemes.

Relevant Legislation: Financial Services and Pensions Ombudsman Act 2017 / Pensions Ombudsman Regulations S.I. 397 of 2003 (repealed)

Effective From: 09 October 2020

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¹ Public service pension/superannuation schemes in place prior to the establishment of the Single Public Service Pension Scheme on 1 January 2013

² Such functions transferred to the Minister for Public Expenditure and Reform under S.9(1)(a)(i) of the Ministers and Secretaries (Amendment) Act 2011.

- 1. Scope:** Sections 2 and 3 of this Circular contain information applicable to all civil and public service pension disputes irrespective of the civil/public service scheme a dispute may relate to.

Section 4 onwards and the appendix outline the procedures HR offices in government departments, offices and public service bodies are required to implement for disputes in respect of beneficiaries/disputed beneficiaries of pre-existing pension schemes (public service pension/superannuation schemes in place prior to the establishment of the Single Public Service Pension Scheme on 1 January 2013) in: (i) the civil service; and (ii) the public service where it is specified in either the governing legislation establishing the body or in the pension scheme rules that the Minister for Public Expenditure and Reform (PER) or formerly Minister for Finance³ is responsible for making the determination.

HR managers/personnel officers in government departments, offices and public service bodies should make these procedures available to eligible individuals (see section 4 – “Who can appeal”) who might have reason to appeal pension decisions linked to these schemes. It is open to public service bodies to use their own guidance document modelled on this Circular and appendix, and adapted to its own particular administrative procedures and relevant legislation. However, it must incorporate the requirements laid out in this Circular and appendix, and the appendix checklist will still be required when an appeal is submitted to the Department of Public Expenditure and Reform (DPER).

Pending the establishment of a dedicated appeals process for the Single Public Service Pension Scheme (“the Single Scheme”), appeals taken by Single Scheme appellants, including those disputing their placement in the Single Scheme, should be dealt with in accordance with the principles outlined in section 2 and 3 of this Circular. Queries in relation to such appeals should be directed to singleschemequeries@per.gov.ie.

This Circular should be circulated to all offices and bodies under your aegis.

- 2. Background:** The Pensions Ombudsman Regulations S.I. 397 of 2003 (“the Regulations”), made under Section 132 (Part XI) of the Pensions Act, 1990 (as amended), were repealed by the Financial Services and Pensions Ombudsman Act 2017 (“the 2017 Act”) which laid down statutory requirements with regards the provision of IDR procedures by pension-providers. The repeal of the Regulations did not negate the use of IDR procedures, nor did it prevent the use of IDR procedures incorporating requirements laid out in the repealed Regulations on an administrative basis where such are considered appropriate and necessary.

The current IDR procedures in respect of pre-existing pension scheme appeals cite the repealed Regulations. In light of their repeal and following a general review of the IDR procedures in respect of these schemes - which highlighted a need for increased clarity with regards the steps all parties should follow - this Circular now replaces any previous Circulars/Letters/Guidance issued with regards to pension appeals/IDR procedures relating to pre-existing schemes in the: (i) civil service; and (ii) public service where the Minister for PER has a role in the determinations. This includes:

³ Such functions transferred to the Minister for Public Expenditure and Reform under S.9(1)(a)(i) of the Ministers and Secretaries (Amendment) Act 2011

- Department of Finance Guide for Departments and State Bodies: internal dispute resolution (IDR) in schemes where the Minister for Finance is responsible for making a determination in claims which may proceed to the Pensions Ombudsman, 7 February 2008 (P18/227/98), and updated version of this dated 29 March 2018; and
- Department of Finance Public Service Pension Appeals – Information Note for Appellants, 23 June 2009

3. Legal basis and duty to provide IDR procedures: The repealing of the Regulations did not affect the statutory role of the Minister for PER in relation to public/civil service pension disputes where it is laid down in civil and public service legislation. Furthermore, the 2017 Act still requires complainants to complain to their pension-provider, and give it a reasonable opportunity to deal with the complaint, before complaining to the Financial Services and Pensions Ombudsman (FSPO).

Constitutional, ECHR and administrative law afford a right to fair procedures. Public bodies, and those working in them, have a positive obligation to apply fair procedures when making decisions regarding individuals' entitlements. The provision of an IDR procedure in civil/public service pension disputes/appeals, and the procedures themselves, are required and should serve to ensure decisions are reached in a way that is procedurally fair and without bias e.g.:

- information being reviewed and relied upon in making the IDR determination should be made available to the appellant and they should be given a chance to respond before a determination is reached;
- the person making the IDR determination should not be involved in the original decision being complained of; and
- the reasons for the IDR determination should be provided to the appellant.

Potential appellants, along with civil and public service pension scheme providers, should be aware of:

- The statutory remit of the Financial Services and Pensions Ombudsman in investigating pension complaints (section 44 of the 2017 Act), namely the conduct of a pension-provider involving:
 - alleged financial loss occasioned to an appellant by an act of maladministration done by or on behalf of the pension provider, or
 - any dispute of fact or law that arises in relation to conduct by or on behalf of the pension provider.
- The statutory time limits (Section 51 of the 2017 Act) for pursuing pension complaints to the Financial Services and Pensions Ombudsman, whichever is the latest to expire of:
 - 6 years from the date of the conduct giving rise to the complaint;

- 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint.
- The FSPO can extend these timelines where they consider it just and equitable to do so. The time limits are also frozen while a complaint is being considered under local IDR procedures. However, the FSPO can investigate a complaint where the pension-provider has failed to complete the procedure in time for the complainant to make a complaint to the FSPO within the time limits above, or if the FSPO considers the complaint is of such importance to warrant waiving the IDR procedure (Section 54 of the 2017 Act).

- 4. Who can appeal:** Appellants under these IDR procedures can be beneficiaries and disputed/potential beneficiaries of pre-existing schemes. An appeal under these IDR procedures may also be made or continued on behalf of a beneficiary by a representative nominated by the member, e.g. Trade Union representative or solicitor. An appeal may be made or continued on a beneficiary's behalf when the member dies, or is a minor, or is incapable of acting for themselves.

It should be noted however that the public service employer of the member/alleged member in question is not appropriate to act on an appellant's behalf should they pursue an appeal to DPER/Minister for PER or should the appellant pursue the complaint further to the FSPO. The public service employer is bound by the rules of the relevant public service scheme and the policies/decisions of DPER and the Minister for PER.

- 5. Nature of decisions that can be appealed:** These IDR procedures apply where one wishes to appeal a decision directly linked to pension scheme terms and/or pension benefits. They do not apply in relation to other HR/contract/retirement-related decisions. For example, a decision by an employer not to grant ill-health retirement is a HR decision rather than a pension decision. If ill-health retirement has been granted and then a dispute arose regarding the calculation or payment of an ill-health retirement pension awarded, an appeal could be pursued under these procedures.
- 6. Who should appellants/prospective appellants contact:** Appeals should be raised with the HR office of the relevant Body/Department. Relevant Body/Department means the Body/Department that was involved in the pension decision being complained of. For example, if a period of service early in one's career was not deemed pensionable by the employer at the time and the individual wishes to dispute this, it is the HR office of their employing body/department at the time of that period of employment that should be pursued, and not the final employing Body/Department, if different.
- 7. Restriction on comment while appeal is under consideration:** From the time a person commences the formal appeal process (see Stage 2 in appendix) until a determination has issued, the appellant should receive no communication either in writing or verbally to indicate the possible success or failure of their appeal. This approach is necessary given the quasi-judicial process involved and applies to PQs, representations, FOI requests and similar requests.

8. Determinations where Minister for Public Expenditure and Reform consultation or consent is required: There are also some public service schemes which provide that the Minister for PER should give consent to, or be consulted on, a determination to be made by another Minister. In such cases, the other Minister should not make any determination until after such consent from, or consultation takes place with, the Minister for PER. In these cases, in order for the Minister for PER to consult on the case, DPER would require the same documentation to be submitted as part of this process as is laid out in the appendix checklist.

9. Queries about this Circular:

In relation to pre-existing scheme appellants:

- Queries from individuals should be raised with their local HR unit
- Queries from public service bodies should be raised with their parent Department
- Queries from Departments can be raised with this Department via email to pensions@per.gov.ie (Note: this email address is for HR offices and pension administrators, individual queries to this email address cannot be answered)

In relation to Single Scheme appellants, including those disputing placement in the Single Scheme:

- Queries should be directed to singleschemequeries@per.gov.ie

Appendix 1: Outline of IDR procedure

Stage 1: Written explanation of decision

If an eligible individual (see section 4 above) has an issue or concern with regards a pension decision, the HR officer of the relevant body/department (if they have not already done so) should provide a written explanation of the decision within **1 week** of the date of the matter being raised.

The HR officer should notify the person that if they are not satisfied with the written explanation of the decision (provided at this stage or previously), they can pursue a formal appeal via Stage 2 of the IDR procedure. They should be provided with a copy of this document (or equivalent if drawn up by the public body in question but incorporating these procedures).

In preparing the written explanation, the relevant body/department should check records and the pension scheme rules to ensure the rules and terms have been applied correctly in the particular case. They should satisfy themselves that their interpretation of the relevant legislation/scheme rules and procedures in question are correct.

Consultation with other parties involved in the decision, like the respective pensions administrator (if separate to the HR office), may be required e.g. in the case of the civil service, consultation with the NSSO – who administer civil service pensions - may be required when the matter relates to calculations, payment or other administrative matters. Where it is accepted that an error or omission has occurred the matter should be rectified immediately.

The response should be comprehensive and should quote the relevant scheme rules and explain how and why they applied in the particular case.

Stage 2: Formal Appeal

- 1) In deciding whether and when to instigate a formal appeal, prospective appellants should bear in mind the deadlines for pursuing a complaint to the FSPO (outlined above in Section 3) and that the FSPO will generally require that the matter be appealed to their pension-provider in the first instance.

The appellant should notify the HR office in the relevant body/department that they wish to pursue a formal appeal. They should submit a statement in writing with information including:

- the name, address and date of birth of the beneficiary or disputed/potential beneficiary
- a correspondence address
- details of the dispute, including the response they received from HR at Stage 1 (or earlier)

- a clear statement of the reasons why they are still aggrieved and the grounds on which the appeal is being continued to Stage 2. Provide detailed information e.g. relevant dates, places and times

The statement must be in writing and signed by or on behalf of the actual or disputed/potential beneficiary. Copies of documents referred to, and evidence being relied upon e.g. contracts, scheme rules, statements, emails, letters, invoices and receipts should be included also.

- 2) The relevant body/department should prepare a detailed response to the appellant's statement and documentation.
- 3) The relevant body/department should coordinate the necessary appeals documentation. The necessary documentation required is listed in a checklist in the appendix of this Circular. Where multiple parties played a role in the decision (e.g. a local HR office, a payroll/pension administrator), all parties should be notified of the appeal by the relevant body/department and a statement, along with any documentary evidence being relied upon, from all parties must be included in the submission prepared by the relevant body/department
- 4) Submission of papers:
 - i. In the case of the public service:
 - a. The appeal documents should be submitted by the relevant body to the line department of the referring Minister specified in the scheme rules/governing legislation **within 2 weeks of receiving the appellant's appeal.**
 - b. The line Department must then ensure that there is all the necessary information and details to present the complete appeal, both from the appellant's point of view and the relevant body's point of view. Any additional information deemed necessary should be requested from the appellant by the line department, with a copy also sent to the body.
 - c. The line Department should set out a factual description of the circumstances surrounding the appeal, the appellant's case, the relevant body's case, the relevant legislation/scheme rules in question and any notable features – in essence crystallising all the issues so that they can be adjudicated upon by the Minister for PER.
 - d. The papers and completed checklist - signed by the line department – should be submitted to DPER **within 2 weeks of receiving the papers from the public service body.** A copy of the submission papers should be sent to the appellant at the same time (save for legal advice should it be decided to

withhold on the basis of legal privilege⁴) and the line department should notify them that they have 10 days in which to forward comments to the Pension Appeals Team in DPER.

ii. In the civil service:

- a. The civil service HR office of the relevant body/department should set out a factual description of the circumstances surrounding the appeal, the appellant's case, the relevant body/department's case, the relevant legislation/scheme rules in question and any notable features – in essence crystallising all the issues so that they can be adjudicated upon by the Minister for PER.
- b. This factual description and the other appeal documents, along with a signed copy of the appendix, should be submitted to DPER within 2 weeks of receiving the appellant's appeal. A copy of the submission papers should also be sent to the appellant (save for legal advice should it be decided to withhold on the basis of legal privilege⁵) at the same time and the HR office should notify them that they have 10 days in which to forward comments to the Pension Appeals Team in DPER.

The appeal papers should be addressed to the Pension Appeals Team, Public Service Pensions Policy Unit in DPER and sent by post and in soft copy to the email address pensions@per.gov.ie. Please be advised that DPER can only accept and progress an appeal where the checklist provided in the appendix has been completed and signed by a representative of the referring line department in the public service category (i) above, or of the civil service HR office of the relevant body/department in the civil service category (ii) above.

- 5) In the course of examining the appeal, the advice of an expert in the relevant area, such as a lawyer, actuary, pension consultant or accountant, who is not involved in the matter at issue, may be sought by DPER. If such is being sought, the DPER appeals officer will:
- inform the parties of their intention to ask for expert advice;
 - on receipt of the advice, inform the parties of the nature of the advice obtained; and
 - give the parties an opportunity to make submissions in regard to the advice.

⁴ If legal advice is withheld, a note on the nature of the advice should still be provided to the appellant.

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6) A “notice of determination” will be given in writing to the appellant within 3 months from the date all particulars required to make the determination have been furnished⁶. The notice of determination will include:

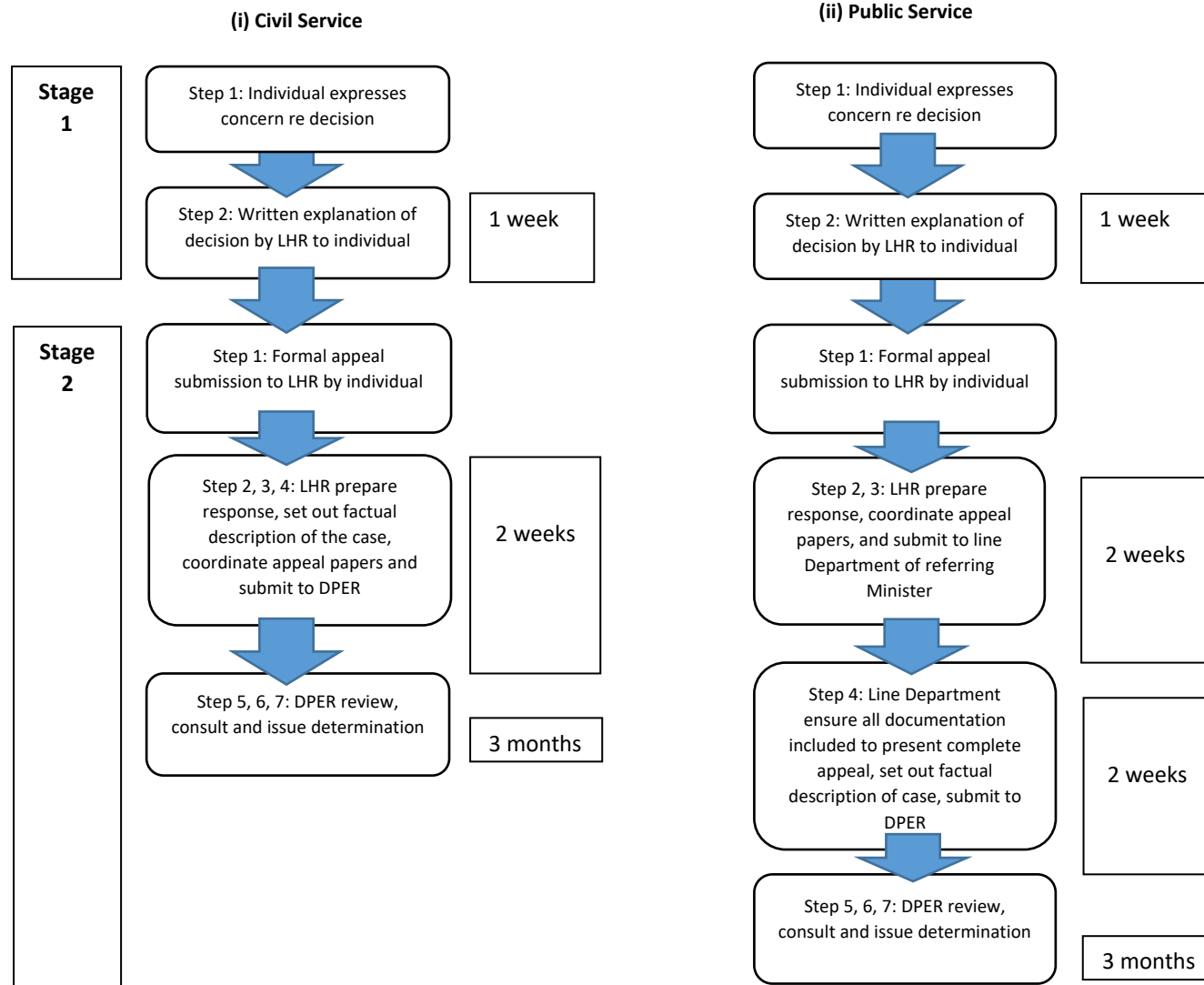
- a statement of the determination;
- the reasons for the determination, and any findings of fact that were material to the determination;
- a reference to such parts of any rules of the scheme relied upon and, where a discretion has been exercised, a reference to such parts of the rules of the scheme by which such discretion is conferred ;
- a reference to any legislation, legal precedent, ruling or other material relied upon; and
- a statement that the appellant should check whether the complaint or dispute is one in respect of which the Financial Services and Pensions Ombudsman has jurisdiction to investigate and that further information can be found at the website of, or by contacting, the Office of the Financial Services and Pensions Ombudsman

7) The determination will also be shared with the referring line department in the case of public service appeals above, or of the relevant body/department in the case of civil service appeals. If it is a public service appeal, the line Department should forward this to the public service employer involved and instruct them to make any necessary changes/revisions to the pension as result of the determination. In the case of the civil service, the HR office of the referring line Department should instruct the NSSO to make any changes/revisions to the pension as required by the determination.

⁶ If it was considered that expert advice was required upon review of the appeal documents submitted, the 3-month deadline would pause until receipt of said advice.

Checklist for IDR: Appeal papers required	Yes	No	Explanation if No
A copy of the written explanation of the decision, as provided to the appellant when the matter was raised initially (see Stage 1 above)			
Appellants' appeal statement submitted at Stage 2 (see Stage 2, Step (1) above)			
A copy of any documentary evidence being relied upon by the appellant			
Response to the appellant's statement by all parties involved in original decision (see Stage 2, Step (2) and (3) above)			
Copy of any documentary evidence being relied upon by any parties involved in original decision (see Stage 2, Step (2) and (3) above)			
Factual description of the case crystallising the issues arising by the office/body referring appeal to DPER pension appeals team (for details required see Stage 2, Step (4) above)			
A copy of the rules of the scheme, and any relevant statutory provisions/Circulars/Letter to Personnel which are in question/being relied upon			
Legislative provision/scheme rule that dictates that the Minister for Public Expenditure and Reform is responsible for making the determination. (This is required for all public service appeals submitted to DPER)			
Any further information (such as personnel records, contract of employment, consent/option forms, contribution records, related correspondence). Please list same.			
<p>To be signed by representative of the referring line department in case of public service appeal, or of the civil service HR office of the relevant body/department in case of civil service appeal: I certify that the appellant has been made aware of all information being submitted as part of their appeal and has been advised that they have 10 days in which to forward any additional comments/information in response to this submission to the Pensions Appeals Team of Public Service Pensions Policy Unit, Department of Public Expenditure and Reform.</p> <p>Signature: _____ Date: _____</p>			

Overview of Internal Dispute Resolution Procedures for disputes involving pre-existing schemes in (i) civil service and (ii) public service when Min/PER makes a determination



- LHR = local HR in relevant Body/Department responsible for making the initial decision being complained of