

# **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.**

**5 February 2019.**

## **1. Introduction.**

2. The Industrial Relations (Amendment) Act 2015 provides for, amongst other things, the making of Sectoral Employment Orders (SEO) which establishes certain legal minimum conditions of employment for workers in the sector concerned.
3. On the 19 October 2017, the Minister for State at the Department of Business, Enterprise and Innovation, Mr Pat Breen TD, made an SEO (Statutory Instrument 455 of 2017) 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.
4. On the 11 December 2018, 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.
5. On 8 January 2019, the Labour Court published a notice advising of its intention to conduct an examination and inviting interested parties to make written submissions to the Court by Thursday 7 February 2019.
6. 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 consider recommending to the Minister that an amended SEO should include:
  - an updated definition of the construction sector which more accurately reflects the nature of the current construction sector;
  - revised rates of pay for each of the grades based on annual increases over a three-year period;
  - the payment of one hours travelling time per day to each worker covered by the scope of the SEO;
  - clarification of the standard daily and weekly hours of work with particular reference as to when overtime rates should apply;
  - increased pension contributions.

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

7. The Court should note that this submission was prepared with the expert assistance of Dr. Tom McDonnell from the Nevin Economic and Research Institute (NERI).<sup>1</sup>

---

<sup>1</sup> <https://www.nerinstitute.net/>

## **8. The Congress Construction Industry Committee.**

9. The CIC consists of five unions affiliated to Congress. These are BATU, Connect Trade Union, OPATSI, SIPTU and Unite the Union.
10. At the time of making the application to the Court for an investigation these unions represented 33,917 workers. A detailed breakdown of the membership of each union can be made available to the Court if required.
11. We currently estimate that there are approximately 65,000 workers employed in the sector that are covered by the scope of the SEO. This is based on work carried out by DKM Economic Consultants<sup>2</sup> at the time of the last Labour Court investigation and also reflects growth in employment in the sector since then. Based on this, these unions represent in the region of 52% of workers in the sector.
12. 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). The outcome of these negotiations, until relatively recently, would have been given legal effect through the making of a Registered Employment Agreement (REA). However, a decision of the Supreme Court in 2013 found the legislation underpinning REAs to be unconstitutional. Despite this, the CIC and the CIF continue to use the NJIC as the main vehicle for the conduct of collective bargaining negotiations in the sector for matters that are not covered by the current SEO.
13. 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 in excess of 50% 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.

## **14. The Position of the Construction Sector.**

15. 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.

---

<sup>2</sup> A copy of the Consultants report can be made available to the Court if necessary.

**16.** The matters that the Labour Court are required to have regard to when making a recommendation to the Minister include:

- the impact on the level of employment/unemployment in the construction sector;
- 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;

We will comment on each of these matters in the proceeding paragraphs.

**17.** The construction sector is going through a period of rapid expansion. The CSO's production in building and construction index increased by 12% year-on-year in volume terms in quarter three 2018, and increased by 19.9% in value terms.<sup>3</sup> Employment in the sector grew for the 64<sup>th</sup> consecutive month in December 2018, while the seasonally adjusted unemployment rate across the economy fell to 5.3% in the same month. Employment in the construction sector grew by 14% in 2018.

**18.** The rapid expansion in house prices in recent years reflects the current supply and demand mismatch in the housing sector. Construction output fell by an average of 0.1% annually between 2011 and 2018 and there is no indication yet of overheating in the sector. Third quarter employment peaked at 237,100 in 2006 and 2007, meaning that current employment is just 61.8% of peak levels despite a larger population in 2018. The job vacancy rate in the sector is, at 1%, marginally below that of the economy as a whole (1.1%).

**19.** The percentage change in average hourly labour costs in the construction sector between the third quarter of 2013 and the third quarter of 2018 was the 4th lowest amongst all 13 economic sectors and the lowest amongst the 10 predominantly private sector ones.<sup>4</sup> In other words, labour cost growth in the construction sector has been trailing the rest of the business economy, implying there is scope for above average growth in wages over the medium-term. As of quarter three 2018, the average hourly labour cost in the construction sector was €23.20, compared to €26.08 in the economy as a whole and €24.24 in the private sector.

**20.** The Construction PMI<sup>5</sup> was at 56.3 in December 2018, where a PMI over 50 reflects industry expectation of further expansion. The ESRI and other institutional research

---

<sup>3</sup><https://www.cso.ie/en/releasesandpublications/er/pbci/productioninbuildingandconstructionindexquarter32018/>

<sup>4</sup><https://www.cso.ie/en/releasesandpublications/er/elcq/earningsandlabourcostsq22018finalq32018preliminaryestimates/>

<sup>5</sup> <https://tradingeconomics.com/ireland/construction-pmi>

bodies suggest long-run demand remains well above current supply levels in the housing sector.

- 21.** The ESRI, the NERI, the Central Bank and the Department of Finance are all forecasting a rapid expansion in house building as well as strong house price growth. Overall, the context is very favourable for the profitability of the construction sector as well as for sustained employment growth.
- 22.** The construction sector is not generally an internationally traded export sector. It does not compete for market share with construction sectors in other countries. As such, total employment in the sector would not fall if the Irish construction sector was to lose competitiveness against other countries.
- 23.** 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 inflation target of 2% and economy-wide productivity growth averaging close to 1.5% over the long-term. Anything lower than this is consistent with a decline in the labour share of GDP. 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 wages would not be keeping up with the cost of living. The Department of Finance expect the personal consumption deflator (i.e. inflation for consumption goods) to be 2% in 2019.
- 24.** Average weekly earnings in the economy increased 3.2% year-on-year in quarter three of 2018, and there is now evidence of wage growth in the construction sector, with hourly wages in the sector increasing 4% year-on-year in quarter three of 2018.
- 25.** Noting the extended period of wage stagnation in the construction sector, the CIC is proposing annual increases of 4%. 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 and slow labour cost growth, we expect there will be zero negative impact on employment/unemployment in the sector.
- 26.** 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. Hourly labour costs in the construction sector (€23.20) are lower than in the economy as a whole (€26.08) and lower than in the private sector. Average hourly earnings in the construction sector (€20.66) are also lower than in the economy as a whole (€22.62) and lower than in the private sector (€20.73).<sup>67</sup>

---

<sup>6</sup> Average weekly earnings in the construction sector (€770.60) are higher than in the private sector (€679.18). This is because average weekly paid hours in the construction sector (37.6) are well in excess of average weekly paid hours in the private sector (32.8). Average weekly earnings in the construction sector are well below that of the public sector.

<sup>7</sup> Average weekly earnings are broadly comparable with average weekly earnings (€751.78) of 'production, transport, craft and other manual workers' in the industrial sectors (NACE groups B-E). The difference was just 2.5% in second quarter 2018.

## **27. An Amended SEO – The View of the CIC.**

- 28.** As summarised at paragraph 6 of this submission, the CIC are seeking a number of amendments to the current SEO.
- 29.** It is the view of the CIC that the definition of the sector in the current SEO should be amended to more accurately reflect the depth and scope of activity in the sector. It should be noted that the current definition is drawn from the previous Registered Employment Agreement and this definition was last revised in the 1990s.
- 30.** At appendix one of this submission, we have included a proposed definition of the sector. This proposed definition is based on the definition in SI 59 of 2018 Sectoral Employment (Order Mechanical Engineering Building Services Contracting Sector) 2018.
- 31.** We would, therefore, request the Court to recommend to the Minister that the definition of the sector be amended in line with the suggestion at appendix one of this submission.
- 32.** The CIC is seeking an amendment to the current SEO to provide for increased basic rates across the grades falling within the scope of the SEO.
- 33.** As referenced in paragraphs 22-26 of this submission, wages across the economy are increasing. As the Court will be aware, basic pay in the construction sector was last increased on the 19 October 2017, when the order giving effect to the SEO was signed. This was the first increase in basic pay since 2007. While basic pay, on that occasion, did increase by close to 10% it needs to be recalled that this increase restored basic pay that had been in place prior to pay cuts that had been implemented during the financial crisis.
- 34.** The CSO compile data on earnings in the economy. In the year since the last pay increase in the construction sector, earnings in the economy in general have risen by 3.2% and average weekly earnings stood at €740.32 per week at the end of quarter three of 2018.
- 35.** It is also evident that the cost of living is increasing. One of the most accurate measures of the cost of living is the personal consumption deflator. The personal consumption deflator represents the average increases in the prices for all domestic personal consumption. The Department of Finance estimates that the personal consumption deflator was 1.5% in 2018 and 2% in 2019.
- 36.** Because earnings in the construction sector have not increased since October 2017, workers covered by the SEO are not getting any benefit from the general increase in earnings across the economy. This combined with the fact that the cost of living is increasing means that the purchasing power of the earnings of construction workers is declining.

37. For these reasons it is imperative that the Labour Court recommend measures that will bring construction workers' earnings back in line with growth in earnings generally in the economy and which provide real wage growth in earnings.
38. The CIC is, therefore, proposing that the Labour Court recommends an amendment to the SEO which would provide for 3 annual increases in pay of 4%. The first increase would come into effect on the date of the order amending the SEO and the subsequent increases on the anniversary of that date in following two years. Table One below illustrates the impact of this recommendation on the various grades of worker who fall within the scope of the SEO.

**Table One**

Category of Worker	Current SEO Rate	On Date of New Order	After a Further 12 Months	After a Further 12 Months
Craft Worker	€18.93	€19.69	€20.47	€21.29
Category 2 Worker	€18.36	€19.09	€19.86	€20.65
Category 1 Worker	€17.04	€17.72	€18.43	€19.17
New Entrant Worker	€13.77	€14.32	€14.89	€15.49
Apprentice Year 1	€6.31	€6.56	€6.82	€7.10
Apprentice Year 2	€9.47	€9.84	€10.24	€10.65
Apprentice Year 3	€14.20	€14.77	€15.36	€15.97
Apprentice Year 4	€17.04	€17.72	€18.43	€19.16

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 variable nature of work location and has been provided for in the collective agreements for many years.
40. The 2015 Act makes very clear provision for traveling time (when working away from base); the nature of the sector requires workers to almost always work away from their base. It is also important to note that, notwithstanding the constitutional checks and balances that are included in the 2015 Act, a key feature of the 2015 Act and the principle Act<sup>8</sup> has been to give legal expression to agreements between “workers and employers”; a key feature of the agreement between workers and employers in the sector has been the provision of traveling time. Furthermore, the 2015 Act at 16(2)(b) specifically advises that the Court should have regard to “the terms of any relevant national agreement relating to pay and conditions for the time being in existence”; it is common case between the employers and unions in the sector that traveling time payments are in existence in

<sup>8</sup> Section 1(2) of the 2015 Act provides – “The Industrial Relations Acts 1946 to 2015 and Part 3, other than [section 36](#), shall be construed together as one Act”.

the sector. It is respectfully submitted that the inclusion of paid traveling time in an SEO for the sector is entirely appropriate.

41. The Labour Court's Recommendation to the Minister on an SEO for the sector on the 13 July 2017 cited the existence of complex legal and technical issues and that further engagement between the parties on travelling time would be required before the Court would be in a position to come to a definitive recommendation on this matter.
42. The CIC has attempted to engage with the CIF on this issue at the NJIC. However, the CIF continued to hold the view that this was a legacy issue despite the fact that is provided for in a collective agreement between the CIC and CIF. It is not disputed by the CIF that some employers continue to pay travelling time, however, it continues to be the case that others do not. We are, therefore, asking the Court to recommend to the Minister that the SEO be amended to provided that each worker in the sector is paid one hours travelling time per day.
43. One of the major anomalies in the sector which has arisen since the SEO was put in place are the hours of work in the sector. There is strong evidence that many workers in the construction sector are now been employed on contracts of employment that require them to work a basic working week of up to 46 hours. This is despite the fact that there is a long-standing collective agreement that provides for a 39-hour working week and the payment of premium rates for unsocial hours. The 39-hour working week was agreed as part of the national pay agreement, *The Programme for National Recovery*. However, the current SEO specifies the rates of payment of unsocial hours payment is silent on the normal working week and the normal daily working hours.
44. SI 59 of 2018 Sectoral Employment (Order Mechanical Engineering Building Services Contracting Sector) 2018 provides clarity as to the working hours for other workers in construction not covered by the scope of the construction SEO and we are seeking an amendment to the SEO to define the normal working week and the normal working day.
45. Specifically, the CIC is asking the Court to recommend to the Minister that the SEO be amended by the inclusion of the following provisions:
  - **Normal Working Week** - The normal working week shall consist of 39 hours worked between Monday and Friday each week.
  - **Normal Daily Working Hours** - Normal daily working hours shall consist of eight consecutive hours of work undertaken between the hours of 8am (normal weekday starting time) and 4.30pm (normal weekday finishing time) Monday – Thursday and between 8am (normal Friday starting time) and 4pm (normal Friday finishing time) on Friday.



- **Other Hours Worker** - Hours worked outside of those hours shall constitute unsocial working hours and shall attract the premium payments provided for in the SEO.

**46.** The SEO requires that workers in the sector are members of an occupational pension scheme. The CIC is seeking a number of amendments to the SEO to provide for:

- increases pension contributions by both employers and employees; and
- further clarity as to the operation of the scheme.

**47.** The rates of contributions to be paid by the workers and employers are prescribed in the SEO. In order to ensure that the workers can reasonably expect that their pension pot at retirement is capable of providing a decent pension, it is vital that their and their employer contributions increase in line with increases in earnings.

**48.** The CIC is asking the Court to recommend to the Minister that the rate of pension contributions paid by the workers and their employers be directly linked to future increases in basic pay. Taking the current pension contribution rates as a starting point and assuming that the Court recommends pay increase in line with those set out in table two of this submission, table two below sets out the rates of pension contributions applicable in the three years concerned.

**Table Two**

Pension Contribution	Employer	Worker	Total
Current SEO	€26.63	€17.76	€44.39
On Date of New Order	€27.70	€18.47	€46.17
After a Further 12 Months	€28.80	€19.21	€48.01
After a Further 12 Months	€29.96	€19.98	€49.93

**49.** The CIC is also of the view that for the avoidance of doubt that the appendix of the SEO setting out the terms of the pension scheme should be amended so that the term 'employee' where it exists be replaced with the term 'worker' within the meaning of the Industrial Relations Acts.

**50.** The CIC is seeking an amendment to paragraph 10.2 as follows:

**10.2. Relevant Pension Contributions**

Employers and their workers 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.

Employers who fail or neglect to make the authorised deduction shall be liable for the total contribution required to ensure that the worker's pension benefits are maintained in full for the period of service with them.

This wording suggested here is identical to the wording that applies to the provisions of the sick pay scheme contained within the current SEO.

## **51. Summary and Conclusion**

**52.** In this submission we have sought to convince the Court that an amended SEO for the construction sector is required. 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.

**53.** 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.

**54.** Workers in the construction sector have suffered a significant deterioration in their terms and conditions of employment in recent years. Some employers in the sector have sought to roll back established conditions of employment such as the 39 hour working week. This investigation presents an opportunity to regularise employment conditions in the sector and to allow workers to share the benefits of a buoyant sector and wider economy.

**ENDS.**

# **Appendix One**

## **DEFINITION OF THE CONSTRUCTION SECTOR**

**Any undertaking who employs workers of the class type or group to which the order applies and carries on activities or a combination of activities as listed below or an undertaking who operates as an employment agency within the meaning of the Employment Agency Act 1971 and or the Protection of Employees (Temporary Agency Work) Act 2012, for the purposes of supplying labour to other employers within the Economic Sector to which the order applies.**

- a) The construction, reconstruction, alteration, repair, painting, decoration, fitting of glass in buildings, and the demolition of buildings.
- b) The installation, alteration, fitting, repair, painting, decoration, maintenance and demolition in any building, or its site, of articles, fittings, pipes, containers, tubes, wires or instruments (including central heating apparatus, machinery and fuel containers connected thereto) for the heating, lighting, power or water supply of such buildings.
- c) (i) The clearing and laying out of sites for buildings.  
(ii) The construction of foundations on such sites.  
(iii) The construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings and the disposal of waste.  
(iv) The construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings.
- d) The manufacture, alteration, fitting, and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster.
- e) 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 and all work in connection with building their sites and 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 like material, any boundary walls, railings, fences and shelters erected thereon.