



Submission to the Labour Court

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

3 February 2023.

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 17 November 2021 the Minister for State at the Department of Business, Enterprise and Innovation, Mr. Damien English TD, made a Sectoral Employment Order (SI No. 598 of 2021) setting certain legally enforceable 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 9 December 2022 BATU, Connect Trade Union, OPATSI, SIPTU and Unite the Union (hereafter referred to as the Unions) 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 9 January 2023, 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 5 February 2023.
5. The Unions are requesting the Labour Court to make a recommendation to the Minister for a new SEO for the Construction Sector which would include:
 - Increases in basic pay as follows;
 - an increase in basic pay of 4% from 1 June 2023;
 - an increase in basic pay of 4 from 1 February 2024;
 - the payment of not less than one hour's basic pay per day in recognition of time spent traveling to construction sites that are not designated bases;
 - Increases in employer and worker pension contributions in line with the increases in basic pay;

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 Supreme Court Judgement¹ in the case of NECI V the Labour Court, The Department of Enterprise, Trade and Innovation, Ireland and The Attorney General.

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

The Unions

7. At the time of making the application the Unions represented approximately 34,500 workers.
8. We estimate that there are approximately 53,000 workers currently employed in the sector covered by the scope of the Construction SEO. This is based on a report provided to the Unions by the Nevin Economic Research Institute (NERI)². This report was provided to the Labour Court as part of the Unions application for an investigation.
9. The main employer organisation in the sector is the Construction Industry Federation (CIF). Since the mid 1960's, the Unions and the CIF have conducted collective bargaining negotiations through the National Joint Industrial Council for the Construction Industry (NJIC).
10. The Labour Court is required by the provisions of the Industrial Relations (Amendment) Act 2015 to be satisfied that the party seeking an investigation is substantially representative. Given the number of workers represented by the Unions in the sector and the fact that the Unions are recognised by the main employer organisation for collective bargaining purposes, it is clear that the Unions are substantially representative.

The Position of the Construction Sector

11. 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.
12. 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;
 - 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;
 - the terms of any relevant national agreement relating to pay and conditions currently in existence;
 - that the SEO shall be binding on all workers and employers in the construction sector.

We have sought the advice of NERI on these issues and this is reflected in paragraphs 14 to 29 of this submission.

² www.nerinstitute.net

- 13.** The construction sector underwent a period of rapid expansion prior to the onset of the Covid-19 pandemic. The CSO's seasonally adjusted *Production in Building and Construction Index* increased in value terms from 102.1 to 172.6 (69.0% or 17% per annum) between Q1 2016 and Q1 2020 (the last mainly pre-pandemic quarter) and increased by 55.9% over the same time in volume terms.³ The volume and value indices were showing double digit annual growth just prior to the pandemic. Overall, the construction sector was one of the fastest growing industrial sectors between 2013 and 2019.
- 14.** The lockdown caused a dramatic, albeit temporary, slowdown in activity. The value of production index fell 7.9% in 2020, while the volume index fell 8.7%. However, the indices have recovered substantially from their Q2 2020 levels.
- 15.** The recovery in the construction sector is further illustrated by the growth in employment in the period between Q3 of 2020 and Q3 of 2022. The CSO Labour Force Survey shows that in that two-year period employment in the construction sector has grown by almost 28%⁴. Seasonally adjusted Q3 employment is also up on the last pre-pandemic year with employment growth of almost 14% since Q3 2019.
- 16.** The job vacancy rate (JVR) in the construction sector was 1.5% in the third quarter of 2022.⁵ This is the highest ever recorded JVR for the construction sector and reflects the intense demand for and under-supply of construction workers. Job vacancies have risen from 500 in Q3 2019 to 2,000 in Q3 2022. Data from Jobfinders.ie also shows that the number of vacancies in the construction sector in the fourth quarter of 2022 had increased⁶.
- 17.** It is also clear that the construction sector is set to grow very rapidly over the next five years. Notably, residential housing supply remains well below projected medium-term population demand and there is likely to be immense and ongoing political pressure for governments to ensure continued growth in supply. The very healthy state of the public finances suggests significant increased capacity for the government to follow on and expand plans to increase capital spending on housing supply. For example, the *National Recovery and Resilience Plan*⁷ places a very strong emphasis on the need to accelerate retrofitting as a response to the climate change challenge and the construction sector is well placed to benefit from government supports.
- 18.** The likely growth in the construction sector over the coming years will result in strong demand for more qualified construction workers. Our view is that construction is the economic sector with the largest growth potential over the next three to five years. It is therefore imperative that we have wage rates sufficient to attract the skills the sector will

³CSO (December, 2022), Production in Building and Construction Index

⁴[Employment - CSO - Central Statistics Office](#)

⁵CSO (November 2022) Earnings and Labour Cost

⁶[Jobs market 'cooling' amid fall in vacancies \(rte.ie\)](#)

⁷[162666_2cea0451-5682-436e-9ddd-a816f328c1df.pdf](#)

require. Higher levels of public investment in infrastructure projects, including sustained investment in the ongoing capital projects is necessary to achieving Ireland's net zero targets. This will further increase the need to attract thousands of new workers into construction. If terms and conditions of employment in the sector are not attractive, then Ireland will fail to achieve its housing and climate targets.

- 19.** It is clear that the construction sector has recovered strongly following the pandemic, that it will continue to grow, and that there will be continued strong growth in the numbers employed in the sector over the short to medium term. The high number of job vacancies in the sector implies that wage increases in the sector will not lead to a reduction in employment. The improvements in terms and conditions of employment been sought by the Unions will be needed to make the sector more attractive to workers.

- 20.** It is important to note that the construction sector is not an internationally traded export sector and is not subject to international competitiveness pressures in the same way as manufacturing and certain types of services such as ICT. 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 be affected if the Irish construction sector was to lose 'competitiveness' against other countries because no such competition exists. Even so, we note that the total hourly labour cost in construction in 2020 per employee was below the average for the former EU15. This suggests that Irish construction worker wages are not high by Western European standards.⁸

- 21.** Overall, the position of the construction sector within the economy as a whole is positive. The ESRI and other bodies estimate that long-run demand for housing remains well above current supply levels. It's important to consider the ongoing supply and demand mismatch alongside the very high levels of household savings and record net wealth, the low levels of household and corporate debt, and the potential for significant further government initiatives to support housing supply and investment in green infrastructure. All of this implies significant scope over the next three to five years for rapid expansion in house building and in investment generally, as well as sustained high levels of employment growth in the sector, and high levels of profitability.

- 22.** The contribution of the construction sector to the economy as a whole or gross value added (GVA) in current prices was €3.1 billion in Q3 2022. This represents a significant increase over the previous quarter and over the previous year (€2.4 billion in Q3 2021). There has now been three consecutive quarters of year-on-year constant price output growth in construction. Final output in 2022 is likely to be very close to 2019 output. A more medium-term picture of activity shows that construction output in constant prices has increased by 19% between Q3 2016 and Q3 2022.⁹

⁸ Eurostat (January, 2023), Labour Cost, Wages and Salaries

⁹ CSO (December, 2022), Quarterly National Accounts

- 23.** The available data would suggest that in the short to medium term the construction sector will continue to have a strong competitive position within the Irish economy. The view of the Unions is that improvements we have sought for workers will not undermine the competitive position of the construction sector.
- 24.** The Labour 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.
- 25.** Average hourly earnings in the construction sector in Q3 2022 (€23.88) are lower than in the economy as a whole (€26.17), lower than in the private sector (€24.45), and lower than in the industry sector (€25.34). Average hourly total labour costs in the construction sector (€27.11) are also lower than in the economy as a whole (€30.30), lower than in the private sector (€28.69), and lower than in the industry sector (€30.35). Average weekly earnings in the construction sector (€915.75) are higher than in the economy as a whole (€864.32) and higher than in the private sector (€808.33). However, this is explained by average weekly paid hours in the construction sector (38.3) being well in excess of average weekly paid hours in the economy (33.0) and private sector (33.1). Weekly earnings are higher in the Industry sector.
- 26.** As of Q3 2022, the average hourly labour cost in the construction sector was €27.11. This was 10.5% below the €30.30 average for the economy as a whole and 5.5% behind the €28.69 average for the private sector.¹⁰ The construction sector has the 6th lowest average hourly labour cost of the 13 main economic sectors. Hourly labour costs in construction increased 21.6% in the five years between Q3 2017 and Q3 2022, with hourly labour costs in the economy as a whole increasing 18.1%.
- 27.** Average weekly earnings in the construction sector grew 5.1% year-on-year in Q3 2022. It is important to bear in mind that this growth in earnings reflects the growth in earnings of workers not within the scope of the construction SEO. It is also worth noting that the construction sector now has the longest average hours of any sector, reflecting labour supply issues. Further, average hourly earnings in construction are just 91.2% of the economy-wide average and 97.7% of the private sector average. The relatively low wages are likely to be a significant impediment to attracting new labour into the sector with ongoing potential consequences in terms of the housing crisis and the net zero transition.
- 28.** High rates of inflation are undermining workers real incomes. The annual CPI inflation for 2022 was 7.8% while annual inflation averaged 8.7% in Q3¹¹. Most institutional forecasts are projecting inflation rates in the region of 6% to 7% in 2023. Given that the construction sector already has very high average hours worked it is unrealistic to expect increases in average hours worked to contribute much if anything in the future to average weekly earnings.

¹⁰ CSO (November, 2022), Earnings and Labour Cost Quarterly

¹¹ CSO (January, 2023) Consumer Price Index

- 29.** Longer-term nominal wage increases in the Irish economy are likely to average close to 3.5%. This is based on the ECB's revised inflation target of 2% and an economy-wide productivity growth averaging close to 1.5%. Any amount 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 medium-term policy should aim for wages increases in excess of the long-run average of 3.5%. Of course, in the shorter run it will be necessary to have even higher nominal wage increases simply to prevent living standards from falling. Cumulative 2023-2024 inflation is likely to be in the order of 9% to 10%.
- 30.** In light of the earnings data referred to in the previous paragraphs, it is clear that the improvements in pay that the Unions have sought are justifiable in order to protect the living standards of workers in the sector.
- 31.** The Labour Court is further required to have regard to the terms of any relevant national agreement relating to pay and conditions currently in existence and to consider if the SEO shall be binding on all workers and employers in the construction sector. The Unions are not aware of any relevant national agreement that will be impacted by revising the SEO as proposed in this submission.
- 32.** The Unions further confirm that all workers falling within the scope of the definition of the construction will be bound by the terms of any new SEO. We understand that employers (main contractors, sub-contractors and Agencies) in the sector are

33.A Revised SEO – The View of the Unions

- 34.** The Unions are seeking an increase in the basic pay rates as follows:
- 4% from 1 June 2023;
 - 4% from 1 February 2024.
- 35.** The increases been sought by the Union reflect the extraordinary circumstances which we have witnessed over the last year. In 2021 an investigation by the Labour Court resulted in the making of a Sectoral Employment Order for the construction sector which provided for two increases in pay of 2.8% the first of which applied from the 1 February 2022 and the second from the 1 February 2023. In our submission we sought annual increases of 4% for three years.
- 36.** However, the Court will be aware we are living through a period of very high price inflation. The CSO confirmed that the annual rate of inflation for 2022 was 7.8%. It is fair to observe that in 2021 nobody envisaged the levels of price inflation we are currently experiencing.

- 37.** In late 2022 the Unions met with the CIF to discuss what measures we could agree to mitigate the impact on workers arising from the high rates of price inflation. Over the course of the two meetings the CIF refused to contemplate any additional payments to construction workers. They made it clear that they regarded the SEO process as the only one which was capable of dealing with pay and that any increases the Unions intended to seek should be sought through that mechanism.
- 38.** Table one below has been prepared for ease of reference and shows the impact of the increases in basic pay proposed by the Unions.

Table One

Category of Worker	Current Hourly Rate of Pay	Hourly Rate of Pay 1/6/2023	Hourly Rate of Pay 1/2/2024
Craft Worker	€21.09	€21.93	€22.81
Category A General Operative	€20.47	€21.29	€22.14
Category B General Operative	€18.99	€19.75	€20.54
New Entrant	€15.35	€15.96	€16.60
Apprentice Year 1	€7.03	€7.31	€7.60
Apprentice Year 2	€10.55	€10.97	€11.41
Apprentice Year 3	€15.82	€16.45	€17.11
Apprentice Year 4	€19.98	€20.78	€21.61

- 39.** 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).
- 40.** There are numerous collective agreements in the construction sector that provided for the payment of travelling time. It is the case 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.
- 41.** It is clear therefore that given circumstances in the sector, and the prevalence of travel time payments, 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.
- 42.** 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.

- 43.** 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 2024. 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.
- 44.** We are therefore proising that employer and worker pension contributions increase 4% on the 1 June 2023 and 4% on the 1 February 2024:

Table Two

Weekly Pension Contributions		
	Employer	Worker
Current Rate	€29.22	€19.50
From 1/6/2023	€30.39	€20.28
From 1/2/2024	€31.60	€21.09

Summary and Conclusion

- 45.** In this submission we have sought to convince the Court that a revised SEO for the construction sector is required.
- 46.** 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. The revisions we have sought will assist in attracting and retaining the skilled construction workers.
- 47.** 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.
- 48.** 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.

ENDS.

