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12<sup>th</sup> September 2022

The Secretary  
The Labour Court  
Lansdowne House  
Lansdowne Road  
Dublin 4

By email: [info@labourcourt.ie](mailto:info@labourcourt.ie)

**Notice of intention to conduct an examination into terms and conditions in the Mechanical Engineering Building Services Contracting Sector pursuant to Section 15 of the Industrial Relations (Amendment) Act 2015 (the "Act")**

Dear Chairman and Members of the Labour Court,

We, as the Trustees of the Construction Workers Pension Scheme (the "**Scheme**") and the Construction Workers Sick Pay Trust (the "**Sick Pay Scheme**"), wish to make a submission in relation to the above notice (the "**Notice**") as issued by the Labour Court.

We wish to make representations in support of a Labour Court recommendation for the making by the Minister of a Sectoral Employment Order ("**SEO**") under Section 17 of the Act, in order to specify the minimum requirements for pension, death benefits and sick pay entitlements arising in the context of employment in the mechanical contracting sector.

Briefly, by way of background, the Scheme is an industry-wide occupational pension scheme which provides for the retirement savings of over 330,523 members in total, which includes 52,715 active members and 8,201 active employers in the broad construction sector. [Of this, a significant number of our active members and employers are in the mechanical contracting sector.]

As you may be aware, the Scheme has been in operation for over fifty years and has been providing pension and death in service entitlements for workers in the construction sector during this time. In so providing the Scheme has gained technical and specialised experience in this sector, and of the specific needs and pension requirements of members of the construction sector workforce. Accordingly, the Scheme has developed a range of benefits and entitlements for that workforce on this basis.

Similarly, the Sick Pay Scheme is also an industry wide scheme for the payment of sick pay benefits to the construction sector workforce, [which again includes those employed in the mechanical contracting sector]. It is separate to the Scheme but closely linked to it, in terms of administration and membership.

It is particularly noteworthy that workers from the age of 15 and upwards can join and contribute to the Scheme and the Sick Pay Scheme until age 70.

It is our strong belief that the provision of minimum terms and conditions and reasonable rates of contributions relating to pension, death benefits and sick pay for workers in the mechanical contracting sector would be of great benefit to those workers and their families. Beyond those immediate benefits, we also believe that such provision would be of wider societal value.

It is our view that by providing for minimum pension terms and conditions, workers in this sector, will be in a position to benefit from a minimum level of retirement income, which will become available to them in addition to the State pension, upon retirement. We would respectfully submit that a recommendation of minimum levels of conditions and rates would

be broadly in line with this Government's policy to increase the number of members participating in occupational pension schemes in order to reduce the sole dependency of workers upon the State pension.

By providing for minimum death benefit entitlements for workers employed in the mechanical contracting sector, it will ensure that the families and dependents of such workers have a sufficient level of protection in the event of death prior to retirement of a worker in the mechanical contracting sector.

The availability of sick pay benefits at a basic level will provide a minimum safety net for workers who fall sick, assisting them to re-enter the workforce.

In considering what minimum terms and conditions should be introduced, we believe that the Labour Court should take account of the following considerations:

## **1 PENSION BENEFITS**

- 1.1 We believe that employers should be required to contribute to an occupational pension scheme established under trust and regulated by the Pensions Authority. The trustees of a pension scheme are fiduciaries who will be in a better position to police an employer's compliance with the minimum requirements of an SEO than, for instance, the provider of a contract based product such as a PRSA.
- 1.2 Given that employment in the mechanical contracting sector is of a flexible nature, and an employee may have a number of employers during the course of their working life, we believe that an industry wide pension scheme, open to all employers in the sector and operating on a multi-employer basis is the best structure. An industry wide multi-employer scheme would enable employees to maintain a single pension account that will travel with them from employer to employer and from job to job during the course of their career within the sector. However, we acknowledge that an industry wide structure is not the only structure that could be available to fulfil a minimum pension requirement.
- 1.3 We believe that a member should not be permitted to take a refund of their own contributions on leaving the service of an employer prior to reaching retirement age.
- 1.4 Due to the transient nature of the industry many employees in the sector will have short periods of employment with different employers, which could in theory mean that they would be entitled to take a refund of contributions on leaving service, as Pensions Act requirements only apply after two years' service. In the scenario of a member taking a refund of contributions, the member loses the employer contributions to the scheme. We believe this could potentially negate the purpose of having minimum pension benefits, and should not be permitted under the terms of the SEO. Where an employee leaves the service of an employer, the contributions which have been paid by both the employee and the employer in respect of the employee should vest under the scheme and be retained to provide pension benefits.
- 1.5 Minimum contributions should be at an adequate, but reasonable, level. Employees should be required to contribute.
- 1.6 The scheme should be required to disclose minimum information about the scheme's charges and who bears them. There must be full transparency of charges and the total annual charges borne by members should be disclosed and must include all administration costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the scheme. A cap could be put on the maximum annual costs which a scheme can charge.

## **2 DEATH BENEFITS**

- 2.1 Employees in the sector should be entitled to death in service benefits of a reasonably substantial minimum size, separate from and in addition to minimum pension benefits. These benefits should be provided without any restrictive eligibility conditions or any medical underwriting requirements, or reference to previous medical conditions.
- 2.2 Death in service benefits should be payable in the event of a member dying at any time while he is employed by an employer in the sector. In other words, 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 under the SEO.
- 2.3 Once any initial eligibility condition is satisfied, the employee should remain fully covered on any transfer to a new employer, and should not have to repeat any eligibility condition or period.
- 2.4 If a member has met the requirements for the full lump sum death in service benefit, but then leaves service and dies within 12 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.

## **3 SICK PAY BENEFITS**

- 3.1 Employers should be required to contribute to an independently administered and managed sick pay scheme either established under trust or by an insurance company, to cover all their employees in the mechanical contracting sector.
- 3.2 Employees should be able to remain covered for sick pay benefits as they transition between employers, to reflect the flexible nature of employment within the sector.
- 3.3 Sick pay benefits should be provided without any restrictive eligibility conditions or any medical underwriting requirements, or reference to previous medical conditions.
- 3.4 Benefits should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.
- 3.5 Once any initial eligibility condition is satisfied, the employee should remain fully covered on any transfer to a new employer, and should not have to repeat any eligibility condition or period.
- 3.6 Benefits should be provided on absence from work due to illness or injury. An adequate sick pay benefit should be provided for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- 3.7 We suggest that 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.

In our view, minimum terms and conditions for pension contributions and sick pay benefits should be maintained at an appropriate level for workers in the mechanical contracting sector, and an SEO should be made on this basis. We have analysed the construction sector in terms of employment benefits, of which the mechanical contracting sector is part, and we have considered the above criteria when setting the Scheme's terms and conditions.

For the purposes of providing guidance to the Labour Court in respect of the mechanical contracting sector generally, we believe that it would be helpful for us to set out for you the Scheme's current minimum daily levels of contributions payable by workers and by employers. The Scheme can operate contribution rates that are set by a Sectoral Employment Order. These minimum rates are set out in the **Appendix** to this submission.

In our view these terms and conditions in relation to pension contributions, sick pay and death in service benefits are reasonable and are at an appropriate level to ensure sufficient protection to these workers and their families.

We would welcome the opportunity to appear before the Labour Court to answer any questions it may have in relation to this submission or indeed, in respect of the Scheme and Sick Pay Scheme.

Yours faithfully,



Dominic Doheny  
Chairman Construction Workers' Pension Scheme