

Submission to the Labour Court

On behalf of Connect Trade Union and Unite the Union

**Examination into the Terms and Conditions in
the Mechanical Engineering Building Services
Contracting Sector pursuant to Section 15 of
the Industrial Relations Amendment Act 2015**

16th December 2020

Note: Updated August 2021



1. Introduction and background

- 1.1. This submission is made by Connect Trade Union and Unite the Union (the applicant unions) on behalf of workers employed in the Mechanical Engineering Building Services Contracting Sector (the sector). The applicant unions request the Labour Court to examine the terms and conditions of workers in the sector under the terms of the Industrial Relations (Amendment) Act 2015 (the 2015 Act) with a view to making recommendations to the Minister that the Sectoral Employment Order (Mechanical Engineering Building Services Sector) 2018 S.I. No 59 of 2018 (the mechanical SEO)¹ be amended as provided for under section 16(7) of the 2015 Act.
- 1.2. It is respectfully submitted that the preliminary questions arising from section 15(1)(a)(i) of the 2015 Act allowing the Labour Court to conduct a review of the sector have been answered in the submissions to the Labour Court from the applicant unions². However, for the sake of completeness and ease of reference much of the text and documentation from those submissions is included in this document.
- 1.3. On March 9th 2018, the Minister for State at the Department of Business, Enterprise and Innovation, issued the mechanical SEO, setting certain legal minimum conditions of employment for workers in the sector.
- 1.4. On September 29th 2020, the applicant unions requested the Labour Court to conduct an examination of the sector pursuant to its powers under Section 15 of the 2015 Act.
- 1.5. On November 18th 2020, the Labour Court published a notice of its intention to conduct an examination of the sector and inviting interested parties to make written submissions to the Court on or by December 16th 2020. ***On August 6th 2021, the Court indicated its intention to hold a hearing on August 30th.***
- 1.6. The applicant unions are requesting the Labour Court to make a recommendation to the Minister for an amended mechanical SEO. In particular, we are asking the Labour Court to consider recommending to the Minister that an amended mechanical SEO should include the following:
 - Revised hourly rates of pay for each of the grades based on annual increases.
 - The inclusion of travel time payments.

¹ Copy of the mechanical SEO attached at **appendix 1**

² Correspondence to the Labour Court dated the 25th September 2020 concerning the applicant unions' application for examination of the sector- attached at **appendix 2** of this submission.

- The inclusion of country money.
- The inclusion of shift arrangements.
- Increased pension contributions.
- An amended disputes procedure.

1.7. Before elaborating on the above headings, we explain the wider context within which the mechanical SEO operates. In doing so, we seek to address some of the matters that the Labour Court is required to have regard to when making a recommendation to the Minister, as set out at Section 16(2) of the 2015 Act.

2. The Sector, Economic Impact, Competitiveness and Future Demand

1) The Sector

- 2.1. Terms and conditions of employment of workers in the sector flow from a generic contract of employment. The terms of that generic contract of employment derive from two documents - the Mechanical Engineering & Building Service Contractors Agreement (the MEBSCA agreement) and the mechanical SEO. While the application and terms of the mechanical SEO are self-evident and straightforward, the MEBSCA agreement requires some explanation.
- 2.2. Mechanical grades have featured in the national construction industry employment agreements covering pay and pensions since their inception as registered employment agreements in the 1960s³. Since the early 1970s, mechanical grades received plus payments beyond the construction industry pay rates on foot of engagement and agreement with the employers in the industry/sector represented by the Construction Industry Federation⁴ (the employers). These plus payments were linked to levels of proficiency and service attained, and they were housed in collective agreements between the employers and trades unions within the sector. These agreements are referred to as the MEBSCA agreement/s.
- 2.3. In 2010/2011, under the auspices of the then Labour Relations Commission, new mechanical rates were agreed on the basis of service; i.e. one to six years beyond apprenticeship completion. The pay rates were agreed on the basis that the then MEBSCA rates, in conjunction with the terms of the then construction REA, would form the basis of a registered employment agreement in the sector. It was envisaged that the unions and employers would agree a comprehensive redrafted agreement,

³ Registered Employment Agreement (Construction Industry Wages and Conditions of Employment) 15th March, 1967 , Registered Employment Agreement (Construction Pensions Assurance and Sick Pay) 7th March, 1969 (the construction REA)

⁴ The Mechanical Engineering & Building Service Contractors Association of the Construction Industry Federation

before applying to the Labour Court to have it registered as an employment agreement as provided for under the then Section 3 of the Industrial Relations Act 1946. Events unfolded that hindered the parties' ability to get the agreement registered. These included legislative changes as well as High Court and Supreme Court decisions. Notwithstanding the fact the REA at the time could not be secured, the result of this engagement was to redraft the MEBSCA agreement to include the new 2011 rates, with the first hour of travel pay incorporated in the hourly rate, and all other terms of the then construction REA to apply⁵.

2.4. In 2018/19, both of the applicant unions lodged separate claims with the employers for increased pay rates and other improvements to the terms and conditions of workers in the sector. During engagement with the employers at the Workplace Relations Commission (WRC), the following was agreed:

- That a single claim be put to the employers on increased pay rates.
- That travel time be dealt with separately from any increases to pay rates.
- That the matters of increasing the rate of country money/subsistence and pension provision be dealt with in future examinations/amendments to the SEO.

2.5. In 2019, the MEBSCA agreement was amended by virtue of both parties agreeing to proposals emanating from a WRC conciliation process. The WRC proposals provided for pay increases of 5.4% over time, and the unions' claim for restoration of the first hour of Travel Time Payment to be advanced to the Labour Court under industrial relations legislation for recommendation⁶. The issue of Travel Time Payments remains adjourned before the Labour Court since the August 13th 2019. The division of the Court involved at the time took the view that the then application for the amendment to the mechanical SEO should be concluded in the first instance.

2.6. Hearings concerning amendments to the mechanical SEO took place in September 2019. This resulted in a draft order to amend the mechanical SEO being produced in January 2020⁷. It's the applicant unions' understanding that the draft SEO was not put before the Houses of the Oireachtas as per section 17(4) of the 2015 Act in advance of the dissolution of Dáil Éireann on the January 14th 2020. Consequently, the draft SEO (January 2020) never achieved force of law.

⁵ Copy of 2011 MEBSCA agreement attached at **appendix 3** of this submission

⁶ Copy of WRC May 2019 proposals attached at **appendix 4** of this submission

⁷ Draft Sectoral Employment Order (Mechanical Engineering Building Services Sector) 2020 attached at **appendix 5** of this submission

2.7. Notwithstanding the events surrounding the mechanical SEO as explained at 2.6 above, the most recent terms of the MEBSCA agreement as explained at 2.5 and appendix 4 were honoured and implemented across the sector⁸.

2) Economic Impact, Competitiveness and Future Demand

2.8. This section addresses issues surrounding the economic impact on levels of employment and competitiveness in the sector. We use construction sector data as there is no adequate breakdown of the mechanical sector itself.

The impact of Covid-19

2.9. ***Until March 2020, the construction sector was in a period of significant expansion. Notwithstanding the impact of Covid-19 and successive lockdowns, all the indications are that the sector is experiencing a strong recovery. While activity in the sector contracted significantly during Q2 2020, and in Quarter 1 2021 compared to Quarter 4 2020, due to Covid-19 and associated restrictions and site shut-downs, the CSO's Production in Building and Construction Index showed that it bounced back in Q3 2020 (by 44%). The corresponding figures for 2021 have yet to be reported, but it is likely that Q2 and Q3 will show similar or greater levels of recovery⁹. CSO figures show that there were 5,021 new dwelling completions in Q2 2021, which is 55.5% greater than the 3,229 completions in the second quarter of 2020. Significantly, the total figure for Q2 2021 quarter is also 4.6% greater than for Q2 2019¹⁰.***

2.10. ***In June 2021, the Ulster Bank Construction PMI in Ireland edged up to 66.5 from 66.4 in May, pointing to the second growth in five months following the full reopening of the sector, at one of the strongest rates since the survey began 21 years ago. In July 2021, this fell to 62.8 but still points to a substantial increase¹¹. Ulster Bank noted that over half of all respondents to its survey predicted a rise in building activity over the coming year¹². The overall context is thus favourable for profitability as well as sustained employment growth.***

2.11. ***The ESRI and other institutional research bodies (both domestic and international) suggest that long-run demand remains well above current***

⁸ 2.7% increase to apply for 12 months from the 1st of September 2020

⁹ <https://www.cso.ie/en/statistics/construction/productioninbuildingandconstructionindex/>

¹⁰ <https://www.cso.ie/en/releasesandpublications/er/ndc/newdwellingcompletionsq22021/>

¹¹ <https://tradingeconomics.com/ireland/construction-pmi>

¹² <https://www.irishtimes.com/business/construction/construction-sector-continued-its-speedy-recovery-in-july-1.4642235>

supply levels in the housing sector. This implies very substantial scope in the next three years for rapid expansion in house price growth, sustained employment growth and high levels of profitability in the sector.

- 2.12. **Demand in the sector will be further enhanced by measures to combat climate change, with the sector likely to significantly benefit from plans to retrofit homes and buildings to make them more energy-efficient. This is provided for in the National Recovery and Resilience Plan published at the start of June¹³, and, in the wake of the report by the Intergovernmental Panel on Climate Change, enhanced targets are likely to be included in the Government's plan to tackle climate change due to be issued in the autumn. In August, Professor John Fitzgerald, a member of Ireland's Climate Change Advisory Council, noted that up to 20,000 specialists would be needed to retrofit houses every year¹⁴.**
- 2.13. **Gross value added (GVA) in the construction sector fell sharply in the months following the initial lockdown in mid-March 2020¹⁵. 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 over 84,000 in early May to under 13,000 in early August¹⁶, highlighting the sector's capacity to recover quickly.**
- 2.14. **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 sector¹⁷. 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**

¹³ <https://www.gov.ie/en/publication/d4939-national-recovery-and-resilience-plan-2021/>

¹⁴ <https://www.irishtimes.com/news/politics/skills-shortage-means-government-must-opt-for-retrofitting-or-new-builds-1.4644167>

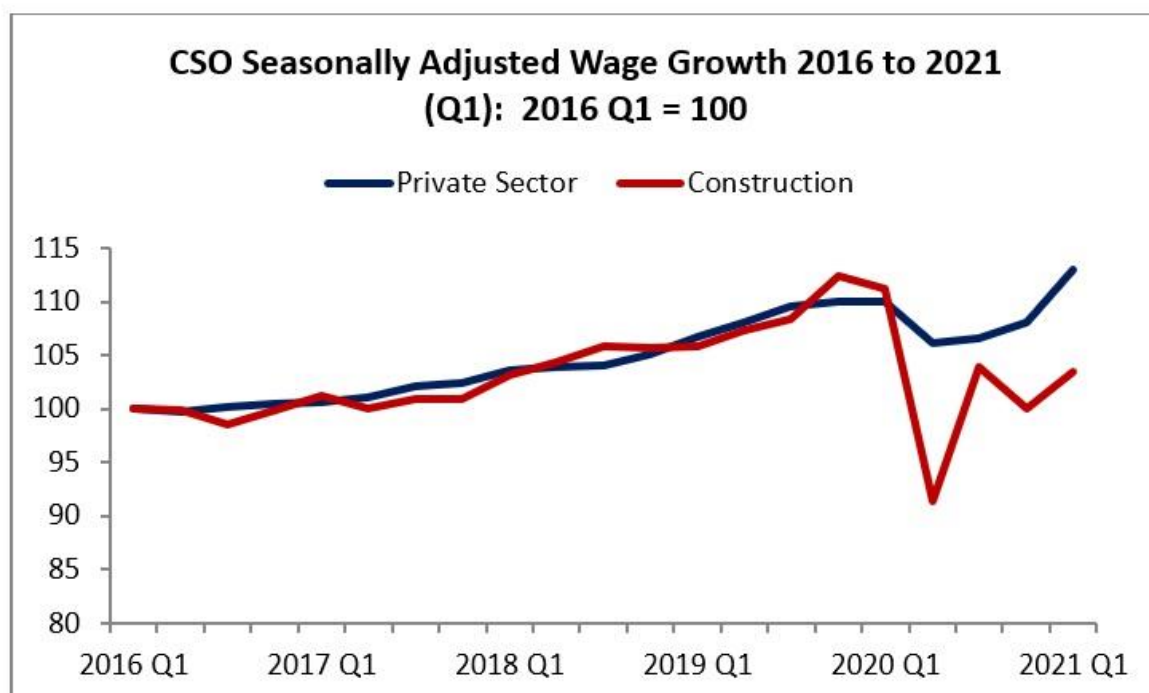
¹⁵ CSO (June, 2021), Quarterly National Accounts

¹⁶ <https://www.gov.ie/en/press-release/1ac7d-update-on-payments-awarded-for-covid-19-pandemic-unemployment-payment-and-enhanced-illness-benefit-3-august-2021/>

¹⁷ CSO (June, 2021), Earnings and Labour Cost Quarterly

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.

- 2.15. *Wage growth (labour cost) in both the wider private sector and in construction moved consistently up to the pandemic. However, since the start of the pandemic, construction wages have fallen relative to the private sector. It would have taken a 9 per cent wage increase in the first quarter of the 2021 to restore parity with the private sector¹⁸.*



Construction wages compared internationally

- 2.16. *The construction sector is not generally an internationally traded export sector, as 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, however, the evidence shows that Irish construction employee compensation is well below our peer group in Europe (other high-income countries). The following data shows employee compensation (wages, employers' PRSI and other payroll*

¹⁸ Central Statistics Office

costs). It is expressed in both nominal and real (purchasing power parities) terms. The latter factors in currency movements and living costs¹⁹.

2.17. A comparison in nominal Euros shows Irish construction compensation to be €7.50 per hour less than our EU peer group average. Irish construction workers would need a 29 per cent increase to reach the average, and an even greater increase to reach the average of other small countries such as Denmark, Austria or Belgium²⁰. A comparison in PPP shows a similar gap between Irish construction compensation and our peer group average. It would require a 33 per cent increase to reach the average. In fact, Ireland trails the Eurozone average which includes much poorer countries such as Greece and Portugal. Irish compensation would need to rise 23 per cent in PPPs to reach the Eurozone average.

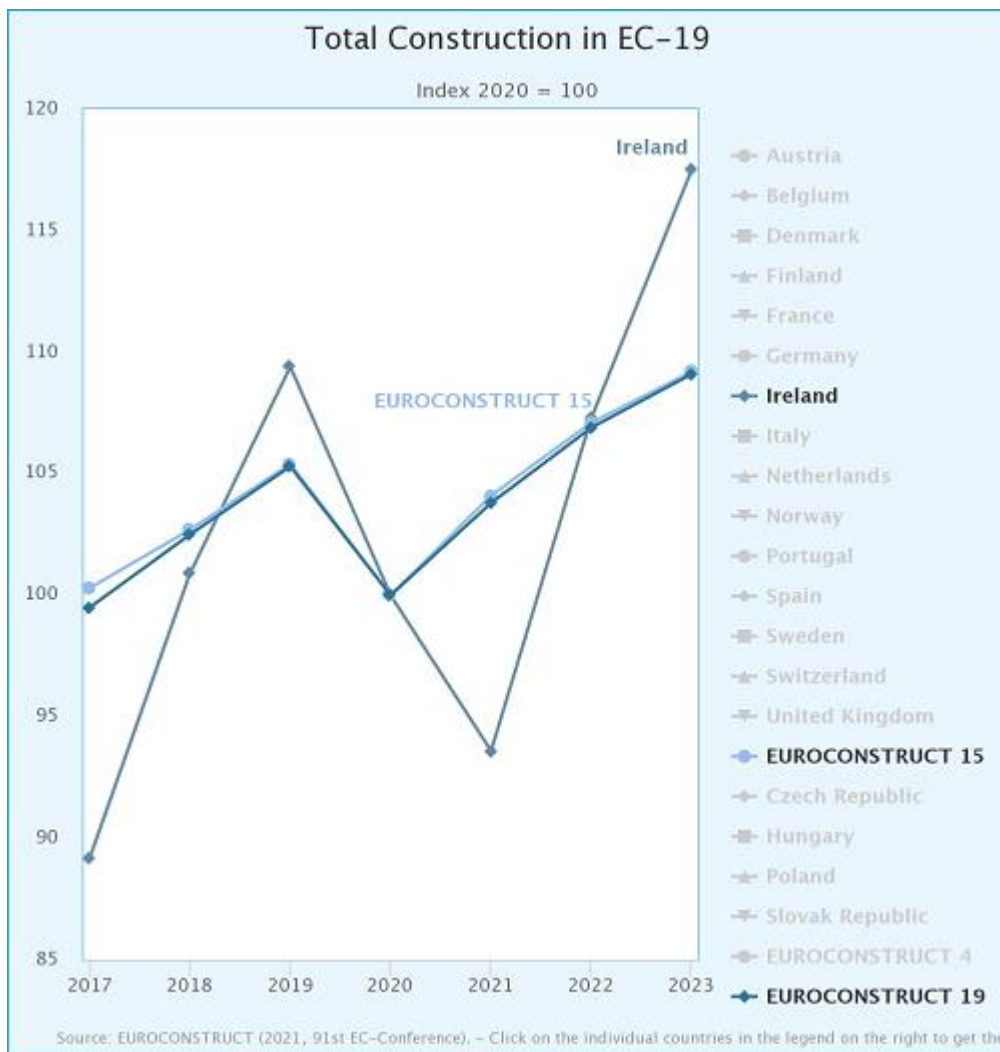
Construction Employee Compensation: 2020 (€ and PPP per hour)			
€ per Hour		PPP per Hour *	
Denmark	41.5	Netherlands	33.88
Netherlands	39.2	Belgium	32.80
Austria	37.1	Austria	32.43
Belgium	36.9	France	31.60
Sweden	36.5	Denmark	31.27
Finland	35.1	Peer Group	29.60
France	34.6	Sweden	27.93
Peer Group	33.6	Finland	27.90
Germany	30.6	Germany	27.42
Ireland	26.1	Ireland	22.25
* GDP Deflator			

¹⁹ Figures sourced from Eurostat

²⁰ <https://protect-eu.mimecast.com/s/LQVfCJN8AuqNRRDIVPfxX?domain=appsso.eurostat.ec.europa.eu>

Outlook

2.18. *The Euroconstruct construction analysis and forecasting network indicates that, between 2017 and 2019, Ireland had experienced the highest increase in construction activity – 21.5 per cent as opposed to 6 per cent – of countries contained within the Euroconstruct 19. Given this performance, 2020/21 and the pandemic saw Irish construction activity decline more sharply than our peers. However Euroconstruct forecasts indicate that Ireland will bounce back even faster than the remainder of the Eurozone²¹.*



2.19. All the data available to date thus points to the resilience of the construction sector, a resilience which is largely due not only to a skilled and experienced workforce but also to the stability conferred by agreements such as MEBSCA and the existence of the mechanical SEO.

²¹ https://www.euroconstruct.org/jart/prj3/wifo/main.jart?rel=euroconstruct_en&content-id=1621537942657

3. Requested amendments to the SEO

1) Minimum Hourly Rates of Pay

- 3.1. Section 16(2)(b) of the 2015 Act advises that the Labour Court should have regard to the terms of any relevant national agreement relating to pay and conditions when making recommendations to the Minister for the establishment of, or amendment to, an SEO.
- 3.2. Table 1 below sets out what is provided for in the MEBSCA national agreement on pay for 2020 to 2021 for categories 1, 2, and 3 of the mechanical SEO, and consequently apprentice grades as provided for in the mechanical SEO²².

Table 1

Category of Worker	2.7% increase from September 1st 2020 for 12 months
Category 1 Worker	€23.97
Category 2 Worker	€24.48
Category 3 Worker	€24.90

- 3.3. Ideally, the applicant unions would seek to have all pay increases proposed in amendments to the mechanical SEO flowing from or linked to industrial relations agreements. We believe such an approach is in keeping with the intention behind the establishment of the 2015 Act. **However, arising from the mechanical SEO not being amended in early 2020 as expected, and the delays arising since the Labour Court sought submissions on this proposed SEO (December 16th 2020), there was no basis to reach collective agreement on future pay increases extending beyond September 2021. This is despite engagement between parties to the MEBSCA agreement from January 2021 to date.**
- 3.4. **Given the context outlined above, the applicant unions would ask the Labour Court to recommend the amendment of the mechanical SEO as follows: 4% increase on current MEBSCA agreement rates to be applied on September 1st 2021, September 1st 2022 and September 1st 2023, with the same percentage increases to apply analogously to apprentice rates. These requests are set out in table 2 below.**

²² Apprentice Year 1 – 33% of Category 1 hourly rate, Apprentice Year 2 – 50% of Category 1 hourly rate, Apprentice Year 3 – 75% of Category 1 hourly rate, Apprentice Year 4 – 90% of Category 1 hourly rate (paid on the anniversary of registration)

Table 2

Category of Worker	Current SEO Rate	Current MEBSCA rates	From September 1 st 2021 for 12 months +4% increase on MEBSCA rates	From September 1 st 2022: 4% increase	From September 1 st 2023 4% increase
Category 1 Worker	€22.73	€23.97	€24.93	€25.93	€26.97
Category 2 Worker	€23.33	€24.61	€25.59	€26.61	€27.67
Category 3 Worker	€23.60	€24.90	€25.90	€26.94	€28.02

- 3.5. ***A 4% increase in respect of hourly rates will recoup the amount that remains outstanding from 2010 when mechanical workers rates were cut by 17%²³.***
- 3.6. ***It should also be noted that 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 national income. 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%. Our proposed increases 2021-2023 are in line with this policy aim.***

2) Travelling Time Payments and Subsistence (Country Money)

- 3.7. The current sector travel time payments are specified in the MESBCA agreement, with the first hour of travel incorporated into the hourly rate by virtue of amendments to the MEBSCA rates in 2011 as detailed above. The result of this change is that the one and a half-hour’s additional travelling time per day is the maximum that a mechanical craft and apprentice worker can receive on a daily basis within the terms of the MEBSCA agreement.
- 3.8. While payments of travel time apply across the sector, its application can be subject to the geographic location of a given project. Some contractors in the sector use the application of travel time pay to entice mechanical workers, whether they are required to apply such payments as per sector-wide agreements or not. Obviously, where local positive arrangements have prevailed, with or without the direct input of the unions, there has been no argument from workers or unions. However, this and the general geographic application of travelling time payments do create a number of difficulties.

²³ See **appendix 6** of this submission illustrating the difference between pay cuts in 2010 and current mechanical workers rates and extracts for the then MEBSCA Agreement

These include: negative manoeuvring for project selection among workers, using project selection negatively by employers and generally creating an inducement for contractors not to pay travel time payments in pursuit of competitive advantage. This in turn, in our view, undermines the stability of the mechanical SEO in the longer term. With this in mind, we believe that travelling time payments should be included in the mechanical SEO. Before we set out our arguments as to why travelling time payments should and can feature in a recommendation to the Minister, we provide the historic context for the provision of travelling time payments.

History of Travelling Time Payments

- 3.9. Payment of expenses for costs incurred and time spent travelling to construction/mechanical projects have featured in the sector as early as the 1930s²⁴. In 1970 and in 1990, Subsistence (Country Money) and Travelling Time Payments respectively became formally enshrined in the then construction REA²⁵. The central role of these payments was to compensate workers for the need to travel to different work places on an ongoing basis. It also facilitates employers in not requiring workers to arrive at work at a fixed location, i.e. the employers' premises, and then travel to construction/mechanical projects. It has since become a key part of workers' overall remuneration in the sector, to the extent that elements of it are paid when workers are on leave and not necessarily incurring the costs involved in travelling to work²⁶. Travelling time payments have also insulated the sector from the instability of *Tyco*²⁷ style decisions and judgements, with workers operating on different construction sites on a weekly and day-to-day basis.

Travelling Time Payments in an SEO

- 3.10. The 2015 Act makes very clear provision for travelling 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 Act²⁸ 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 travelling time payments. Furthermore, the 2015 Act at

²⁴ See Dublin Working Rule Agreement for construction and electrical 1938

²⁵ Subsistence (Country Money) see Variation Order 1970, Travel Time see Variation Order 1990

²⁶ See documents attached at **appendix 7** illustrating the inclusion of travel time in holiday, 1999, 2000

²⁷ *Federacion de Servicios Privados del sindicato Comisiones Obreras (CC. OO.) v Tyco Integrated Security SL, Tyco Integrated Fire and Security Corporation Services SA* Case C-266/14

²⁸ 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*".

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 travelling time payments are in existence in the sector.

3.11. It is respectfully submitted that the inclusion of travelling time payments in an SEO for the sector is entirely appropriate and exists already in the mechanical SEO; by virtue of the fact that the first hour of travelling time pay is in the hourly rate, as explained above.

3.12. Similar to overtime, travelling time by its very nature in the mechanical sector is variable, but this does not negate the need to arrive at a formula to facilitate its provision. It is our view that only the formula can have universal application rather than what each worker covered by the mechanical SEO receives in respect of travel time payments.

Subsistence (Country Money)

3.13. As explained above, Country Money²⁹ has its origins in the earliest collective and registered agreements within the sector and the wider construction sector. The MEBSCA agreement provides for Country Money to be paid where an “*operative resides away from home*”. The language in the sector agreements concerning Country Money is dated; this is evident in the fact that the revenue commissioners provide exclusions for tax for Country Money but do not require an operative to reside away from home to avail of such exclusions³⁰. The reality is that many workers in the sector receive Country Money where they have to work away from base beyond the bands provided for by travelling time payments. Country Money functions mainly as an extension of the travel time bands, and because it applies at a particular distance from an employer’s base or General Post Office/s, regardless of the geographic location of the base, it has standard and universal application.

Universal Application

3.14. While the Labour Court has not advised how travelling time would or could apply in an SEO heretofore, in a past construction sector SEO recommendation its comments are instructive³¹. It is clear that the Court did not accept that the current arrangements

²⁹ Paid at €181.68 per week as per the MEBSCA agreement

³⁰ See Income Tax Statement of Practice SP-IT/2/07 – Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees, at 14 and 15

³¹ “*The Court takes a view that a number of complex legal and technical issues arise on which the parties need to engage further before the Court is in a position to come to a definitive recommendation on this matter*”. See Labour Court Recommendation to the Minister for Jobs, Enterprise and Innovation, 13th July 2017

within the construction sector have universal application. The current arrangements in the construction sector are, by and large, the arrangements in the mechanical sector. The important difference in this sector is that the employers are on record as supporting the continuation of Travelling Time and Country Money³².

3.15. Despite the employers' acceptance that Travelling Time Payments and Country Money be continued, there has not been a basis for the employers and the unions in the sector to reach agreement on the way in which a travel time arrangement might feature in the context of an SEO, despite extensive engagement on this matter, directly and under the auspices of the WRC, as recently as 2019.

3.16. It is clear to the applicant unions that the only basis for the employers and unions in the sector accepting a comprehensive and universally applicable travelling time arrangement, which can be housed in an SEO, is for the Labour Court to provide recommendations on such arrangements. With this in mind, we have structured a proposal below for the payment of Travelling Time Payments and Country Money in the sector. We appreciate the significant cost implications contained in the proposal as it is currently configured. We would ask the Court to consider the formula and principles proposed as a basis to achieve universal applicability of Travelling Time Payments and Country Money in the sector over time.

3.17. Unions' Proposal on Travelling Time Payments and Country Money:

National Travelling Time Payment Rates

- 0 - 6 kilometres 1 hour per day
- 6 - 8 kilometres 1¼ hours per day
- 8 - 10 kilometres 1½ hours per day
- 10 - 12 kilometres 1¾ hours per day
- 12 - 20 kilometres 2 hours per day
- 20 - 32 kilometres 2½ hours per day
- Over 32 kilometres Country Money applies

a) The hours or fractions of hours above refer to the basic rate for mechanical craftworkers and apprentices, as appropriate.

³² See correspondence from the employers in the sector to the applicant unions of the 24th of March 2017 and 8th of August 2017 at **appendix 8** of this submission

- b) All distances are radial and are measured from place of business outwards to the actual job/site. All distances are measured on a straight line basis and are one way only.
- c) These payments are paid only on the strict understanding that they are allowances towards compensating the operative for the expense and time involved in travelling to and from the various jobs/sites. This travelling is to be done in the operative's own time and at his/her own expense, and he/she must be available on the site for work at the normal starting time.
- d) Where transport is provided by the employer, 75% of the appropriate travel allowance is paid in that situation.
- e) Subsistence allowance (Country Money) shall be €50 per day or €250 for 5 working days and increase pro rata for 6 or 7 days. The allowance will be increased every 6 months in accordance with increases in the consumer price index. The allowance shall be paid where an operative has to either reside away from home or travel more than 32 km (in one direction) in the performance of his/her duties. No back week should apply to this payment.

3.18. The formula above largely flows from the travel time provisions of the former Electrical REA³³ in terms of its universal applicability and, if supported in full by the Labour Court in a recommendation to the Minister, would address the unions' outstanding industrial relations claim, as explained at point 2.4 and 2.5 above, and help to further shape a level playing field, in respect of labour costs, for employers in the sector.

3) Shift Work

3.19. The mechanical SEO does not currently have a provision for shift arrangements in the sector. It is the applicant unions' view that the shift arrangements as recommended by the Labour Court in S.I. 251 of 2019 Sectoral Employment (Electrical Contracting Sector) 2019 (Electrical SEO) under "*Unsocial Hours Worked*" as set out below should apply. We would ask the Labour Court to include the following in a recommendation to the Minister in an amendment to the mechanical SEO.

Unsocial Hours Worked

Where for specific projects hours are required to differ from those set out at "Normal Daily Working Hours" above, the following rates should apply:

³³ Registered Employment Agreement (Electrical Contracting Industry) 24th September 1990 , Registered (the Electrical REA)

- Where the starting time is before 1 pm: 8 hours at time plus one quarter should apply.
- Where starting time is after 1 pm: 8 hours at time plus one third should apply.

In addition to the above, the applicant unions believe the following two points should also be added to the unsocial hours worked section of an amended mechanical SEO:

- When starting time is before 1.00 pm: 8 hours (worked consecutively) should be paid at time plus a quarter. Additional hours worked should be paid at time plus a quarter by the appropriate overtime premium (i.e. hours worked from 8 pm until 12 midnight at time, plus a quarter by time plus a half. Additional hours worked after midnight should be at time plus a quarter by double time).
- When starting time is after 1.00 pm: 8 hours (worked consecutively) should be paid at time plus a third. Additional hours worked should be paid at time plus a third by the appropriate overtime premium (i.e. hours worked from 8 pm until 12 midnight at time, plus a third by time plus a half. Additional Hours worked after midnight should be at time plus a third by double time).

4) Pension provision

3.20. Currently the mechanical SEO weekly pension, death in service and sick pay contributions are the same as the pension, death in service and sick pay contributions in S.I. No. 455 of 2017 Sectoral Employment Order (Construction Sector) 2017 (the construction SEO). This is the case despite the significant difference in the hourly rates provided for in the mechanical SEO. The applicant unions would ask the Labour Court to recommend that the weekly pension contributions are a percentage of the average mechanical rates of pay and are increased in line with increases in basic pay. If the Labour Court supports our requests on pay at point 3.1 above, and our proposed formulation on weekly pension contributions of workers and employers in the sector, the following would apply:

- ***Pension contributions from date of the amended mechanical SEO***

Weekly pension contribution should be 7% of the average mechanical rate. This should be made up of the employers paying 4.2% and the workers paying 2.8%³⁴. This currently would be employer weekly contribution of €40.31. Employee weekly contribution of €26.87. Total contribution weekly of €67.18

- ***Pension contributions from September 1st 2021***

Weekly pension contribution should be 7% of the average mechanical rate. This should be made up of the employers paying 4.2% and the workers paying 2.8%. This currently would be employer weekly contribution of €41.92. Employee weekly contribution of €27.94. Total contribution weekly of €69.86.

- ***Pension contributions from September 1st 2022***

Weekly pension contribution should be 7% of the average mechanical rate. This should be made up of the employers paying 4.2% and the workers paying 2.8%. This currently would be employer weekly contribution of €43.59. Employee weekly contribution of €29.06. Total contribution weekly of €72.65.

- ***Pension contributions from September 1st 2023***

Weekly pension contribution should be 7% of the average mechanical rate. This should be made up of the employers paying 4.2% and the workers paying 2.8%. This currently would be employer weekly contribution of €45.32. Employee weekly contribution of €30.22. Total contribution weekly of €75.54.

3.21. Also, it is the applicant unions' view that members of the pension scheme should retain the right to retire at age 65 years. Should they continue to work in line with the national retirement age, payments of contributions in respect of pension, death in service and sick pay benefits should continue to be paid. The applicant unions also suggests that a worker³⁵ should be entered into the pension, death in service and sick pay schemes upon entry to the sector from 15 years of age and until such time as the

³⁴ 4.2% employer and 2.8% employee is the current breakdown of pension contributions in the mechanical SEO. 7% average of the mechanical rate is derived from the average of categories 1, 2 and 3 of the mechanical SEO.

³⁵ As defined in Part III of the Industrial Relations Act 1990

individual reaches their retirement age from the age of 65 years to the national retirement age (as may vary).

5) Disputes Resolution Procedure

3.22. The applicant unions would propose the following amended disputes resolution procedure:

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.

3.23. The key change proposed by the applicant unions in this section is to insert the words "*concerning a matter contained in the SEO*" into the disputes procedures. While

this is the position utilised on a daily basis by the applicant unions, we believe the wording should be amended accordingly. Ambiguity should not be preclude workers from availing of a bargaining position at certain stages and areas of the sector regarding issues that are not included in the SEO, particularly where employers have sought to bring about change that impacts on terms and conditions. There are numerous examples, currently and historically, of the employer representative body in the sector and their members' firms providing improved terms and conditions beyond the minimum sectoral standards arising from unique demands on particular groups of workers. It is also important that workers and trade unions are not unduly delayed or hampered in being able to defend workplace representatives in the sector against penalisation and blacklisting.

- 3.24. Without prejudice to the applicant unions' position set out above, if the Court does not support the proposal in its entirety we would ask that issues and trade disputes relating to penalisation of workplace representative are specifically excluded from the disputes procedures. The applicant unions are aware of numerous instances of workplace representatives being penalised for carrying out their role. While there are a number of pieces of protective legislation and positive codes of practice, justice delayed is proverbially justice denied, and the fast-moving nature of the sector precludes workers being swiftly afforded protection or justice. Also, having the protection of workplace representatives excluded from the disputes procedures would itself act as a deterrent to employers who would engage in such negative practises.

4. Conclusion

- 4.1. The applicant unions believe that all the appropriate indices allowing the Labour Court to support a recommendation for the amendment of the mechanical SEO in the sector have been met. We believe that the mechanical SEO will provide the sector with ongoing stability and certainty for employers within the sector, while providing workers in the sector with decent standards concerning minimum rates of pay, pensions, death in service and sick pay benefits.