



Circular Number: Circular 23/2022

Circular Title: Limited Appeals Process for option to join Public Service Spouses' and Children's Contributory Pension Schemes

To: HR Manager/Personnel Officer/Pensions Manager in each Department and Office

A Dhuine Uasail,

I am directed by the Minister for Public Expenditure and Reform to refer to the limited appeals process recommended by the Commission on Public Service Pensions (CPSP) in its final report (2000) in relation to the exercise of past options not to join Spouses' and Children's pension ('S&C') schemes.

For circulation to all Offices & Bodies under your aegis, and to any current and former staff members and pension recipients to whom it may be relevant¹

Date: 09 December 2022

File Reference: P26-004-2018

Purpose: To clarify the arrangements for operating a limited appeals process for reviewing the exercise of past options not to join S&C schemes in particular circumstances, as recommended by the CPSP, and to give delegated authority for the granting of appeal cases that meet specific criteria.

Applicable to: The circular is of limited application as the appeals process is relevant only to the historical option given to serving staff when the 'original' and 'revised' spouses' and children's contributory pension schemes were first introduced in the public service, and under limited circumstances only.

This circular does not apply to membership of the Single Public Service Pension Scheme 2013.

Related circulars: DPER Circular 18/2020: *Recognition of same sex marriages/civil partnerships under Public Service 'Original' Spouses' and Children's Contributory Pension Schemes*

¹ Including staff on leave, secondment, career break, etc.

The circular should also be made available, where considered relevant, to individuals in receipt of a public service pension; and, where possible through reasonable measures, to others holding an entitlement to benefits under public service pension schemes - such as potential beneficiaries where the pension scheme member is deceased, or members entitled to preserved benefits.

DPER Circular 16/2020: 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

Effective From: 09 December 2022

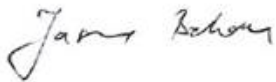
Implementation:

Each civil and public service Department and Office is required to give effect to this Circular, and to ensure that appropriate steps are taken to implement it.

Confirming S&C scheme membership

It is recommended that all civil and public service employers remind their staff who are members of pre-existing public service pension schemes to check whether or not they are a member of an S&C scheme, and the terms of that scheme. Having established their position with regards to S&C membership, members may wish to advise their spouse/partner accordingly.

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Jasmina Behan
Assistant Secretary
Work and Pensions Division

Circular 23/2022: Limited Appeals Process for Public Service Spouses' and Children's Contributory Pension Schemes

Introduction and background

1. The 'original' widows' and orphans' contributory pension schemes were first introduced in the public service and were open to male employees only. The Widows' and Orphans' Scheme for the Civil Service was introduced through Circular 15/1976: *Contributory Pensions Scheme for the Widows and Children of Civil Servants*.
2. Membership was subsequently extended to female employees and the schemes were renamed Spouses' and Children's (S&C) schemes. At the time of their introduction, and subsequent extension to female employees, membership was made optional for serving staff and mandatory for new entrants. In the Civil Service, this was through Circular 10/1981: *Revision of the Superannuation Code*.
3. The 'revised' S&C schemes were introduced from the mid-1980s onwards in many parts of the public service. Membership was again compulsory for new entrants, while serving staff were generally given the option to join. In the Civil Service, this was through Circular 16/1984: *Civil Service Spouses' and Children's Contributory Pension Scheme*.
4. The main difference between the original schemes and the revised schemes is that while the original schemes restrict the classes of beneficiaries to spouses and children of marriages and civil partnerships² that take place during scheme membership, the revised schemes were extended to include spouses/civil partners of post-retirement marriages and civil partnerships, children conceived or adopted after retirement, and children of non-marital relationships.
5. It was a matter for staff and management to agree the introduction of the S&C schemes for each public service body or group. Membership was optional for serving staff in recognition of the contributory nature of the schemes and the fact that individual circumstances would determine to what extent, if at all, a member's spouse, civil partner or dependants would be likely to benefit from the schemes. This approach was agreed with the public service unions.
6. Some serving public servants exercised the option not to join the revised and/or original scheme when these were introduced, and have subsequently sought a new option to join.

Limited appeals process recommended by Commission on Public Service Pensions

7. The Commission on Public Service Pensions (CPSP, 2000) did not recommend granting another general membership option on grounds of cost.
8. However, the Commission recommended that:

'... a limited appeals process for spouses' and children's scheme membership options be established to examine individual cases and to allow appeals that meet any one of the following criteria:

- (i) where there is no evidence that an option was provided to the individual public servant in the first place;*

² With enactment of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, the definition of 'spouse' includes 'civil partner' under both the original and revised S&C schemes.

- (ii) *where there is medical evidence to indicate that the person making the decision not to join the scheme was of sufficiently unsound mind not to appreciate the consequences of his or her decision;*
- (iii) *where a member of the original scheme declined to join the revised scheme in circumstances where there would have been no reasonably foreseeable adverse financial consequences for the individual (in terms only of his or her scheme contributions) had he or she instead opted to join the revised scheme.'*

(CPSP 2000, paragraph 20.3.26)

The criteria recommended by the Commission have been used by this Department in considering S&C scheme membership appeals.

9. As a result of a recent review, and in light of new cases that have come to attention following the issue of DPER Circular 18/2020, it is considered opportune to:
- clarify the arrangements for implementing a limited appeals process to examine individual cases;
 - allow for Civil Service appeal cases under CPSP criteria (i) and (iii) to be submitted to this Department for decision;
 - convey sanction to allow appeal cases within the wider public service that are deemed to meet the CPSP criteria (i) and (iii), to be determined by the parent Department; and
 - allow for appeal cases under CPSP criterion (ii) to be submitted to this Department for decision in all cases.

Submission of appeal

10. Provided the case meets one of the criteria listed at paragraph 8, an appeal under this limited appeals process may be made by, or on behalf of, the following categories of individual:³
- (a) a person who is currently in employment in a public service body and is a member of a public service pension scheme;
 - (b) a person who has left public service employment and is in receipt of a public service pension (or is entitled to claim a preserved public service pension);
 - (c) a surviving dependant of an individual who was in receipt of a public service pension or was entitled to claim a public service pension.
11. The appeal process involves an examination of the exercise of the membership option extended by the public service body, as it pertains to the pension scheme member or former member, and using the criteria laid down by the CPSP and the guidance provided in the Appendix to this circular.
12. Note that no appeal can be lodged if:
- the original scheme and/or revised scheme (as appropriate) was never introduced for the public service body in question; or

³ For more information, see paragraph 4, 'Who can appeal' in DPER Circular 16/2020.

- an individual who exercised an option to be an S&C scheme member now wishes to reverse that option.
13. An appeal must be submitted in the first instance, in writing, to the Personnel (HR) Unit/pension administrator of the public service body with which the pension scheme member, or former member, was most recently employed.⁴
 14. The appellant must indicate clearly which of the three appeal criteria applies to the application, provide all available supporting documentation, and respond to requests for information from the relevant Personnel Unit/pension administrator.

Processing of appeal

15. Where an appeal concerns Civil Service pension schemes, the determination on the appeal shall be made by this Department; to that end, all relevant documentation, should be submitted by the final employing Department or Office to this Department (pensions@per.gov.ie) under the subject line 'Limited S&C scheme membership appeal – Civil Service'.

Civil Service personnel Units/pension administrators should obtain any further information and documentation they consider necessary before submitting the case for decision.

16. Subject to paragraph 19, where an appeal concerns public service pension schemes, the determination on the appeal shall be made by the parent Department of the public service body.
17. Subject to paragraph 22, an appeal may be allowed only if the case has been fully examined by reference to the guidance set out in this circular, and it has been determined that the appeal fulfils criterion (i) or (iii) of the CPSP recommendation.
18. It is acknowledged that as appeals under this limited appeals process relate to historic S&C option periods, it may take some time to establish the facts and review the relevant documentation. However, unless exceptional circumstances apply, the notice of determination should be issued within 3 months from the date all particulars required to make the determination have been furnished.
19. Please note that, subject to the rules of the applicable pension scheme, all cases based on appeal criterion (ii) should be submitted to this Department for determination. In addition, this Department should be consulted prior to decision on any appeal case if:
 - there is a Pension Adjustment Order in place;
 - a child's pension is (or children's pensions are) already in payment, and the granting of an appeal would have the effect under S&C scheme rules of reducing the amount of such pension or pensions already in payment; or
 - other issues arise that are not addressed by the guidance in this circular.

⁴ Where the individual's former employer no longer exists, steps should be taken to follow-up with the body or bodies to whom the pension/personnel file may have passed. Generally, this may be a new public service body in the case of amalgamation; or, where the body has ceased to exist, the parent Department of that body.

Where such an appeal concerns public service pension schemes, all relevant documentation should be submitted by the final employing Public service body to this Department (pensions@per.gov.ie) under the subject line 'Limited S&C scheme membership appeal – public service'.

20. When an appeal is concluded, a full written explanation of the reasons for acceptance or rejection should be provided in the notice of determination. This should include a statement that it may be possible to lodge a complaint to the Financial Services and Pensions Ombudsman (FSPO) and that the individual concerned should consult the FSPO website or contact the FSPO to check whether it has the power to investigate. It is a requirement of the FSPO that any pension complaint should, in the first instance, be appealed to the pension provider; it is considered that this requirement is met once a determination has issued under the limited appeals process.
21. Circular 16/2020 provides guidance on the process to be followed where a general appeal mechanism has been invoked by beneficiaries/disputed beneficiaries of Civil and certain public service pre-existing pension schemes. It also sets out key principles that should be followed in all Civil/public service pre-existing pension scheme appeals.

The limited S&C appeal mechanism provided for in this circular should adhere to those principles, to the greatest extent possible. In particular, as they relate to fair procedures; assembling of relevant papers and provision of a copy of same to appellant; completion of appeal checklist; and issue of written notice of determination.

22. This circular does not affect the rights of scheme members to appeal decisions relating to their pension, where there is a right to such appeal granted under the relevant scheme rules or establishing legislation. Circular 16/2020 sets out further guidance in this regard. However, where a determination has been given in accordance with this circular, it is considered that the appeal process has been concluded and a member may not appeal the same issue through the general appeals process.

Consequences of a successful appeal

23. Where an appeal is successful, the appellant should be informed that they may exercise a membership option for the S&C scheme. A calculation of the contribution liability should take place, and be communicated to the appellant within 6 weeks of a notification of a successful appeal (see paragraph 24, below).
24. The appellant should be informed of the option for membership and all of the associated requirements for exercising the option, including:
 - the deadline date for exercising their option to join the scheme (see paragraph 26);
 - the current contribution liability, which should be supplied in an estimated monetary amount, including:
 - (a) interest to be applied (as of when the notification is issued),
 - (b) notice that the final amount of interest will depend on when full payment is made,
 - (c) the liability may additionally be provided in years (where the member remains in service);

- that the contribution liability owing, and any interest applied (see paragraph 27), must be paid before payment of scheme benefits can be made;
 - payment methods available to the appellant, including payment plan options;
 - a copy of the documentation containing the terms of the relevant S&C scheme; and
 - that their decision to join the relevant S&C scheme is irrevocable, and that payments made under the above will not be refunded to them;
 - that benefits under the S&C scheme will not be payable until such a time as the contribution liability is cleared.
25. When exercising their option to join the scheme, the appellant should be asked to sign a written undertaking confirming their understanding of the requirements (see paragraph 24).
26. The membership option will expire if the appellant actively opts not to join the scheme, or if not taken up 4 weeks after the notification at paragraph 24.
27. The onus is on the appellant to ensure their written notice of undertaking to join the scheme is received by the relevant Department.
28. Where, having received a new option to join on foot of this process, an appellant does not confirm membership by the deadline or chooses not to join the relevant S&C scheme, they may not make a subsequent appeal under this circular in respect of the same membership.

Calculation and payment of contributions due

29. The guidance at paragraphs 16, 18, 20-22 of Circular 18/2020 should be followed in the calculation and payment of any member contributions due and interest to be applied, disregarding the references to Part VIIA of the Pensions Act 1990. These broadly relate to the following areas:
- Paragraph 16:
Make-up of contributions owing in the Civil Service (periodic and non-periodic).
 - Paragraph 18:
Interest to be applied to Civil Service cases.
 - Paragraph 20:
Contributions and interest to be applied in the public service.
 - Paragraph 21:
Use of a 'waiting period' to discharge contribution liability.
 - Paragraph 22:
Use of agreed payment plans, and revised calculations.

For Civil Service cases, to ensure consistency of treatment with cases managed under Circular 18/2020, the interest rates from Circular 15/2014: *Revised rate of compound interest for use in the calculation of refunds to the Exchequer* should be applied as simple rather than compound interest.

30. In order to confirm any contribution liability owing, the pension administrator should examine the information available on the former public servant's pension or personnel file. If necessary, they should also seek relevant documentation from the individual (or, if the individual is

deceased, the surviving spouse/civil partner) on, for example, details of S&C scheme contributions refunded.

31. For a successful appeal under criterion (iii), it would be expected that no contribution liability would be owing if the former public servant was a member of an original S&C scheme while serving and was married at retirement. In such cases, the pension administrators should confirm from the records available that the requirements of the scheme in relation to payment of periodic and non-periodic contributions have been complied with in full.
32. For individuals who continue to be employed in the public service (paragraph 10, category (a)), standard periodic S&C scheme contributions by deduction from salary (if not already being made) should commence from the next available pay period following the option to join the S&C scheme. As agreed with the member, the payment of additional periodic S&C scheme contributions may also be applied to discharge the liability, i.e. doubling of periodic contributions.
33. Any balance of contributions owing shall be paid in accordance with the scheme rules for all appellant categories, including those in respect of individuals who are not in public service employment (paragraph 10, categories (b) and (c)).

Income tax relief

34. It is understood from the Revenue Commissioners that pension recipients who discharge their contribution liability by making lump sum payments may, in certain circumstances, qualify for some income tax relief on foot of these payments. Individuals wishing to enquire about the extent of income tax relief (if any) allowable on foot of lump sum payments should contact their local Revenue tax office (see 'Contact Us' on the www.revenue.ie webpage).

Further information

35. Any queries by Civil Service Departments/Offices should be directed to this Department's Public Service Pensions Policy Unit (pensions@per.gov.ie) under the subject line 'Limited S&C scheme membership appeal query'. Other public service bodies should consult, in the first instance, with their parent Department/Office.
36. All individuals should contact the Personnel (HR) Unit/pension scheme administrators of the public body with which they had been last employed.

23/2022 APPENDIX 1: Guidance on Commission on Public Service Pensions appeal criteria

This Appendix gives guidance on the appeal criteria recommended in the Pension Commission final report (2000, para. 20.3.26) to assist with appeal cases submitted for decision under Circular 23/2022. The criteria are detailed at paragraph 8 of the circular. Please note that this guidance is not exhaustive as circumstances might arise that are not contemplated below; the key point in all cases is that the CPSP appeal criteria must be applied.

Criterion (i): This concerns cases in respect of which the exercise of an option was not properly exercised by the individual at the appropriate time. It is essential to establish first that a general membership option was, in fact, made available to serving staff when the original scheme was first introduced, or was later extended to include female staff, and later when the revised scheme was introduced. (For a small number of public service bodies or groups, an S&C scheme was not introduced in the first place, or where such a scheme did exist, it was decided not to implement the revised scheme notwithstanding its introduction in other parts of the public service. In such cases, this appeal process does not apply.)

An option exercise must have been offered to staff in the public service body and there must exist a fault in the management of the options process that would call into question whether the individual had, in fact, been given an opportunity to exercise the option to join when all other staff had been given that choice, and that the documentary evidence (signed option forms, or lack thereof; communications with HR, etc.) supports that conclusion.

It will be a matter for the public service body to locate the relevant option forms and to furnish any evidence regarding whether or not a valid option was received and processed (e.g. lists of staff who opted to join/not to join; records of payment of member S&C contributions, manual personnel records), or to provide explanations as to why such documentation is not available. The availability of an original or copy of an option form that was signed by the individual in proper exercise of his or her membership option shall normally be a conclusive factor in the decision to reject an appeal; although consideration should be given to whether a cohort of staff, because of their working conditions, would not have had access to the relevant explanatory documentation.

The absence of an option form is not considered to be conclusive evidence of an option not having been given: it will be for the public service body to establish this in the context of the other records available. Also relevant in determining what precisely happened at the time of exercise of options will be any later communications with the individual that make clear his or her status as a member or non-member of the S&C scheme as this will give evidence as to the individual's recorded understanding of the position at that later date.

The payment of S&C contributions should also be considered. Once someone joins a scheme, they will be subject to periodic contributions by deduction from their salary. The requirement to make S&C contribution in the order of 1.5% of Gross/Net Pensionable Remuneration, as appropriate, would have been communicated to individuals via the documentation accompanying the exercising of an option. In this regard there is a duty on both employer and employee to ensure the necessary periodic contributions are being deducted. Thus, the non-deduction of contributions should have alerted the individual that they were not enrolled in the S&C scheme following the options period (when the individual may have believed they had been so enrolled); it would be expected that this should have led them to raise a query at the time with either the HR or salaries unit, and that there would be a record of this query.

An appeal shall not be allowed where documentary evidence is not available for the option to join the original scheme but is available on the revised scheme option.

Criterion (ii): Where medical evidence exists to indicate that a decision not to join the scheme was exercised while an employee was of unsound mind, this decision may be deemed invalid. It is considered that for an appeal to be allowed under this criterion, relevant documentary medical evidence must be furnished regarding any illness or medical condition to which the individual in question was subject at the time of exercising the membership option that would support the contention that they must have been 'of sufficiently unsound mind not to appreciate the consequences of their decision. The medical evidence, which must be unambiguous and specific, must point to a direct, proximal and credible causal connection between the illness or medical condition complained of and the exercise of the S&C membership option.

While the applicant might point to the existence of a chronic illness or long running medical condition, their appeal might effectively depend on isolating, for re-examination of the exercise, just one work-based decision (the S&C membership option) with the implication that all other work-based decisions were, in fact, properly exercised. In this context, it is worth noting that were the effects of the chronic illness or long-running medical condition to the health of the individual so pronounced, there would be an expectation that this would be reflected in their sick leave record, and that possibly the advisability of the individual being retired early on grounds of ill health or incapacity might have arisen. It will be a matter for the employing body to assess all the available information from the employment/HR record.

The onus will lie on the applicant to produce the medical evidence necessary to sustain an application under criterion (ii). The employing body must give its recommendation in relation to the case and the medical and other evidence examined, taking due account of the guidance outlined above. This Department has no information on any appeal cases being granted to date under this heading. For this reason, all appeal cases under this criterion must be submitted to this Department for decision, together with the recommendation of the appropriate line Department and, where relevant, public service body.

Criterion (iii): This concerns a situation in which an individual who was a member of the original scheme declined to join the relevant revised scheme in circumstances in which there would have been no reasonably foreseeable adverse financial circumstances for the individual (in terms only of their scheme contributions) had they instead opted to join the revised scheme.

The argument has been accepted that 'no foreseeable adverse financial circumstances for the individual (in terms only of his or her scheme contributions)' would apply in a case where the individual was married at the time of exercising the membership option. This is because, in general, under both the original and the revised schemes, a married individual exercising the option could have expected that at retirement (if still married) they would not be able to claim a refund of periodic contributions nor to avoid the deduction of non-periodic (lump sum) contributions from the retirement gratuity for any years for which periodic contributions had not been paid.

23/2022 APPENDIX 2: Option to join SPOUSES' AND CHILDREN'S PENSION SCHEME (S&C Scheme)

For exercise of a new option to join, as allowed by successful appeal under circular 23/2022: Limited Appeals Process for option to join Public Service Spouses' and Children's Contributory Pension Schemes.

Public Service Body	
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PART A – Details of Option

To be completed by the employer before providing this form to the appellant.

Name of Appellant (acting for prospective member if applicable)	Name of prospective Scheme Member (if different from Appellant)
S&C Scheme	Governing Documentation
DEADLINE FOR RETURN	Date of Issue

CONTRIBUTION LIABILITY (with interest)*

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To join the scheme, Part B only should be completed and submitted by the deadline listed above.

* Interest calculated as per date of issue, but the final amount of interest will depend on when full payment is made. Where the member remains in public service employment, the liability may be provided in years in addition to an estimated monetary value.

The following information should be provided to the appellant in addition to this form:

1. Relevant circular(s) or other documentation governing the S&C Scheme (specified under 'Governing Documentation').
2. Payment methods available, including payment plan options.
3. Circular 23/2022.

PART B – Joining the Scheme

Complete this section if you wish to join the applicable S&C Scheme.

I have read and noted the provisions of Part A, including the additional information provided, and agree to same. I hereby declare that I wish to join the Spouses' and Children's Scheme referred to above.

I accept that as a member of the Scheme I will have to pay the appropriate contributions required under the terms of the scheme, that my decision to join the scheme is irrevocable, that the contribution payments made within the terms of the scheme will not be refunded to me under any circumstances, and that they must be paid before payment of scheme benefits can be made.

Signature	Date

PART C – Option to Decline Joining the Scheme

If you do not wish to join the applicable S&C Scheme, please note that a non-response by the above deadline will suffice to confirm this.

If you do not respond by the deadline, or otherwise decline to join the scheme, you may not make a subsequent appeal under circular 23/2022 in respect of the same membership.

THE COMPLETED FORM SHOULD BE MAINTAINED IN A CONFIDENTIAL AND SECURE MANNER ONCE RETURNED.