

26 July 2021.

The Secretary
The Labour Court
Lansdowne House
Lansdowne Road
Dublin 4.

Dear Secretary,

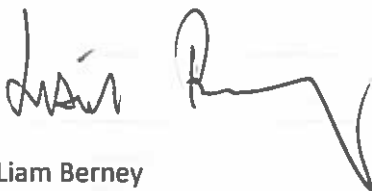
I refer to the notice published by the Labour Court of its intention to conduct an Examination into Terms and Conditions in the Construction Sector pursuant to section 15 of the Industrial Relations (Amendment) Act 2015.

I note that the Labour Court invited parties to make representations by way of written submission by 5pm on 27 July 2021.

I am including for the attention of the Court (six copies) of the submission of the Irish Congress of Trade Unions Construction Industry Committee. We have also sent a copy of this submission by email to the address provided in the notice published by the Labour Court.

I would be obliged if you could acknowledge receipt of this submission.

Yours sincerely



Liam Berney
Industrial Officer.





Submission to the Labour Court

On behalf of the Congress
Construction Industry Committee

Examination into the Terms and Conditions in the
Construction Sector pursuant to Section 15 of the
Industrial Relations Amendment Act 2015



26 July 2021

Introduction

1. The Industrial Relations (Amendment) Act 2015 provides for, amongst other things, the making of Sectoral Employment Orders (SEOs) which establish certain legal minimum conditions of employment for workers in the sector concerned.
2. On the 28 May 2019, the Minister for State at the Department of Business, Enterprise and Innovation, Mr Pat Breen TD, made an order (Statutory Instrument 234 of 2019) setting certain legal minimum conditions of employment for workers in the construction sector. Save in exceptional circumstances, a further order cannot be made for 12 months.
3. On the 28 May 2021, the Irish Congress of Trade Unions' (Congress) Construction Industry Committee (CIC), consisting of BATU, Connect Trade Union, OPATSI, SIPTU and Unite the Union requested the Labour Court to conduct an examination into the minimum terms and conditions of employment in the construction sector as provided for in Section 15 of the Industrial Relations (Amendment) Act 2015.
4. On 29 June 2021, the Labour Court published a notice advising of its intention to conduct an examination and inviting interested parties to make written representations to the Court by 27 July 2021.
5. The unions comprising the Congress CIC are requesting the Labour Court to make a recommendation to the Minister for an amended SEO for the Construction Sector. In particular, we are asking the Labour Court to recommend to the Minister that an amended SEO should include:
 - an increase in basic pay of 4% per year for three years commencing on the 1 October 2021;
 - the payment of not less than a minimum of one hour's basic pay per day in recognition of time spent traveling to construction sites that are not designated bases;
 - the payment of two additional hours pay per day in recognition of specialist work carried out by crane operators;
 - an amendment that would guarantee a minimum of 39 hours work per week;
 - an increase in employers and workers pension contributions in line with the movement in basic pay;
 - and an amendment to the Disputes Procedure to clarify the that requirement to use the procedure is confined to disputes on matters covered by the SEO.

We will provide more detail on each of these later in this submission.

6. In preparing this submission we have had particular regard to the recent Supreme Court Judgement¹ in the case of NECI V the Labour Court, The Department of Enterprise, Trade and Innovation, Ireland and The Attorney General.

The Congress Construction Industry Committee (CIC)

7. The CIC consists of five unions affiliated to Congress. These are BATU, Connect Trade Union, OPATSI, SIPTU and Unite the Union.
8. At the time of making the application these unions represented 29,962 workers. A detailed breakdown of the membership of each union can be made available to the Court if required.
9. We currently estimate that there are between 50,900 and 54,300 workers employed in the sector covered by the scope of the Construction SEO. This is based on an analysis carried out by Nevin Economic Research Institute (NERI)² on behalf of the CIC. Based on this, these unions represent in the region of 55% of workers in the sector.
10. The main employer organisation in the sector is the Construction Industry Federation (CIF). Since the mid 1960's, the CIC and the CIF have conducted collective bargaining negotiations through the National Joint Industrial Council for the Construction Industry (NJIC).
11. The Labour Court is required by the provisions of the Industrial Relations (Amendment) Act 2015 to be satisfied that the party seeking an investigation and the making of an SEO is substantially representative. Given that the combined membership of the unions representing workers in the sector is 55% and given that the unions comprising the CIC are recognised by the main employer organisation for collective bargaining purposes, it is clear that the unions making this application are substantially representative.

The Position of the Construction Sector

12. Section 16 (2) of the Industrial Relations (Amendment) Act 2015 requires the Labour Court to have regard to certain matters when making a recommendation to the Minister.
13. The matters that the Labour Court are required to have regard to are as follows:
 - the impact on the level of employment/unemployment in the construction sector;

¹ [pdf \(courts.ie\)](https://courts.ie)

² www.nerinstitute.net

- the terms of any relevant national agreement relating to pay and conditions currently in existence;
- the potential impact on competitiveness in the construction sector;
- the general level of remuneration in other economic sectors in which workers of the same class, type group are employed;
- that the SEO shall be binding on all workers and employers in the construction sector.

14. We have sought the advice of NERI on these issues and this is reflected in paragraphs 15 to 27 of this submission.

15. The construction sector was going through a period of rapid expansion prior to the onset of the Covid-19 pandemic. The CSO's production in building and construction index increased by 72.4% between 2015 and the fourth quarter of 2019 (the last pre-pandemic quarter), and increased by 88.8% over the same time in value terms.³ The volume and value indices were showing double digit annual growth just prior to the pandemic. Overall, the construction sector was the third fastest growing industrial sector between 2013 and 2019.

16. The lockdown caused a dramatic, albeit temporary, slowdown in activity. Building and construction activity was already picking up prior to the onset of the most recent wave of the pandemic. The construction sector is likely to grow very rapidly over the next three years, as residential housing supply is currently just half of projected medium-term demand. Indeed, the rapid expansion in house prices in recent years reflects the current supply and demand mismatch in the housing sector. The construction sector will also significantly benefit from government plans to retrofit homes and buildings to make them more energy efficient. The recently announced *National Recovery and Resilience Plan*⁴ places a very strong emphasis on the need to accelerate retrofitting as a response to the climate change challenge. The demand for more qualified construction workers will also increase significantly in the coming years so it is imperative that we have wage rates sufficient to attract the skills the sector will require. Higher levels of public investment in infrastructure projects will further increase the need to attract workers into construction.

17. Gross value added (GVA) in the construction sector fell sharply in the months following the initial lockdown in mid-March 2020.⁵ However, GVA bounced back rapidly in the third quarter once restrictions were eased, while CSO data shows that GVA in Q4 2020 was identical to Q4 2019 (and higher than 2018). Thus, while GVA fell sharply again in Q1 2021, we can expect the construction sector to be able to bounce back swiftly and robustly over the coming months and years. PUP recipients in the construction sector plummeted from

³CSO (June, 2021), Production in Building and Construction Index

⁴[162666_2cea0451-5682-436e-9ddd-a816f328c1df.pdf](#)

⁵ CSO (June, 2021), Quarterly National Accounts

over 84,000 in early May to 19,000 in early July, highlighting the sector's capacity to recover quickly.

18. There is no indication yet of overheating in the sector. Third quarter employment peaked at 237,100 in 2006 and 2007, meaning that 2020 employment was just 57% of peak levels despite a larger population.⁶ Employment in 2019 was 62% of peak levels suggesting there was significant potential for employment growth, although the potential for sustainable employment is well below the pre-crash peaks. The job vacancy rate (JVR) in the sector was 0.6% in Q1 2021. This was the highest first quarter JVR in the sector since 2015.
19. As of Q1 2021, the average hourly labour cost in the construction sector was €23.25, well below the €29.64 average for the economy as a whole and the €27.76 average in the private sector.⁷ The pandemic has distorted the 'average' earnings data due to compositional effects associated with certain low paid sectors experiencing much more substantial temporary job losses. Even so, we can see that prior to the pandemic in Q4 2019 average hourly labour costs in construction (€25.70) were just 91.2% of the economy-wide average (€28.19). Hourly labour costs in construction increased 4.7% in the five years between Q1 2016 and Q1 2021, with hourly labour costs in the economy as a whole increasing 13.7%. Focusing on the pre-pandemic period (ending-Q4 2019) shows five-year hourly labour cost growth of 13.3% in construction and 10.3% in the economy as a whole.
20. Following a sustained post-crash period of stagnant wage growth, average weekly earnings in construction were growing by 12% in the three years leading up to the pandemic (Q4 2016 to Q4 2019), or an average of 4% per annum. The equivalent for the economy as a whole was 9.6% over three years, or an average of 3.2% per annum. Hourly wage growth in construction was 11.1% over the three years and 9.2% in the economy as a whole. Average wage data for 2020 and 2021 is not comparable to previous years on account of the distorting compositional effects of pandemic related job losses.
21. The Construction PMI⁸ was at 66.5 in June 2021, where a PMI over 50 reflects industry expectation of further expansion. This was one the strongest rates since the survey began 21 years ago and means that the construction industry is expecting very fast growth in the period ahead. The PMI reveals that housing (68.8) is expected to lead the industry expansion, but with significant growth also expected in commercial (63.8) and in civil engineering activity (57.7).
22. The ESRI and other institutional research bodies (international and domestic) suggest long-run demand remains well above current supply levels in the housing sector. This implies very substantial scope over the next three years for rapid expansion in house

⁶ CSO (June, 2021), Labour Force Survey

⁷ CSO (June, 2021), Earnings and Labour Cost Quarterly

⁸ Trading Economics (July, 2021), Construction PMI Ireland

building as well as extremely high house price growth, sustained employment growth, and high levels of profitability in the construction sector.

23. The construction sector is not generally an internationally traded export sector. The Irish construction sector does not compete for market share with construction sectors in other countries. Domestic demand is serviced by domestic supply and the construction sector does not export to other countries. In other words, total employment in the sector would not fall if the Irish construction sector was to lose 'competitiveness' against other countries because no such competition exists. It is however, important for the Court to note that employee compensation in the Irish construction sector as measured by Eurostat is lower than peer countries in the EU.
24. Nominal wage increases in the Irish economy are likely to average close to 3.5% over the long-term. This is based on the ECB's revised inflation target of 2% and an economy-wide productivity growth averaging close to 1.5% over the long-term. Anything lower than 3.5% is likely to be consistent with a decline in the labour share of GDP. Ireland has a very low labour share relative to other Western countries, suggesting policy should aim for near-term wages increases in excess of the long-run average of 3.5%.
25. In addition, it should be emphasised that, over the long-run, average nominal wage increases lower than 2% represent a cut in real wages because wage growth below the ECB target would not be keeping up with the cost of living. The Central Bank of Ireland is projecting that HICP inflation will be 2% in 2022.⁹ The Department of Finance expect the personal consumption deflator (i.e. inflation for consumption goods) to be 2.8% in 2022.¹⁰
26. Noting the extended post-crash period of wage stagnation in the construction sector, the CIC is proposing annual increases of 4% for each of the next three years. This is modestly in excess of the expected long-run average rate of close to 3.5%. In the context of a rapidly expanding construction sector characterised by rapidly increasing house prices, relatively slow labour cost growth, and the expectation of high profitability, we expect there will be zero negative impact on employment/unemployment in the sector.
27. The Court is required to consider the general level of remuneration in other economic sectors in which workers of the same class, type group are employed. Average hourly earnings in the construction sector in Q1 2021 (€24.06) are lower than in the economy as a whole (€26.89) and lower than in the private sector (€25.25) and the industry sector (€26.57). Average hourly labour costs in the construction sector (€23.25) are also lower than in the economy as a whole (€29.64) and lower than in the private sector (€27.76). Average weekly earnings in the construction sector (€815.08), while lower than in the economy as a whole (€867.52), are marginally higher than in the private sector (€810.78).

⁹ Central Bank of Ireland (July, 2021), Quarterly Bulletin

¹⁰ Department of Finance (April, 2021), Stability Programme Update

This is because average weekly paid hours in the construction sector (33.9) are well in excess of average weekly paid hours in the private sector (32.1).

An Amended SEO – The View of the CIC

28. The CIC is seeking an increase in basic pay of 4% per year for 3 years, commencing on the 1 October 2021. The Court will be aware that under the current SEO pay was last increased on 1 October 2020. The established approach to pay progression in the construction sector is that pay would increase annually. It is also clear that the given the position of the construction sector as set out in the previous section of this submission there is absolutely no justification for a pay pause.
29. We have also shown in paragraphs 19, 20, 24, 25, 26, and 27 of this submission that given the trends in pay movement in Ireland and the forecasts for pay progression more generally that our claim for an increase in basic pay of 4% per year for three years in not only affordable but also entirely justified. It should be noted that the most recent report of the Low Pay Commission has recommended to Government that the hourly rate of the minimum wage should be increased by 2.94%.
30. Table one below has been prepared for ease of reference and shows the impact of a 4% increase in basic pay per year for three years, commencing on the 1 October 2021 for all of the grades covered by the construction SEO.

Table One

Grade	Current Hourly Rate of Pay	Hourly Rate of Pay 1/10/2021	Hourly Rate of Pay 1/10/2022	Hourly Rate of Pay 1/10/2023
Craft Worker	€19.96	€20.76	€21.59	€22.45
Category A Worker	€19.37	€20.14	€20.95	€21.79
Category B Worker	€17.97	€18.69	€19.44	€20.21
New Entrant	€14.52	€15.10	€15.70	€16.33
Apprentice Year 1	€6.65	€6.92	€7.19	€7.48
Apprentice Year 2	€9.98	€10.38	€10.79	€11.23
Apprentice Year 3	€14.97	€15.57	€16.19	€16.84
Apprentice Year 4	€17.96	€18.68	€19.43	€20.20

31. As the Court will be aware, travelling time has traditionally formed an important part of the remuneration of workers in the construction sector. It is paid in recognition of the fact that workers are required to travel to numerous different work locations which is not their actual place of employment. The 2015 Act makes very clear provision for the payment of traveling time (when working away from base).

32. In 2019 the Court rejected the CIC claim for an additional one hour of basic pay per day in recognition of time spent by workers travelling to construction sites that were not their designated base. On that occasion the Court claimed that because the payment of 'travelling time' was not universal across the sector it did not believe that it was appropriate for it to form part of the SEO.
33. In the intervening period, unions in the sector have made agreements with individual employers for the payment of travelling time. As a result of this it is now the case that that a significant majority of workers in the sector have an additional payment in recognition of time spent travelling to construction sites that are not their base. For example, SISK, John Paul Construction, Walls Construction, PJ Hegarty, BAM, and Castlethorn Construction, all of whom are members of the CIF make such payments to workers. Travelling time payments are also made on some of the major construction projects currently underway including the Intel project in Kildare, the Facebook project in Meath, Wuxi in Dundalk and Lilly in Cork. In addition to this the MEBCSA¹¹ and the Electrical NJIC¹² agreement provides for the payment of travelling time. We have appended a list (not exhaustive) to this submission of companies currently making such payments.
34. It is clear therefore that given the changed circumstances, and the prevalence of travel time payments in the sector, it is entirely appropriate for the Court to provide for the payment of a minimum additional one hour of basic pay per day in recognition of time spent by workers travelling to construction sites that are not their actual base.
35. The Court will be aware that there are additional payments made to certain categories of workers in recognition of particular specialist tasks that they perform in the course of their work.
36. Crane drivers operate and maintain equipment vital to the effective and efficient functioning of construction sites. In recognition of this it is now the practice that all crane drivers are paid an additional two hours basic pay per day in recognition of specialist tasks they perform including greasing.
37. Given the universal nature of this payment, it's inclusion in the SEO will have no economic or competitiveness impact on the sector as a whole and we believe that it would be appropriate for the Court to provide for this payment in an amended SEO.

¹¹ The MESBCA collective agreement is an agreement between the CIF and unions representing mechanical workers in the construction sector.

¹² The Electrical NJIC Agreement is an agreement between Electrical Contracting Employers and Connect Union.

38. As part of the current SEO workers and employers are required to make minimum levels of contributions to a pension scheme. The importance of maintaining and extending the coverage of occupational pension schemes has been recognised by Government as a key policy measure in order to avoid poor living standards in retirement.
39. It is the stated policy of Government to introduce a form of mandatory occupational pension and this is to be implemented through the roll out of auto-enrolment from 2022. As part of this there will be a minimum level of pension contribution, for employers and workers. It is critical therefore that the pension contributions in the construction sector continue to keep pace with the overall movement in basic pay.
40. We are therefore proising that employer and worker pension contributions increase by 4% per year for three years commencing on the 1 October 2021. Table two below has been prepared for ease of reference and to illustrate the impact of this change.

Table Two

Weekly Pension Contributions			
	Employer	Worker	Total
Current Rate	€27.35	€18.42	€45.77
From 1/10/2021	€28.44	€19.16	€47.60
From 1/10/2022	€29.58	€19.92	€49.50
From 1/10/2023	€30.77	€20.72	€51.49

41. In 2019 the Court clarified in its recommendation to the Minister that the standard working week in construction was 39 hours per week and provided for the payment for overtime for hours worked in excess of the standard working week. This was necessary as a practice had emerged where some employers were employing workers on, for example 45-hour contracts, contrary to the established norms in the sector.
42. In the intervening period another anomaly has emerged that is contrary to established practice in the sector. This relates to periods where work is not possible due to adverse weather conditions. It is the established practice that workers would be paid for these hours, however it has now emerged that workers are being sent home without pay and advised to return to work when weather conditions improve and work can resume.
43. This practice has emerged against the backdrop of recent changes to the law relating to working time. The Employment (Miscellaneous Provisions) Act 2018 requires employers to specify the daily and weekly hours that a worker will be required to work.

44. Specifically, Section 7(e) of the 2018 Act requires that an employer must provide a statement of conditions of employment containing:

(e) the number of hours which the employer reasonably expects the employee to work—

- (i) per normal working day, and
- (ii) per normal working week.

45. It would seem appropriate that an amendment be made to the SEO that would provide a guaranteed minimum working week of not less than 39 hours.

46. The CIC are proposing a change to Disputes Resolution Procedure in the SEO. The purpose of the change is to clarify that the disputes resolution procedure applies only to disputes that are concerned with a condition of employment provided for in the SEO.

47. This is necessary as employers in the sector have been claiming that the disputes resolution procedure has general application and applies to all disputes even those unrelated to conditions of employment that are not contained within the SEO. We are therefore suggesting the amended disputes resolution procedure (**in bold below**).

If a dispute occurs between workers to whom the SEO relates and their employers concerning a matter contained in the SEO, no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with.

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's 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 Services 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 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 Conciliation Services of the WRC. If either party is unwilling to engage at the WRC, the matter can be advanced directly onto the Labour Court.**
- c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.**

Summary and Conclusion

- 48. In this submission we have sought to convince the Court that an amended SEO for the construction sector is required.**
- 49. We believe that we have demonstrated that the current level of activity in the sector means that our claims for an increase in pay is affordable, sustainable and fair.**
- 50. In seeking a multi-annual approach to pay we believe that this will benefit employers in the sector as it will allow them to have certainty about the cost of labour when tendering for work. It will also support the maintenance of industrial peace in the sector.**
- 51. The increase in employer and worker pension contributions are required in order to ensure that workers can have the confidence that they will have a decent income in retirement and they are consistent with national pension policy of enhancing and increasing occupational pension coverage.**
- 52. The amendments we have suggested that relate the Disputes Resolution Procedure and Working Time in the sector are required to address issues that have arisen since the Courts investigation in 2019.**

Appendix A

3D Personnel

Actav

Apex

Ardmac

BAM

Banagher

BDM

Becketts

O'Neill & Brennan

Breffini

BRFS

Bridge

Brock Fire

Casey Civils

Castle Ceillings

Castlethorn Construction

Churchhill Painting

CM Structural

Concast

Connect Recruitment

Coredrilling

Daracore

Diamond Drilling

Duggan Bros

Empire Roofing

Farleng

Gaberiel O'Brien

GDC Construction

Hallquar

Hertel

Howley's

ICDS

Industrial Insulations Specialists Ltd

John Paul Construction

JS McCarthy

Kiernan Struct

Laois Scaffolding

Maor Scaffolding

Martin Scaffolding

Mastiff

Mavco

Maveric

McLoughlins

MCR

MLS Engineering

PJ Hegarty

Potential Resources

RAMM

Ross Engineering

S O'Mahony

Severfield

SIAC Roofing and Cladding

SISK

SMG

Walls Construction