

Mulvey-led report credits extra hours for role played in two crises

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In its full report, the Kieran Mulvey-chaired Independent Body on the Haddington Road working hours credits the extra hours worked across the public service since 2013 for playing an important part in two crises: the national recovery from the financial crisis, and combatting the Covid-19 pandemic. Restoring the hours from July 1 would make a follow-on agreement more likely, it says.

In January, when the main findings of the Independent Body on the HRA working hours were revealed, the trade unions moved quickly to welcome them – even before the Government side had issued a statement.

This was a clear case of getting their (warm) welcome for the report in as fast as possible, hoping to secure a speedy commitment from the Minister for Public Expenditure & Reform, that he would recommend to cabinet that they back the main finding of the Kieran Mulvey-led Body. That is to restore almost all of the “lost” hours back to 2013 levels by introducing a minimum 35 hour week, in one go, from July 1 of this year.

An incremental approach towards restoring the hours “could cause unnecessary organisational challenges”

But since then little has been heard of what the Government’s intentions are with regard to the hours. And, just when might Minister McGrath invite the public service unions to talks on a new public service agreement to replace the current one, Building Momentum, which expires at the end of 2023?

While there is plenty of time for talks on a new deal, the Fórsa general secretary (also President of ICTU), Kevin Callinan, pushed again last week for talks in May “at the latest”.

One reason for this - apart from allowing time for union ballots - is that members are anxious about rising inflation and a more general view among the leadership, that having a deal in place ahead of the Budget (in October) makes sense.

IRN understands that the full Mulvey report, with the Minister now for a number of weeks, is also with the parties involved. While the detail of the recommendations and conclusions have been known since January, the full report provides more detail with regard to the rationale employed by the Body. It also tells us how the Body approached two key issues from a broader public policy perspective: firstly, the cost of restoring the hours and; secondly, what level of change and reform was achieved - and just how this is to be maintained.

Known formally as the 'Independent Body Examining Additional Working Hours (HRA) in the Public Service', the Body was established under the Building Momentum agreement to make recommendations to address the additional working time introduced under the HRA.

“UNNECESSARY”

In summary, the Body recommends a once-off implementation date of July, 2022, rather than opt for an incremental approach, the latter approach seen by the Body as potentially causing “unnecessary and unavoidable operational and organisational challenges”.

Regarding the agreed envelope of €150m, set aside under the Building Momentum agreement to cover the cost of the restoration for 2022, the report envisages an additional €30m will be needed.

DPER estimates that the recommendations will cost about €180 million this year (in line with the Body's report), but as IRN has commented, whatever calculations are used, “this is considerably below the (DPER) €645m estimate given to the independent body last summer”. Over a full year, the cost is estimated to come to €357m.

THE TASK

The Body explains that it was tasked with bringing forward recommendations on the HRA hours before the end of 2021. It met with key stakeholders and carried out a detailed scrutiny and analysis of submissions, examining the potential operational and administrative implications of any reduction in working time, as well as the impact of the HRA hours on the public service.

In arriving at its recommendations, it was also guided by Section 4 of the Building Momentum agreement, which stipulates that the additional working hours introduced under the HRA are considered under “outstanding matters to be resolved”.

“DISPROPORTIONATE”

The longevity of the additional hours, the strain on staff and the “truly committed efforts” of staff during the last two years in particular, has to be acknowledged, the Body says. It also observes the “disproportionate effect on female members of the public service, many of whom have caring responsibilities”.

The role that healthcare played can best be recognised by restoring the HRA hours “at the earliest possible date”, the report says, as well as across all grades and sectors, “and at the same time”.

While the hours were used in various ways across the sectors “to enhance services”, the “speed and flexibility” of the public service response to Covid gives confidence that “the restoration of previous working hours will not hinder public servants in maintaining service levels”.

ALREADY IN PLACE

Apart from the response to the pandemic, it says that the various sectoral reviews make clear the range of structural and operational reforms, which have been ongoing in many parts of the public service. “While the HRA hours are likely to have helped facilitate these measures”, the Body believes structural and operational reforms “will continue long after the restoration of hours”.

Given that its terms of reference require an equitable application of any recommendations, the Body recommends that:

- HRA hours implemented in 2013 will be restored in the majority of Civil and Public Service employments with effect from July 1st 2022; and,
- Working hours for any grade will not be less than the level that applied prior to the HRA, in this regard a minimum of 35 hours per week will apply.

SIGNIFICANT ANNIVERSARIES

The Body was conscious of the fact that the date it has recommended for restoration is also the “final date on which all FEMPI measures will have ceased”, and “will constitute the 9th anniversary of the introduction of all Haddington Road extended working hours and for which no compensatory financial measures were sought, considered or introduced”.

Whereas the financial envelope of €150m will be exceeded by their recommendation, “any further delay in restoring the hours would have caused a severe and negative reaction from the public service unions”.

“Under our own cost modelling projections our recommendations involve the order of a potential €30m additional cost,” the Body says. It is also of the view that what it describes as “some other cost considerations” will have cost benefits to the Exchequer, adding that “our public finances and will potentially mitigate these costs”.

The options available to it “were to recommend a continuation of the additional hours for a further period in 2022 and 2023 or to restore the hours in a manner which would cause the least operational disruption which would arise by having to adjust rosters and hours twice over a relatively short period of time”.

In place since July 1, 2013, it says the additional hours have “undoubtedly contributed significantly to the national effort to recover from the global crisis of the last decade”, with reforms delivered at a time when recruitment restrictions were in place.

Regarding replacement costs, the Body these will not arise in all cases or sectors, “particularly in the case of posts at managerial level where both management and unions agree that this cohort ... work in excess of contract hours, often during unsocial hours and without compensatory payment”.

Importantly, the Body recommends that both Government and the PSC/ICTU agree that “no compensatory claims will be pursued or conceded in respect of any grade arising from the implementation of the recommendation to restore the HRA hours”. This is a critical issue for the Government side ahead of talks on a new agreement.

Meanwhile, the Body says that the “overtime divisor” should be a matter for further direct discussions between the parties, which suggests this will be on the table in the next round of talks.

CONTINUED COLLABORATION

The Body observes that during the period since 2013, there has been an “orderly return to the public finances ... without any serious disruption to services, a continued commitment to industrial peace, and adherence to the processes surrounding collective bargaining’.

On balance, it says that a partial or incremental approach towards implementing the restoration of working hours “could cause unnecessary and unavoidable operational and organisational challenges”.

Furthermore, the recommendations “should potentially lead to the conditions by which a successor agreement to Building Momentum should be negotiated”.

In making this declaration, the Body – aware the parties intend reaching a new deal before the start of 2023 - is acknowledging the need for action on firm commitments made in the current agreement. Its explanation as to why it has opted for a ‘big bang’ approach to implementation can be interpreted as, firstly, it makes sense administratively and organisationally; secondly, it paves the way to the next agreement.

SUMMARY OF IMPLICATIONS

For the majority of public servants impacted by the additional working hours, the Independent Body’s recommendation “will reduce the length of the working week by two hours”, it explains, bringing weekly working hours in line with those that prevailed prior to changed HRA hours in 2013.

Regarding the costs associated with a reduction in working time, it says this “arises where there is a requirement to replace this time”, in order to ensure continuity of key services or avoid a diminution in the quality of these services.

While a recommendation to phase restoration “could have reduced the cost in 2022 and 2023”, the Body was cognisant of the likely “operational disruption, which would arise from having to make large scale adjustments to rosters, shift patterns and working hours twice in a relatively short period”.

In analysing the replacement cost, the Body considered replacement on an hour-for-hour basis, with costs relating to estimates of the remuneration arrangements for selected grades.

It says the true cost “may ultimately be driven by overtime or agency arrangements, which are generally more costly than recruitment”. The actual replacement mechanism and overall level of replacement “is a matter for the Employer”, it asserts, and a recommendation on these issues “is beyond the Independent Body’s Terms of Reference”.

The key points of the Independent Body’s recommendation for specific sectors are summarised:

Health:

- The Body estimates that the recommendation will cost €102 million in respect of the health sector in 2022 - 57% of the total cost of the recommendation.
- Given that an OECD-assisted review of the academic contract is currently underway, the Body “does not believe that a recommendation is appropriate for this cohort at this time”. For this reason, academic grades have not been included in the recommendation, “and are not a contributing factor in terms of cost”.
- Of the estimated €102 million, Nursing and Midwifery grades are estimated to account for €40 million - 22% of the total.

Civil Service:

- The Body estimates a cost of €38 million in respect of the Civil Service in 2022 - 21% of the total.
- Prior to the HRA, Civil Servants were working 34.75 hours per week. The Body’s recommendation is for a minimum of 35 hours per week across the public service. “This means that the new working week for Civil Servants will be 35 hours (i.e. working hours are not expected to return to 34.75). This was factored in when costing the Body’s recommendation.”

Local Authority: The Body estimates a cost of €14 million in respect of this sector in 2022 - 8% of the total.

Tusla: The Body estimates a cost of €8 million in respect of Tusla in 2022 - 5% of the total.

Higher Education: The Body estimates a cost of €10 million in respect of this sector in 2022 - 5% of the total.

Education: The Body estimates a cost of €4 million in respect of the first/second-level education and FET sectors in 2022 - 2% of the total.

The Body “is satisfied that primary and post-primary school teachers receive an additional payment for carrying out duties relating to their HRA obligation”. It sees “no basis to adjust this arrangement which was arrived at under previous Agreements”. For this reason, it says primary and post-primary school teachers “have not been included in the Body’s recommendation and are therefore not a contributing factor in terms of cost”.

An Garda Síochána: The Body estimates a cost €3 million in respect of An Garda Síochána in 2022 - 2% of the total.

LOOKING BACK

Under reforms introduced as part of the Croke Park Agreement (CPA) and HRA, the Body explains that public servants also agreed to work additional hours.

“These additional hours assisted greatly with meeting the increasing demand for public services at a time of significant resource constraints.”

It says the HRA built on the significant reforms achieved under the CPA, and provided for a series of further reforms in the following areas: Redeployment; Performance management; Flexible working arrangements; Work-sharing arrangements; and, Workforce restructuring.

The HRA also introduced temporary pay reductions for those earning over €65,000 per year, and changes to overtime and premia payments.

Overall, the various measures introduced under the FEMPI Acts are estimated to have resulted in savings of approximately €3.7 billion over 2009 to 2014, across pay and pensions, supported by reductions in numbers and the implementation of productivity measures.

It says the CPA did not result in changes to working time for the majority of public servants. However, it did introduce a requirement for teachers to work one additional hour per week. Additional hours introduced under the CPA were retained in the HRA.

The HRA provided for the following changes to the standard working hours of public servants:

- The working hours of those with a working week of 35 hours or less (net of rest breaks) increased to a minimum of a 37 hour week;
- The working hours of those with a working week of more than 35 hours but less than 39 hours (net of rest breaks) increased to a 39 hour week; and,
- The working hours of those with a net working week of 39 hours or greater remained the same. However, an hour of overtime worked each week for these grades was unpaid until 31st March 2014.

ADDED TO WORKING DAY

The HRA hours were to be implemented either as a revision to the length of the working day or week, or on an accumulated basis. "In most cases, the additional hours were added to the length of the working day, but for those involved in shift work, the hours were accumulated and incorporated into pre-existing shift-patterns."

In 2013, it was estimated that this would add approximately 15 million hours to the public service on an annual basis.

For nurses and midwives working on a 24/7 frontline basis, it was estimated this was equivalent to 6.5 additional 12-hour shifts per year. For day service nurses and midwives, there was an extension of the working day.

Meanwhile, public service numbers varied significantly over the period from 2008 to 2020. Between 2009 and 2014, under the moratorium on public service recruitment, the number of public servants fell by 7%, but since 2013 (when the additional hours came into effect), numbers have been steadily increasing, as Government invested in additional services.

The number increased by around 20%, with an annual average increase of 3%. In total, approx 58,000 additional FTEs were recruited across the public service in this period. During this time, the public service pay bill also increased, reaching €20.3 billion by the end of 2020.

COVID-19

Health care professionals in particular were at the forefront of the public service response to COVID-19, the report says, including those providing care in hospital settings and to the medically vulnerable in other settings.

The onset of the pandemic, and the associated public health measures, "had severe implications for normal business practices across the civil and public service".

Much of the core business of public service organisations was required to drastically change overnight. The report gives several examples to illustrate the scale of this change.

"PRO-ACTIVE & FLEXIBLE"

In regard to Health, since 2014 the numbers employed in the health sector have increased by 24.3% and there was "a wide ranging programme of reform and modernisation has taken place since the introduction of the HRA hours in 2013". The sector responded in a pro-active and flexible manner to the demands made on it by COVID-19 and the HSE Ransomware attack, with the innovative methods employed during this time having "long term benefits".

The reduction in working hours proposed will also "assist in making employment conditions more attractive".

The Body notes the range of approaches taken to ensure that the reduction in Nursing and Midwifery hours in 2008, “was to be achieved on a cost neutral basis and without adversely impacting on patient care”. It believes that there may be scope “to revisit these approaches in implementing the recommendations set out in this report”. This may help to mitigate some of the challenges that may arise in implementing these recommendations, it adds.

Meanwhile, a wide-ranging programme of reform and modernisation has taken place in the civil service since the introduction of the HRA hours in 2013, “including those following from COVID-19 measures”. These changes mean that every additional hour “may not need to be replaced”.