

THE LABOUR COURT  
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D04 A3A8



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**Report to the Minister for Business, Enterprise and Innovation regarding a request made in accordance with the Industrial Relations (Amendment) Act 2015 at Section 14 for a Sectoral Employment Order for the Construction Sector**

The matter came before the Court by way of an application by the Building and Allied Trades Union, Connect Trade Union, OPATSI Trade Union, SIPTU Trade Union and UNITE the Union under Section 14 of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015 (the 2015 Act). The five Trade Unions requested the Court to examine the terms and conditions of workers engaged in the Construction Sector which they submitted is “a defined economic sector” for the purposes of the 2015 Act. The Court, as it is required to do, published its intention to undertake an examination of the Trade Unions’ request and invited submissions from all interested persons. Written submissions were received from five interested parties - the Construction Industry Federation, a single submission on behalf of the five applicant Trade Unions, the Construction Workers Pension Scheme, Ms Dolores Rogers and the Small Firms Association. Three of the submissions supported the making of a Sectoral Employment Order, one was neutral on the proposition that an Order would be made and one contended that such an Order should not be made.

A hearing was held on 22<sup>nd</sup> March 2019 to which the parties that had made written submissions and, in the view of the Court, had consequently declared themselves to be “interested and desiring to be heard” were invited to attend. Representatives from the Construction Industry Federation, the five applicant Trade Unions and the Construction Workers Pension Scheme attended and made oral contributions at that hearing.

The Class, type or group of workers to whom the request is expressed to apply is

*Persons employed in the Construction Sector as craft persons, construction operatives and apprentices.*

**Conditions Precedent to an Examination by the Court under Chapter 3, Part 2 of the Act**

Section 15 of the Act specifies a number of conditions precedent which the Court must satisfy itself have been met in respect of any request made to it under section 14 to examine the terms and conditions of workers in an economic sector with a view to considering whether or not it should make a recommendation to the Minister to make a Sectoral Employment Order in respect of workers in that economic sector.

Section 15 states

*15. (1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—*

*(a) following consideration of any documentation submitted under subsection (2) of section 14 —*

*(i) the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers, and*

*(ii) where the request is made by a trade union or organisation of employers or jointly with a trade union or organisation of employers, the trade union or organisation concerned is substantially representative of the employers in the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers employed in the particular class, type or group in the economic sector concerned by employers represented by the trade union or organisation of employers concerned,*

*(b) the request is expressed to apply to all workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply,*

*(c) it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and*

*(d) any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply.*

*(2) Prior to undertaking an examination under this section, the Court shall publish in such manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned, notice of its intention to undertake an examination under this section.*

*(3) A notice under subsection (2) shall invite representations to be made to the Court from any interested parties not later than 28 days after the date of the notice.*

*(4) Not earlier than 28 days after the date of a notice under subsection (2), the Court may hear all parties appearing to the Court to be interested and desiring to be heard.*

The five applicant Trade Unions made a joint request to the Court on 17<sup>th</sup> December 2015 under section 14 of the Act of 2015 to examine the terms and conditions of workers in the economic sector with a view to considering whether or not it should make a recommendation to the Minister to make a Sectoral Employment Order in respect of workers in that economic sector.

The Court examined the supporting documentation submitted by the Trade Unions which included a statutory declaration signed by officers of each Trade Union outlining the structure of the industry and the membership in the Trade Unions of workers of the class, type or group to which the request relates in the sector. On the basis of that examination the Court is satisfied that the five Trade Unions are substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply.

The Court satisfied itself that the request was expressed to apply to all workers of the particular class, type or group and their employers in the Construction Sector.

The Court also satisfied itself that it is normal and desirable practice to have separate terms and conditions of employment in relation to remuneration, sick pay schemes and pension schemes in respect of the workers of the class, type and group employed in the construction sector in respect of whom the application is made.

The Court is further satisfied that a Sectoral Employment Order that sets mandatory terms and conditions of employment and dispute resolution procedures within the sector is likely to promote harmonious relations between workers of the class type or group in respect of whom the application is made and their employers.

### **Notification to the Public**

In accordance with section 15(2) of the Act the Court published notices in three national newspapers - The Irish Times, The Irish Independent and the Irish Examiner as well as An Iris Oifigiuil and Seachtain. In addition, that notice was published on the Court's then website [www.workplacerelations.ie](http://www.workplacerelations.ie). Those notices informed the public that it had received a request to conduct an investigation under the Act and inviting interested parties to make submission to it on the application before it. The Court was satisfied that this manner of publication was best calculated to bring the request to the notice of all interested persons concerned.

### **Submissions Received**

The Court received five submissions in response to the public notice not later than 28 days after the date of publication of notice of the request. Three of the submissions supported the making of a Sectoral Employment Order, one was neutral on the proposition that an Order would be made and one contended that such an Order should not be made. Four of the submissions made specific proposals on the levels at which the Court should recommend the setting of pay and / or conditions of employment within the sector.

### **Hearing of Interested Parties**

The Court invited the five parties that made submissions to it to make oral submissions at a public hearing on 22<sup>nd</sup> March 2019. These were the parties appearing to the Court, in accordance with the 2015 Act at Section 15(1)(4), to be interested and desiring to be heard. Three parties attended and engaged extensively with the Court.

### **The making of a Sectoral Employment Order**

All of the interested parties were given an opportunity to be heard on all relevant matters at the public hearing of the Court. The Court then proceeded to consider the request of the five Trade Unions in the context of the requirements of section 16 of the Act of 2015 and the evidence and submissions before it.

Section 16 states

*16. (1) Subject to this section, the Court shall, where it considers it appropriate to do so, having heard all parties appearing to the Court to be interested and desiring to be heard, and having regard to the submissions concerned and the matters specified in subsection (2), make a recommendation to the Minister.*

*(2) When making a recommendation under this section, the Court shall have regard to the following matters:*

*(a) the potential impact on levels of employment and unemployment in the identified economic sector concerned;*

*(b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;*

*(c) the potential impact on competitiveness in the economic sector concerned;*

*(d) the general level of remuneration in other economic sectors in which workers of the same class, type or group are employed;*

*(e) that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.*

*(3) A recommendation under this section shall—*

*(a) specify the class, type or group of workers and the economic sector in relation to which the recommendation shall apply,*

*(b) be accompanied by a report on the circumstances surrounding the making of the recommendation, including confirmation that the Court has had regard to the matters set out in subsection (2), and*

*(c) be made not later than 6 weeks after a hearing under section 15.*

*(4) The Court shall not make a recommendation under this section unless it is satisfied that to do so—*

*(a) would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and*

*(b) is reasonably necessary to—*

*(i) promote and preserve high standards of training and qualification, and*

*(ii) ensure fair and sustainable rates of remuneration,*

*in the economic sector concerned.*

*(5) A recommendation under this section may provide for all or any of the following in respect of the workers of the class, type or group in the economic sector concerned:*

*(a) a minimum hourly rate of basic pay that is greater than the minimum hourly rate of pay declared by order for the time being in force under the Act of 2000;*

*(b) not more than 2 higher hourly rates of basic pay based on—*

*(i) length of service in the economic sector concerned, or*

*(ii) the attainment of recognised standards or skills;*

*(c) minimum hourly rates of basic pay for persons who—*

*(i) have not attained the age of 18 years,*

*(ii) enter employment for the first time after attaining the age of 18 years,*

*(iii) having entered into employment before attaining the age of 18 years, continue in employment on attaining that age, or*

*(iv) have attained the age of 18 years and, during normal working hours, undergo a course of study or training prescribed by regulations made by the Minister under section 16 of the Act of 2000, reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned;*

*(d) minimum hourly rates of basic pay for apprentices;*

*(e) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base);*

*(f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer; and*

*(g) the requirements of a sick pay scheme.*

*(6) A recommendation under this section shall include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order.*

*(7) Subject to sections 14 and 15, a recommendation under this section may provide for the amendment or cancellation of a recommendation previously made under this section and confirmed by the Minister by a sectoral employment order.*

*(8) In this section "apprentice" has the same meaning as it has in the Industrial Training Act 1967.*

The Court notes that all of the interested parties appearing before it made submissions which explicitly or implicitly supported the making of a Sectoral Employment Order. The two parties who addressed the matter explicitly submitted that the making of an Order would, within the meaning of section 16 (2) of the Act of 2015, have beneficial effects on the sector.

The Court has had regard to Section 16(2) of the Act. Having considered the application in the context of section 16 of the Act and having considered the written and oral submissions and all of the evidence before it, the Court is satisfied having regard to the Act at Section 16(2) to recommend the making of a Sectoral Employment Order to the Minister. The Court, in making this decision, noted that the Minister had previously made a Sectoral Employment Order for the Construction Sector and the request of the five Trade Unions was made at least 12 months after the making of that Order.

### ***Recommendation***

The Court recommends that the Minister introduce a Sectoral Employment Order for the Construction Sector as defined below.

### **Definition of the Sector**

The five Trade Unions submitted that the definition of the Sector should be reflective of the depth and scope of activity in the sector. The Court has considered the parties' written and oral submissions on this matter together with the Central Statistics Office definition of the sector and makes a Recommendation below which it believes most appropriately reflects activity in this Sector. The Court, for completeness, has also recommended a definition of worker which is consistent with the Industrial Relations Acts, 1946 to 1990.

The sector to which the Order should have application is defined as the sector of the economy comprising the following economic activity:

- The construction, reconstruction, alteration, repair, painting, decorating, fitting of glass in buildings and demolition of buildings;
- The clearing and laying out of sites for buildings, the construction of foundations of such sites, the construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings or the disposal of waste;

- The construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings, the making of roads and paths within the boundaries of such sites;
- The manufacture, alteration, fitting and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster;
- The construction, reconstruction, alteration, repair, painting, decoration and demolition of roads, paths, kerbs, bridges, viaducts, aqueducts, harbours, docks, wharves, piers, quays, promenades, landing places, sea defences, airports, canals, waterworks, reservoirs, filter beds, works for the production of gas or electricity, sewerage works, public mains for the supply of water or the disposal of sewerage and all work in connection with buildings and their sites with such mains; rivers works, dams, weirs, embankments, breakwaters, moles, works for the purpose of road drainage or the prevention of coastal erosion, cattle markets, fair grounds, sports grounds, playgrounds, tennis-courts, ball alleys, swimming pools, public baths, bathing places in concrete, stone tarmacadam, asphalt or such like material, any boundary walls, railings, fences and shelters erected thereon;
- The painting or decoration of poles, masts, standard pylons for telephone, telegraph, radio communication and broadcasting;
- Ground levelling, ground formation or drainage in connection with the construction or reconstruction of grass sports grounds, public parks, playing fields, tennis-courts, golf links, playgrounds, racecourses and greyhound racing tracks.

For the purpose of a Sectoral Employment Order a worker to whom such order has application is defined as any person aged 15 years or more who has entered into or works under a contract with an employer, (including through an employment agency within the meaning of the Employment Agency Act, 1971 and / or the Protection of Employees (Temporary Agency Work) Act, 2012), whether the contract be for manual labour or otherwise, whether it be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour. For the purpose of this definition apprentice and apprenticeship has the same meaning as it has in the Industrial Training Act 1967

### **Categories of Worker**

Both the Construction Industry Federation and the five Trade Unions made submissions to the Court that the Sectoral Employment Order set the mandatory pay and conditions of employment for a basic hourly rate for the sector and two higher rates of pay based on the level of skill of the workers concerned. The categories of worker associated with these rates were identified as Craftsperson, Category A Worker, Category 2 Worker and New Entrant Worker.

Those different categories of worker represent differentiation on the basis of level of skill of the worker as follows:

**Craftsperson** in the following trades: Bricklayers/Stone Layers; Carpenters and Joiners; Floor Layers; Glaziers; Painters; Plasterers; Stone Cutters; Wood Machinists; Slaters and Tilers; together with **Apprentices** in these trades.

**Category A Worker** to consist of Scaffolders who hold an Advanced Scaffolding Card and who have four years' experience; Banks operatives, Steel Fixers; Crane Drivers and Heavy Machine Operators

**Category B Worker** to consist of Skilled General Operatives with more than 2 years' experience working in the Sector

**New Entrant Worker** to apply to all new entrant General Operatives with less than two years' service working in the sector.

### ***Recommendation***

In accordance with section 16 (5) (a) of the Act the Court recommends:

a basic minimum rate of pay to apply to all skilled general operatives who have worked in the sector for more than 2 years - (**Category B Worker**)

In accordance with section 16(5) (b) of the Act the Court Recommends two higher hourly rates of basic pay as follows:

(1) A higher hourly rate of pay to apply to Scaffolders who hold an Advanced Scaffolding Card and who have four years' experience; Banks operatives, Steel Fixers; Crane Drivers and Heavy Machine Operators (**Category A Worker**)

and

(2) a top hourly rate of pay to apply to Craftspersons in the following trades: Bricklayers/Stone Layers; Carpenters and Joiners; Floor Layers; Glaziers; Painters; Plasterers; Stone Cutters; Wood Machinists; Slaters and Tilers; (**Craftspersons**)

A basic hourly rate of pay to apply in accordance with section 16 (5)(c)(ii) to General Operatives who enter employment for the first time after attaining the age of 18 years and for two years after entering employment in the industry, (**New Entrant Worker**) and in accordance with section 16(5)(d) of the Act a minimum hourly rate of pay to apply to apprentices (**Apprentice**)

### **Pay Rates**

The current Sectoral Employment Order for the Sector provides for pay rates as follows:

**Craft Worker - €18.93 per Hour**

**Category 2 Worker - €18.36 per hour**



**Category 1 Worker - €17.04 per hour**

**New Entrant Worker - €13.77 per hour**

**Apprentice Year 1 - €6.31 per hour**

**Apprentice Year 2 - €9.47 per hour**

**Apprentice year 3 - €14.20 per hour**

**Apprentice year 4 - €17.04 per hour.**

The five applicant Trade Unions proposed that a new Sectoral Employment Order should increase these rates of pay for each of three years succeeding the making of an Order by 4% each year. The Construction Industry Federation proposed that these rates should not be increased. Ms Dolores Rogers can be interpreted as submitting that the current Order contains rates which are too high. The Small Firms Association did not address rates of pay directly but did submit that rates of pay should be appropriate, competitive and affordable. The Trustees of the Construction Workers Pension Scheme did not address rates of pay

The Court however, in making a recommendation on pay and conditions of employment, cannot confine its deliberations to the submissions of the parties. It must also address the requirements of the Act when coming to a decision on any matter before it including pay.

The parties were given the opportunity to make submissions to the Court on each of those factors and the Court has given careful consideration to those submissions. Taking all factors into account the Court recommends as set out below.

### ***Recommendation***

The following basic hourly rates of pay will apply in the sector from 1<sup>st</sup> October 2019 to 30<sup>th</sup> September 2020.

**Craftsperson**            €19.44 per hour

**Category A Worker** €18.86 per hour

**Category B Worker** €17.50 per hour

**Apprentice**            Year 1 - 33.3% of Craft rate

Year 2 - 50% of Craft Rate

Year 3 - 75% of Craft Rate

Year 4 - 90% of Craft Rate

An hourly rate of pay of €14.14 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

The following basic hourly rates of pay will apply in the sector from 1<sup>st</sup> October 2020.

**Craftsperson** €19.96 per hour

**Category A Worker** €19.37 per hour

**Category B Worker** €17.97 per hour

**Apprentice** Year 1 - 33.3% of Craft rate

Year 2 - 50% of Craft Rate

Year 3 - 75% of Craft Rate

Year 4 - 90% of Craft Rate

An hourly rate of pay of €14.52 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

### **Normal Working Time**

The Court has received submissions from the Construction Industry Federation and the five Trade Unions as regards the definition of normal working time and the normal hours of work.

Having considered the oral and written submissions of the parties the Court has formulated the Recommendation below for inclusion in a Sectoral Employment Order for the sector.

#### ***Recommendation***

- The normal Working week shall consist of 39 hours worked between Monday and Friday each week;
- Normal daily working hours shall consist of four days of eight consecutive hour's work undertaken between 7 am (normal starting time) and 5 pm (normal finishing time) Monday – Thursday inclusive and one day of seven consecutive hour's work between the 7 am (normal starting time) and 4 pm (normal finishing time) on Friday

### **Overtime Payments**

No submission has been made which would cause the Court to recommend that any Order made in the sector should alter the premium payment arrangements contained in the current Order for the sector. The Court finds that these rates are broadly in line with overtime rates generally in operation in the wider economy. The Construction Industry Federation has

submitted that the common term of 'overtime' is the more appropriate nomenclature for a Sectoral Employment Order. The Court finds this submission to be reasonable.

### ***Recommendation***

The following overtime premium rates will apply from 1<sup>st</sup> October 2019 in respect of overtime working:

<i>Monday to Friday from normal finishing time to midnight</i>	<i>time plus a half.</i>
<i>Monday – Friday from midnight to normal starting time</i>	<i>double time</i>
<i>Saturday (1) First four hours from normal starting time</i>	<i>time plus a half</i>
<i>(2) All subsequent hours till midnight</i>	<i>double time</i>
<i>Sunday - all hours worked</i>	<i>double time.</i>
<i>Public Holiday - all hours worked</i>	<i>double time plus an additional day's leave</i>

### **Pension Scheme**

The CIF, the five Trade Unions, the Trustees of the Construction Workers Pension Scheme expressed continuing support for a sector wide pension scheme that reflects the benefits set out in the long established and widely supported Construction Workers Pension Scheme. The CIF and the Small Firms Association submitted that there should be no change to current pension contributions while the five Trade Unions and the Trustees of the Construction Workers Pension Scheme submitted that pension contribution rates should be linked to wage inflation.

The Court has considered the submissions of all interested parties.

The Court finds that the structure and operation of the Construction Workers Pension Scheme is well suited to the needs of the sector and makes reasonable pension provision at reasonable cost for both workers and employers in the sector. However, the Court is persuaded that rates of contribution should be linked to wage inflation with effect from 1<sup>st</sup> October 2019.

The contribution rates currently in force in the Construction Workers Pension Scheme

<b>Pension Contribution</b>	Employer €26.63 per week
	Employee €17.76
	Total Contribution weekly into the scheme per worker €44.39

**Death in Service Contribution**      Employer €1.11  
Employee €1.11  
Total €2.22

The main features of such a pension scheme are attached as appendix 1.

### ***Recommendation***

A pension scheme with no less favourable the terms, including both employer and employee contribution rates, than those set out in the Construction Workers Pension Scheme be in place in the industry. That scheme must provide for entry into the scheme at age 18 and must provide a facility for payment of a daily contribution rate which is a fifth of the weekly rate specified in the scheme.

The contribution rates in the scheme will be as follows with effect from 1<sup>st</sup> October 2019:

**Pension Contribution**      Employer €27.35 per week (Daily Rate of €5.47)  
Employee €18.24 (Daily Rate of €3.65)  
Total Contribution weekly into the scheme per worker €45.59  
(Daily - €9.12)

**Death In Service Contribution**      Employer €1.14 per week (Per day - €.23)  
Employee €1.14 per week (Per day €.23)  
Total €2.28 per week (€.46 per day)

Contribution rates will increase in line with wage inflation after 1<sup>st</sup> October 2019.

### **Sick Pay**

The Court notes that both sides of industry in their submissions supported the continuing operation of a sick pay scheme in the industry. A sick pay scheme is currently mandatory in the sector.

The Court has given careful consideration to the scheme contained in the current Sectoral Employment Order for the sector and notes it that enjoys the support of both sides of industry.

In that context and having reviewed the statutory framework within which the Court must consider all proposals for inclusion in a recommendation to the Minister the Court finds that a scheme in line with the Construction Industry Sick Pay scheme, including no less comparable benefits and contributions by both workers and employers, be included in a Sectoral Employment Order for the sector.

### ***Recommendation***

A requirement for a sick pay scheme in line with the Construction Industry Sick Pay scheme, including no less comparable benefits and contributions by both workers and employers, will be maintained in the sector.

The current weekly Sick Pay Contribution in force in the Construction Industry Sick Pay Scheme provided for in the current Order for the sector are as follows

*Employer €1.27*

*Employee €0.63*

*Total €1.90*

These contribution rates should be adjusted in line with wage inflation from 1<sup>st</sup> October 2019.

The terms and benefits of the scheme are attached at appendix 2.

### **Dispute Resolution Procedure**

Having regard to the dispute resolution procedure contained in the current Sectoral Employment Order for the Sector and the oral and written submissions of the parties the Court finds that the Order should reproduce the dispute resolution procedure set out in the current Order. The Court recommendation is set out below.

### ***Recommendation***

If a dispute occurs between workers to whom the SEO relates and their employers, no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with. All sides are obliged to fully comply with the terms of the disputes procedure.

### **Individual Dispute**

- a) The grievance or dispute shall in the first instance be raised with the employer at local level with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the individual concerned or his trade union to the relevant organisation representing employers or to the employer directly.
- b) If the dispute is not resolved it shall be referred to the Adjudication Service of the WRC
- c) Either party can appeal the outcome of the Adjudication Hearing to the Labour Court.

### **Collective Dispute**

- a) The grievance or dispute shall be raised in the first instance with the employers with a requirement to respond within 5 working days. Notice in writing of the dispute shall

be given by the workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.

b) If a dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC

c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.

### **Travel Time**

The parties disagreed in oral and written submissions to the court regarding the matter of ‘travel time’ within the sector. The five applicant Trade Unions submitted that it was an essential feature of employment within the sector and reflects the variable nature of work locations. The Construction Industry Federation submitted that ‘travel time’ had never been a uniform feature of employment within the industry and had applied in a variable fashion in certain cities historically.

The Court has given careful consideration to the submissions of all parties in relation to ‘travel time’. The Court notes that ‘travel time’ has not been a feature of employment in the industry for some time and is not an element of the current Order for the sector. Consequently, the introduction of ‘travel time’ in a Sectoral Employment Order would amount to a mandatory pay adjustment upwards of 12% to all workers to whom the Order applies. The Court finds that ‘travel time’ was never a uniform feature of employment in the sector.

The Court notes that some workers in various cities currently have contracts of employment that provide for the payment of ‘travel time’. These contractual arrangements are not affected by the terms of this recommendation.

The Court does not recommend the inclusion of ‘travel time’ in a Sectoral Employment Order at this time.

### **Conclusion**

In this Report made under Section 16(3) of the 2015 Act the Court has included a series of Recommendations. Those recommendations will comprise the Court’s Recommendation to the Minister under Section 16(1) of the Industrial Relations (Amendment) Act, 2015. The Recommendation of the Court accompanies this Report to the Minister.

**The Labour Court**

**25<sup>th</sup> April 2019**

## **Appendix 1**

### **Terms covering pension benefits**

Every employer employing workers to whom this Order applies shall participate in a pension scheme that meets the pension requirements set out hereunder.

### **Pension Scheme Structure**

The pension scheme to which the SEO applies (“SEO pension scheme”) should include the following features and benefits:

1. An SEO pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
2. Recognising the flexible nature of employment across employers within the construction sector and related industries (the Sector), an SEO pension scheme should be established as a multi-employer scheme open to all employers in the Sector.
3. Whilst a member remains employed within the Sector, members should be able to have a single individual pension account within the SEO pension scheme thereby enabling successive employers of the member to contribute to the member’s account provided the employer has joined itself to the SEO pension scheme.
4. Where an employee member leaves service of an employer, the contributions which have been paid by the employee and the employer in respect of the member will be retained in full within the SEO pension scheme in the individual account of that member.
5. The rules of an SEO pension scheme should not permit a member to take a refund of their own contributions prior to reaching retirement age.
6. Bodies that are representative of both employers and unions involved in the Sector must appoint the members of the SEO pension scheme trustee. The constitution of the Trustee Board should also include representatives of both employers and employees in the Sector.
7. In addition to providing pension benefits, an SEO pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme.
8. An existing pension scheme at the time the SEO comes into force may qualify as an SEO pension scheme provided it complies with the terms of the SEO or is adapted to so comply.
9. An SEO pension scheme must disclose and publicise information about the pension scheme’s charges and who bears them. There must be full transparency of charges and this information should be disclosed in the scheme’s Trustee Annual Report as well as provided to each member when joining. The total annual charges borne by members should be disclosed

and must include all administration costs, Trustee costs, distribution costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the SEO pension scheme.

## 10. Scheme Design

The terms and conditions applying under an SEO pension scheme and benefits to be provided must be at least as great as that described below.

### 10.1. Eligibility

An SEO pension scheme must at least provide for an employee of a participating employer in the Sector to be eligible for membership of the scheme provided they have attained age 20 but not yet attained age 65.

### 10.2. Relevant Pension Contributions

Employers and their employees working in the construction sector and related industries (the Sector) must contribute to an SEO pension scheme.

Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

### 10.3. Pension Benefits

a) Members' pension benefits within an SEO pension scheme should be based on the full value of their individual pension funds and there should be no deductions from the contributions paid or when the funds are drawn down.

b) The Trustees of the Scheme will invest each member's pension contributions and these along with the investment returns declared, net of charges, will determine the value of the member's pension fund.

### 10.4. Retirement

Normal Retirement Age shall be age 65. However, a member may be permitted to retire from age 60 (at the discretion of the scheme trustee). When a member retires, he or she should be able to choose from a range of options based on their entire fund value in line with applicable pension and tax legislation. One of the options which must be available is the provision of a pension for life for the member.

### 10.5. Death in Service Benefits

a) Every employer to whom the SEO applies must participate in an SEO pension scheme that provides a death in service benefit for the deceased member's dependants. The death in service benefit should be in addition to the benefits provided for the dependants based on the full value of the member's pension fund.



b) Provided the employee has completed a once-off initial qualifying contribution period, inclusion for death in service benefits shall be automatic on becoming a member of the SEO pension scheme, without medical underwriting or by reference to any previous medical conditions of the member. In the event of the member moving to another participating employer within the Sector, the member should not be required to complete any further qualifying period in order to be covered for death in service benefits.

c) Death in Service Contributions will form part of the overall contribution rate of an SEO pension scheme with a portion payable by both the member and employer in addition to the pension contributions.

d) Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

e) If a member had met the requirements for the full lump sum death in service benefit, but then leaves service and dies within four weeks of doing so without being re-employed in the Sector, the SEO pension scheme should provide a modified lump sum benefit in addition to the value of their pension account.

f) Death in Service benefits should be payable regardless of cause or timing of death, so long as the member meets the qualification conditions for inclusion for Death in Service benefits as set out above.

## **Appendix 2**

### **Terms covering Sick Pay benefits**

#### **Scheme Structure**

The sick pay scheme to which the Order applies (“SEO Sick Pay Scheme”) should include the following features and benefits.

1. An SEO Sick Pay Scheme should be a funded arrangement with contributions held in Trust and independently administered and managed. An SEO Sick Pay Scheme should facilitate participation by multiple employers to reflect the flexible nature of employment within the Sector.
2. The main purpose of an SEO Sick Pay Scheme is the provision of benefits for every worker for periods of illness or injury while in the employment of employers to whom this SEO applies.
3. The Sick Pay Benefit should be paid to each employee without the need for underwriting or reference to previous medical conditions. Entitlement to Sick Pay Benefits should be unaffected and uninterrupted as employees transfer from one employer to another within the Sector.
4. The Sick Pay Benefits provided by an SEO Sick Pay Scheme should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.

#### **Scheme Conditions & Benefits**

5. Inclusion for Sick Pay Benefits will be automatic on becoming a member of an SEO Sick Pay Scheme. No charges should be incurred by either employers or members for Sick Pay benefit provision, other than the relevant contributions required to provide the benefits.
6. Sick Pay Contributions
  - a) An SEO Sick Pay Scheme should be a contributory sick pay scheme with contributions payable by both employers and employees.
  - b) A member shall not lose accrued Sick Pay Benefit rights or entitlements as a result of changing employment within the Sector as accrued service will transfer to the next employer to whom the SEO applies.
  - c) Employers who fail or neglect to make the authorised deduction shall be liable for the total contribution required to ensure that the worker’s Sick Pay Benefits are maintained in full for the period of service with them.

## **7. Relevant Benefits**

- a) An SEO Sick Pay Scheme shall provide for the payment of a standard Sick Pay Benefit for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- b) An SEO Sick Pay Scheme may include a waiting period during which a member would not be entitled to any benefit from the scheme whilst initially absent due to illness or injury. This waiting period should not exceed the first five working days of disability.
- c) An SEO Sick Pay Scheme should facilitate continuity of Sick Pay Benefit from the Scheme from the first working day of disability where a claimant has returned to work for a period of two working days or less. This is provided that the sick pay entitlement from the scheme has not been exhausted by reference to the duration limitations referenced earlier.
- d) An SEO Sick Pay Scheme should facilitate provision of a Supplementary Sick Pay Benefit if the claimant has no entitlement to Social Welfare benefit due to inadequate number of Social Welfare contributions.
- e) An SEO Sick Pay Scheme may set appropriate limitations on the maximum duration for which a Sick Pay Benefit may be payable. These must be clearly documented and disclosed to participating employers and members. The maximum duration under an SEO Sick Pay Scheme should not be any lower than a period of 10 weeks in any calendar year, whether for a single claim or in aggregate in a scheme year.

### **Dispute Resolution Procedure**

If a dispute occurs between workers to whom the SEO relates and their employers no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with. All sides are obliged to fully comply with the terms of the disputes procedure.

#### **Individual Dispute**

- a) The grievance or dispute shall in the first instance be raised with the employer at local level with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the individual concerned or his trade union to the relevant organisation representing employers or to the employer directly.
- b) If the dispute is not resolved it shall be referred to the Adjudication Service of the WRC
- c) Either party can appeal the outcome of the Adjudication Hearing to the Labour Court.

#### **Collective Dispute**

- a) The grievance or dispute shall be raised in the first instance with the employers with a requirement to respond within 5 working days. Notice in writing of the dispute shall

be given by the workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.

b) If a dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC

c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.