

Labour Court Report to the Minister for Enterprise, Trade and Employment pursuant to section 16 of the Industrial Relations (Amendment) Act 2015 (“the 2015 Act”) relating to a Recommendation to the Minister which would amend a previous Recommendation of the Court which was confirmed by the Minister by a Sectoral Employment Order (SEO) [S.I. No. 598 of 2021] for the Construction Sector

Background

The matter before the Court is the request by five Trade Unions to the Court to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers of a specified class, type or group in the Construction Sector.

Section 14 of the 2015 Act provides as follows:

(1) Subject to subsection (3)—

(a) a trade union of workers,

(b) a trade union or an organisation of employers, or

(c) a trade union of workers jointly with a trade union or an organisation of employers, may request the Court to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers of a particular class, type or group in the economic sector in respect of which the request is expressed to apply.

(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—

(a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and

(b) where the request is made by a trade union or an organisation of employers or jointly with a trade union or an organisation of employers, the trade union or organisation concerned is substantially representative of the employers of the workers specified in paragraph (a).

(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under subsection (1) in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.

(4) A request under subsection (1) shall be in a form prescribed by the Court.

The Court confirms that the Section 14(1) Request and all accompanying documentation was published on the website of the Court www.labourcourt.ie on 9th January 2023 and that all submissions in connection with a hearing convened in accordance with Section 15(4) of the Act were similarly published on 9th February 2023 which was in advance of the hearing of parties appearing to the Court to be interested and desiring to be heard convened on the 13th February 2023.

Receipt of a section 14 request

On 10th December 2022 the Court received a joint request from BATU, Connect, OPATSI, SIPTU and UNITE Trade Unions, made in accordance with Section 14(1) of the Act of 2015, to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of persons employed in the Construction Sector as craftspersons, construction operatives and apprentices.

The Court, in considering the request from the five trade unions notes the provisions of the Section 18(a) of the Interpretation Act, 2005 at Section 18(2) which states as follows:

18.—The following provisions apply to the construction of an enactment:

(a) Singular and plural. A word importing the singular shall be read as also importing the plural, and a word importing the plural shall be read as also importing the singular;

The request stated that the Sector was as defined in **S.I. 234 of 2019 – Sectoral Employment Order (Construction Sector) 2019**.

That Sectoral Employment Order (SEO) defines the Sector as follows:

the sector of the economy comprising the following economic activity:

The construction, reconstruction, alteration, repair, painting, decorating, fitting of glass in buildings and demolition of buildings;

The clearing and laying out of sites for buildings, the construction of foundations of such sites, the construction, reconstruction, repair and maintenance within such sites of all sewers, drains and other works for use in connection with sanitation of buildings or the disposal of waste;

The construction, reconstruction, repair and maintenance on such sites of boundary walls, railings and fences for the use, protection or ornamentation of buildings, the making of roads and paths within the boundaries of such sites;

The manufacture, alteration, fitting and repair of articles of worked stone (including rough punched granite and stone), granite, marble, slate and plaster;

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 works, public mains for the supply of water or the disposal of sewerage and all work in connection with buildings and their sites with such 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 such like material, any boundary walls, railings, fences and shelters erected thereon;

The painting or decoration of poles, masts, standard pylons for telephone, telegraph, radio communication and broadcasting;

Ground levelling, ground formation or drainage in connection with the construction or reconstruction of grass sports grounds, public parks, playing fields, tennis-courts, golf links, playgrounds, racecourses and greyhound racing tracks.

The request was accompanied by a Statutory Declaration from the Industrial Officer of the Irish Congress of Trade Unions, Liam Berney, which the five Trade Unions authorised him to make on their behalf. That authorisation took the form of a signed statement to that effect given by senior officials of all five Trade Unions which was appended to the statutory declaration submitted to the Court.

The procedure followed by the Labour Court

On 19th December 2022 the Court met to consider the documentation submitted by the applicant Trade Unions.

Section 14(2)(a) of the Act

The Trade Unions, in the documentation submitted in pursuance of the request made under Section 14(1) of the Act, have provided the detail of the numbers in their memberships of the relevant class, type or group of workers employed in the Construction Sector. The matter before the Court in Section 14(2)(a) of the Act is to determine, for the purposes of deciding whether the request meets the statutory requirements of the Section, whether the Trade Unions have provided confirmation in such form and accompanied by such documentation as the Court has specified, that the Trade Unions are substantially representative of the workers to whom the request relates.

Section 14(2)(a) of the Act states as follows:

14(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—

(a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and

The Court at its meeting of 19th December 2022, determined that the request of the five Trade Unions was accompanied by confirmation in the form the Court had specified in its Rules drawn up in accordance with Section 20 of the Industrial Relations Act, 1946, as regards the number of workers of the class, type or group to which the request related who were members of the five Trade Unions. Those Rules are entitled **Labour Court (Sectoral Employment Orders) Rules 2016** (the Rules of the Court) and are published on the Court's website www.labourcourt.ie.

The Rules of the Court at Rule 3 specify that an applicant that is a Trade Union must furnish the Court with a statutory declaration within the meaning of the Statutory Declarations Act, 1938 made by a person authorised in that behalf by the Trade Union which details, inter alia, (a) the number of workers of the class, type or group to which the request relates who are members of the trade union of workers on whose behalf the request is made, and (b) the number of workers of the class type or group to which the request relates who are normally employed in the sector to which the request relates.

The statutory declaration accompanying the request of the five Trade Unions confirmed that 34,597 workers of the class, type or group to which the request relates were in membership of the five Trade Unions. It also confirmed that the number of workers of the class, type or group to which the request relates who are normally employed in the Construction Sector is approximately 53,000.

The Court decided, having regard to the requirements of Section 14 of the Act and the Rules of the Court, that the Trade Unions had provided, in the form specified by the Court, confirmation that the trades unions are substantially representative of the workers to which the request was expressed to apply.

The Court's decision in this matter arises in the context of Section 14 of the Act and the obligation set out therein and resting upon the Court to, in effect, be satisfied that the requirements of the Rules of the Court referred to above have been complied with. The Court will be required separately under Section 15 of the Act to address the question of substantial representativity as a condition precedent to the Court undertaking an examination in accordance with that Section of the Act.

Section 14(3) of the Act

The Act at Section 14(3) provides as follows:

(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under subsection (1) in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.

The current SEO having application to the particular class of workers in this particular sector specified in the Section 14 request was made on 17th November 2021 [**S.I. No. 598 of 2021**]. On that basis, the Court decided at its meeting on 19th December 2022 that it was satisfied that at least 12 months had elapsed between the date of making of the last SEO and the date of receipt of this request.

Section 14(4) of the Act

Section 14(4) of the Act provides as follows

(4) A request under subsection (1) shall be in a form prescribed by the Court.

The Court, at its meeting of 19th December 2022, determined that the request of the five Trade Unions was in the form the Court had prescribed in its Rules drawn up in accordance with Section 20 of the Industrial Relations Act, 1946. Those Rules are entitled **Labour Court (Sectoral Employment Orders) Rules 2016** (the Rules of the Court) and are published on the Court's website www.labourcourt.ie.

Section 15(1)(a)(i)

The matter before the Court concerns a request by five trade unions under Section 14 of the Act.

The Act at Section 15(1)(a)(i) of the Act provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(a) following consideration of any documentation submitted under subsection (2) of section 14 —

(i) the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers, and

The Section requires the Court, in satisfying itself as to whether the Trade Unions are substantially representative of the workers of the particular class, type or group in the economic sector to which the request is expressed to apply, to take into consideration the numbers of such workers represented by the Trade Unions concerned. The Act requires the Court to so satisfy itself following consideration of any documentation submitted under subsection (2) of section 14.

The Court, at its meeting of 19th December 2022, recognised that no guidance is given in the Act as to the meaning of the term ‘substantially representative’. The Act could have provided specificity in terms of quantum of members of a trade union, level of penetration of trade union representation in the sector concerned, numerical or percentage relationship between the numbers of workers in membership of the Trade Unions and numbers of workers overall in the sector of the class, type or group to whom the request relates or as regards any other matter. The legislation however makes no specific provision in these respects and consequently the Court concludes that the absence of such specificity reflects the intention of the Oireachtas.

McMenamin J. in the Supreme Court decision **Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta - and - The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General [2020] IESC 000** states as follows:

181. Given the lesser significance of the concept under the Industrial Relations (Amendment) Act 2015, the fact that the concept is concerned solely with the numbers of workers represented is not unconstitutional. It is a legitimate legislative choice to say that an entitlement to make an application should be restricted to organisations which represent, directly or indirectly, a substantial number of workers in the economic sector concerned.

In that decision the learned Judge also considered the nature of the consideration to be given by the Court under Section 15(1)(a)(i) of the Act when he found

“In truth, it entails no more than a threshold which must be met in order to make an application to the Labour Court. Once this threshold is met, the applicant enjoys no special status in the subsequent examination to be undertaken by the Labour Court. The applicant is but one of a number of interested parties who are all entitled to be heard in the context of the Labour Court’s examination of the relevant economic sector. This is to be contrasted with the status which a “substantially representative” trade union or employers’ organisation had enjoyed under Part III of the Industrial Relations Act 1946. Under that legislation, such bodies were, in effect, the authors of the delegated legislation.”

This Court’s decision under Section 15 (1)(a)(i) of the Act is, therefore, a decision on a threshold matter which may be further addressed in the written and oral submissions of parties interested and desiring to be heard at a hearing of the Court convened in accordance with the Act at Section 15(4) and, in those circumstances, would fall to be further considered by the Court in consideration of any such submissions.

The Court decided at its meeting on 19th December 2022 that, based on a consideration of the documentation submitted by the requesting Trade Unions, (a) the number of workers of the class, type or group in membership of the Trade Union was 34,597, (b) that this number was substantial in the sense that this word is normally understood, and (c) that, because the workers are in membership of the Trade Unions, those Trade Unions are representative of those workers.

The Court decided that any consideration as to whether these factual parameters allow a conclusion that the Trade Unions were substantially representative of the workers of the class, type or group to

whom the request relates should, reasonably, have regard to the overall presence of such workers in the sector concerned. The Court did not however consider that the statute requires that any specific or general numerical or percentage relationship between numbers in membership of the Unions and numbers in employment in the Sector overall must exist in order to allow a conclusion that the test of substantial representativity is reached. In the view of the Court, its consideration of the matter of numbers employed in the sector overall is contextual and in the manner of ensuring that any conclusion as regards substantial representativity takes reasonable account of the relevant context within the sector of the level of representation by the requesting Trade Unions of workers to whom the request relates.

The Court noted that the requesting Trade Unions had confirmed in the documentation submitted that a total of 34,597 workers of the class, type or group to whom the request relates were in their combined membership and that a total of approximately 53,000 such workers were normally employed in the sector. On this basis, the number of such workers in membership of the Trade Unions as a percentage of all such workers normally employed in the Sector is, in round numbers, 65%.

The Court concluded, based on the number of workers of the class, type or group represented by the five Trade Unions and having regard to the overall number of such workers estimated to be employed in the sector, that the level of representativity by the five Trade Unions is real, identifiable, and far beyond insignificant and consequently that it is reasonable to conclude that the five Trade Unions are substantially representative of such workers.

The Court therefore was satisfied that the request made by the five trade unions meets the requirements of the Act at Section 15(1)(a)(i).

As the requestors were Trade Unions of workers only, the Court was of the view that **section 15(a)(ii)** was not applicable to the immediate request and as such did not need to be considered.

Section 15(1)(b)

The Act at Section 15(1)(b) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(b) the request is expressed to apply to all workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply,

The request of the five Trade Unions made under Section 14 of the Act stated that the request related to “*the construction sector as defined in SI 234/2019 – Sectoral Employment Order (Construction Sector) 2019*” and to “*persons employed in the sector as craft persons, construction operatives and apprentices*”

The Court, at its meeting of 19th December 2022, decided that the request therefore was expressed to apply all workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply,

Section 15(1)(c)

The Act at Section 15(1)(c) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(c) it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and

The Construction Sector is the subject of a Sectoral Employment Order since 2017 (S.I. No. 455 of 2017, S.I. No. 234 of 2019 and S.I. 598 of 2021) in respect of the workers to which the within request relates. The five Trade Unions have asserted in the documentation submitted as part of the request made under Section 14 of the Act, that, in respect of workers in the Sector to which the request relates,

“Since the enactment of the Industrial Relations (Amendment) Act, 2015 the terms and conditions relating to remuneration, sick pay, and pension have been determined by the making of a Sectoral Employment Order. There have been three such orders made to date. Matters not covered by the Sectoral Employment Order are negotiated through the National Joint Industrial Council”

The Court, on the basis of the history of the sector since 2015, concluded that it is normal and desirable practice to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of the class, type or group to which the request of the five Trade Unions relates.

Section 15(1)(d) of the Act

The Act at Section 15(1)(d) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(d) any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply.

The Court notes that any Recommendation of the Court to amend an existing Sectoral Employment Order will, in accordance with the Act at Section 16(6), result in an SEO which will include procedures that shall apply in relation to the resolution of a dispute between employers and workers in the sector. The Court concluded that the presence of procedures which shall apply in relation to the resolution of disputes between employers and workers to whom such a recommendation would relate will promote harmonious relations between those parties.

In an environment where such procedures did not apply, it is reasonable, in the Court’s view, to expect less orderly dispute resolution practices and consequently less harmonious relations between parties.

In those circumstances the Court, at its meeting on 19th December 2022, was satisfied that any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply.

Section 15(2) and (3) of the Act

Having regard therefore to its consideration of the Act at Section 15(1)(a) to (d), the Court concluded that the requirements of that Section which must be satisfied before the Court can publish a notice of its intention to conduct an examination under the Section were satisfied.

Having so concluded, the Court, in accordance with Section 15(2) of the Act, placed a notice of its intention to undertake an examination under Section 15. That notice was published on the 9th January 2023 in the following newspapers / publications: *Irish Times*, *Irish Independent*, *Irish Examiner*, and on 11th January 2023 in *Seachtain*; and on the Court's website www.labourcourt.ie The Court was satisfied that this manner of publication was best calculated to bring the request to the notice of all interested persons concerned. That notice, in accordance with Section 15(3) of the Act, invited representations to be made to the Court from any interested parties by 5p.m. on 5th February 2023 which was not later than 28 days after the date of notice. The publication also gave notice of a public hearing to be convened on 13th February 2023 such that all parties appearing to the Court to be interested and desiring to be heard could be heard.

Section 15(4) of the Act

Written representations were received within the specified timeframe from (a) the Construction Industry Committee of the Irish Congress of Trade Unions (the CIC), (b) The Construction Industry Federation (the CIF), (c) the Irish Plant Contractors Association (IPCA) and (d) the Construction Workers Pension Scheme (the CWPS). The written representations of all four parties were published by the Court on its website www.labourcourt.ie on 9th February 2023.

The Court decided that the four parties who had made written representations within the time allowed were the only parties appearing to the Court to be interested and desiring to be heard in relation to the request.

The Hearing

The Court, on 9th January 2023, published on its website and social media a notice of the venue, time and date of the hearing which was 13th February 2023 at 11.00am in Lansdowne Road, Dublin 4.

Representatives of the CIC, the CIF, the IPCA and the CWPS attended the hearing as persons interested and desiring to be heard. The hearing was attended also by at least one member of the media.

At the outset the Chairman advised the parties that it had reached conclusions as regards the threshold issues set out at Sections 14 and 15(1)(a) to (d) of the Act as follows:

- (a) it had decided that the applicant Trade Unions were substantially representative of the workers to whom the request relates,
- (b) that it was expressed to apply to all workers of the class, type or group to which the request was expressed to relate,
- (c) that it is normal and desirable practice to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of such workers and
- (d) that any Recommendation of the Court is likely to promote harmonious relations between these workers and their employers in the sector to which the request relates.

The Chairman advised all parties that any conclusion which had been reached by the Court under Section 15 could be the subject of submission or contest at the hearing.

All four parties responded to the Court to state that they agreed with the conclusions of the Court as had been outlined and that they did not contest any element of the conclusions of the Court in relation to matters set out at Section 14 or 15 of the Act in the course of the hearing.

The Chairman advised the parties that the following procedure would be followed by the Court at its hearing:

1. Each party would be invited to read their written submission to the Court in turn.
2. When that phase had been completed, each party would be invited to comment on each other's submissions and to make any further oral submission they might wish to make to the Court in doing so.
3. When that phase had been completed, the members of the Court would address any question or query they might have to the parties arising from their written and oral submissions.
4. When that phase had been completed the Chairman of the Court would ask each party in turn to make an oral submission or draw the Court's attention to those elements of their written submission which addressed the matters referred to in section 16 (2) (a) to (e) of the Act and section 16(4)(a) and (b). The Chairman clarified that the Court would hear from the parties in relation to each subsection before advancing to invite oral submissions on the next subsection. The members of the Court would ask any question of clarity to the parties as this process proceeded.

The Chairman finally set out that the Court would invite comment in relation to the matters addressed in Section 16(7) of the Act.

All parties present confirmed to the Court that they were agreeable to the procedure as outlined.

The Submissions of the parties

The written submissions of the parties are appended to this report at Appendix A, and should be read as part of this report.

The parties each read out their submissions which can, in broad relevant part, while noting that the entirety of the submissions of the parties form part of this report, be summarised as conveying the following:

The CIC

The CIC submitted that that the existing SEO for the Sector should be amended so as to provide for:

- An increase in basic pay of 4% with effect from 1st June 2023.
- An increase in basic pay of 4% with effect from 1st February 2024.
- The payment of not less than one hour's basic pay per day in recognition of time spent travelling to construction sites that are not designated bases.
- An increase in employers' and workers' pension contributions of 4% with effect from 1st June 2023.
- An increase in employers' and workers' pension contributions of 4% with effect from 1st February 2024

The submission, which forms part of this report, contended that the 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.

According to the CSO, the growth in employment in the period between Q3 of 2020 and Q3 of 2022 is of the order of 28%. Seasonally adjusted Q3 employment is also up on the last pre-pandemic year by almost 14% since Q3 in 2019.

The job vacancy rate in the construction sector was 1.5% in the third quarter of 2022 which was the highest ever job vacancy rate ever recorded for the sector and reflects the demand for and under-supply of construction workers.

The CIC submits that increases in pay in the sector are required to reflect the extraordinary circumstances which have been witnessed in the 12 months prior to the making of the within request to the Court. The economy is experiencing a period of very high price inflation and the CSO has confirmed that the annual rate of inflation for 2022 was 7.8%. At the point where S.I. 598 of 2021 came into being no one envisaged the levels of price inflation currently being experienced.

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. 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.

As part of the SEO for the sector workers and employers are required to make minimum levels of contribution 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. It is critical that the pension contributions in the construction sector continue to keep pace with overall movement in basic pay.

The CIF

The CIF is supportive of an SEO in the sector.

The industry is labour intensive, and an SEO provides a 'level playing field' for contractors when tendering for work. Labour and materials are the main cost elements included in a tender. Where labour costs are set, contractors can tender for work in the knowledge that their competitors are also bound by the labour costs associated with the SEO. A competitive advantage is found by investing in training, new technologies, etc. SEOs also provide good rates of pay and terms and conditions of employment for construction workers. These conditions will serve to entice new entrants into the sector.

The current high level of inflation is due to bottlenecks associated with Covid-19, supply chain issues and the war in Ukraine. CIF members have experienced substantial increases in energy costs and materials. While inflation is reducing, it is anticipated that it will remain at high levels in 2023 before reducing to more moderate levels in 2024.

In recognition of the current exceptional circumstances, CIF proposes that the following additional increases in pay are provided in an amended SEO:

1st July 2023	1% increase in pay
1st July 2023	1% increase in pension contributions
1st July 2024	3% increase in pay
1st July 2024	3% increase in pensions

It is however essential that remuneration and pension contribution rates are set at realistic and sustainable levels.

The IPCA

The IPCA is strongly opposed to any increases in labour costs at this time but emphasised that its main purpose in making a submission to the Court was to ensure fairness and consistency across the sector and a decent wage for those who work in it. The IPCA submitted that, having regard to the state of

the economy, soaring prices of fuel, possible shortages of fuel, increases in the cost of materials, ongoing delays in the supply of materials and shortages of labour in the construction sector, any increase in labour cost would not only add to the problems of the sector but are unsustainable and will ultimately result in the loss of jobs, the collapse of the sector and the exacerbation of the housing crisis.

The IPCA submitted that the rates of pay contained in S.I. No. 598 of 2021 should be abolished pending the establishment of an independent body capable of auditing and monitoring any rates of pay prescribed in any existing or new SEO. At the very least the rates contained in S.I. 598 of 2021 should be frozen pending the establishment of an independent audit.

It is essential that the rates of pay set out in an SEO should be enforced and applied across the sector and in particular Local Authorities and State Agencies, of whom many are not enforcing the SEO when awarding contracts to contractors who bid for work at the lowest possible cost, should ensure that the legal entitlements of workers and obligations of employers are observed in public contracts.

The CWPS

The CWPS support an SEO for the Sector which specifies the minimum requirements for pension, death benefits and sick pay entitlements.

The CWPS submitted that the SEO which currently provides for a pension scheme and pension contributions on the part of and on behalf of workers aged 15 years or more is essential for the sector. The CWPS submitted that it operates a pension scheme and a sick pay scheme which provide access for workers aged 15 years or more and until the age of 70.

The CWPS made no proposals for amendment or cancellation of a Recommendation previously made by the Court to the Minister under Section 16 of the Act.

Summary Comments of the parties on each other's submissions

The parties commented on each other submissions, in summary, as follows:

CIC of ICTU

The CIC of ICTU made no comment on the submission of the CWPS.

In respect of the submission of the IPCA the CIC disagreed that a pay increase was not needed in the sector. The CIC submitted that the impact of inflation on workers in the sector was severe and must be addressed. The CIC also submitted that whereas the IPCA is representative of employers in the sector the CIF is the main body representing employers in the sector.

In respect of the submission of the CIF the CIC submitted that its analysis of the sector differed significantly from that of the CIF. The CIC is of the view that the sector is robust and will be resilient into the future.

There is no evidence of a 'wage/price' spiral in Ireland or within the EU.

The CIF in its submission had compared rates of pay in the public and private sector but did not take account of the fact that the work in the private sector is more labour intensive than that in the public sector. Workers in the private sector are in fact paid less than similar workers in the public sector.

The assertion by CIF that the concept of travel time in the sector is consigned to history is not correct. The vast majority of workers in the sector receive travel time. The matter of travel time of one hour per day is a significant priority for the CIC.

In respect of the submission made by the IPCA the CIC disagreed that an increase in pay is not required in the sector. The rate of inflation imposes significant difficulties upon workers in the sector. The CIC also submitted that the workers employed by members of the IPCA do receive training in order to be able to carry out the work for which they are employed.

CIF

The CIF made no comment on the submission of the CWPS.

The CIF submitted that the proposal of the CIC to increase pay by 6.8% in 2023 together with amendment of the current SEO so as to provide one hour's travel time to workers in the sector amounts to a total proposed pay adjustment of 20% in one year together with an increase of 4% in employer pension contributions. The total increase proposed between February 2023 and February 2024 is 30% with a pension contribution increase of 11%. Increases in pay costs at this level are unsustainable.

The CIC correctly points to growth rates in the sector but does not acknowledge that growth in the sector follows on from a very low base as a result of the impact of the global pandemic.

The CIF does not accept the CIC contention that the majority of workers in the sector are in receipt of travel time payments and submitted that the practice of paying travel time in the industry was never a universal national feature but was confined to certain urban areas. The fact is that only a minority of workers in the sector are currently in receipt of travel time payment.

CWPS

The CWPS made no submission in response to the submissions of the other parties.

The IPCA

The IPCA submitted that workers in the employments which they represented were not the subject of recognised and certified training and that the rate of pay of such workers should reflect that reality.

It was submitted that if the prediction that inflation rates are likely to fall is accurate there can be no justification for a change to the rates of pay contained in the SEO at this time.

Section 16 of the Act

The Act at Section 16(1), (2) and (4) provides as follows:

16. (1) Subject to this section, the Court shall, where it considers it appropriate to do so, having heard all parties appearing to the Court to be interested and desiring to be heard, and having regard to the submissions concerned and the matters specified in subsection (2), make a recommendation to the Minister.

(2) When making a recommendation under this section, the Court shall have regard to the following matters:

(a) the potential impact on levels of employment and unemployment in the identified economic sector concerned;

(b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;

(c) the potential impact on competitiveness in the economic sector concerned;

(d) the general level of remuneration in other economic sectors in which workers of the same class, type or group are employed;

(e) that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.

(4) The Court shall not make a recommendation under this section unless it is satisfied that to do so—

(a) would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and

(b) is reasonably necessary to—

(i) promote and preserve high standards of training and qualification, and

(ii) ensure fair and sustainable rates of remuneration,

in the economic sector concerned.

The Court, at its hearing, set out the detail of Section 16(1), (2) and (4) of the Act and outlined that, in accordance with the Act, the Court would, in reaching a decision as regards a recommendation to the Minister, have regard to the matters set out therein. The Court then took the parties through each subsection of section 16 and asked each party to set out their view on the sub-section orally or to draw the Court's attention to the relevant element of their written submission. The Court heard from the parties as follows and, having had regard to the matter set out in each subsection of Section 16(2) and the parties' submissions relating thereto, reached a conclusion on each subsection as also set out below:

Section 16(2)(a)

CIC

The amendment of the existing SEO could only have a positive impact on the sector. The sector is currently experiencing labour shortages and an improvement in the minimum rate of pay and conditions of employment would attract workers to the sector at a time of growth

CIF

The industry provides employment for a range of workers including skilled craftspersons. The SEO will provide decent rates of pay which will entice a skilled workforce.

As the economy grows new workers will be required to meet targets set out in the National Development Plan, the Housing for all scheme and the Climate Action Plan.

An SEO which sets legally binding rates of pay and conditions of employment will ensure that the current high levels of employment in the sector can be maintained.

IPCA

The IPCA submitted that the existence of a high level of vacancies in the sector would indicate that a freeze on rates of pay is appropriate.

CWPS

The CWPS made no submission on this sub-section.

Conclusion of the Court

The Court concludes that, for the reasons submitted by the CIC and CIF, an amendment of the Recommendation previously made by the Court so as to positively affect minimum rates of pay is likely to have a positive impact on levels of employment in the sector and consequently a negative effect on the levels of unemployment in the sector. The Court considers that the submission of the IPCA on this matter, while based on a potential fall in inflation into the future, did not address the issues arising from the current high rate of inflation.

Section 16(2)(b)

CIC

The CIC submitted that no relevant national agreement is in being.

CIF

The CIF submitted that the extended “Building Momentum” national agreement affected similar workers in the public sector and should be considered by the Court as relevant to the matter.

IPCA

The IPCA made no submission in relation to this sub-section.

CWPS

CWPS made no submission on the sub-section

Conclusion of the Court

The Court concludes that a national agreement, Building Momentum, which deals with the pay and conditions of public sector workers, is in being. This agreement, which does not apply to the workers to whom the application relates, is, in the view of the Court, a relevant example of a national agreement which subsists contemporaneously with the existing SEO for the construction sector.

Its relevance relates to the fact that in October 2022 the parties to the Building Momentum national agreement considered it necessary to review the terms of that agreement in acknowledgement of changes to the underlying assumptions of the 2021 agreement regarding inflation. That review resulted in an extension to the National Agreement which incorporated increased pay terms to have effect in 2022 and 2023.

The Court has noted and had regard to the nature of the evolution of pay determination by way of collective agreement in the Public Sector since the conclusion of the Building Momentum national agreement in 2021. The Court notes also that no party brought the Court’s attention to any other agreement having relevance to this sub-section.

Section 16(2)(c)

CIF

Contractors in the sector have to tender for work and labour cost is a significant feature of the cost of tender. The existence of an SEO means that labour cost does not become the basis for competition in the sector and that the area of labour cost is a 'level playing field' as a result.

The absence of competition on labour cost ensures that contractor competition is based on matters associated with delivery of work including quality, productivity, levels of training provided to staff and investment in technology.

Activity in the sector will increase to meet the targets set out in the National Development Plan, Housing for All and the National Climate Action Plan. Where labour is taken out of competition, investment in new technologies and training provides contractors with a competitive advantage when tendering for work.

The absence of an SEO would leave the sector in a position where competitiveness could be undermined by the presence of contractors coming from jurisdictions where rates of pay and labour cost reflect their home jurisdiction rather than the cost of labour generally in Ireland and consequently undermining competitiveness in the sector.

CIC

The CIC shared the analysis of the CIF on this matter.

CWPS

The CWPS made no submission on this subsection.

IPCA

The IPCA submitted that inflation in input costs negatively affects the sector. An increase in labour cost will add to the challenge facing employers in the sector.

Conclusion of the Court

The Court concludes that, for the reasons submitted by the CIF, an amendment of its previous Recommendation so as to provide for a further increase in pay is likely to have the effect of removing from the sector competition between contractors based on lower pay rates of workers and is likely, as a result, to promote competition based on a range of other factors. The Court is satisfied that the effect of removing competition between firms based on lower wage rates is the continuation of minimum wage rates which have application across the sector. The Court concludes that the effect of an SEO on competition in the sector therefore is likely to be positive rather than negative.

In reaching this conclusion the Court has regard to the decision of McMenamin J. at para 118 of **NECI and THE LABOUR COURT, THE MINISTER FOR BUSINESS ENTERPRISE & INNOVATION, IRELAND AND THE ATTORNEY GENERAL** where he said:

Seen against this background, the policy behind s.16(2),(4), and s.19 of the Act of 2015, comes into clear focus. Among other considerations, the principles and policies in the Chapter were directed at a particular understanding of competitiveness, to be seen as applying on the basis of factors such as productivity, efficiency, education and skill level of the labour force, as well as the quality of goods and services, and the degree of innovation. This understanding is to be

contrasted with laissez-faire free market competition, sometimes based on reducing pay and salary levels. The effect of this was again to significantly narrow the scope of the potential choices available to the Labour Court (O'Sullivan).

Section 16(2)(d)

CIC

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.

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. 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%.

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.

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 Q3. 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.

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%.

CIF

Rates of pay for craft workers and general operatives employed by Local Authorities are based on a scale of 13 points (see below).

Local Authorities Rates from 1st October 2022

	Start	Mid-Point	Top
Craftworker	€18.01	€19.50	€20.99
Craftworker's Mate	€15.04	€16.14	€17.24
General Operative (outside Dublin)	€15.24	€16.24	€17.24

The above rates are due to increase by 2% in March 2023, and again by 1.5% in October 2023.

Our nearest competitors are based in Northern Ireland and Britain. The British Building and Allied Trades Joint Industrial Council (BATJIC) recently concluded a one-year agreement for a 5% wage rate increase across the board.

The euro equivalent of the increased rates as at 30th of January 2023 are:

Advanced Craft: €15.96

Intermediate Craft: €13.76

General Operative: €12.20

Craft workers and general operatives employed in Ireland are paid substantially higher rates of pay than their equivalents employed in the UK and Northern Ireland.

IPCA

The IPCA made no submission on this subsection.

CWPS

The CWPS made no submission in relation to this matter.

Conclusion of the Court

The CIF and the CIC shared their assessments as regards comparative pay rates of similar workers to the workers to whom the application relates. The Court was not provided with any historical context setting out the relationship between pay rates in the sector and pay rates of the comparator sector or jurisdiction. It is clear however to the Court that no basis has been tendered by any party which would suggest that pay rates in the Sector have traditionally followed rates in any other sector or jurisdiction employing workers of a similar class, type or group.

The Court notes that the sector has a long history of sectoral pay bargaining and that this has been the basis for pay determination and evolution of rates of pay for many years. The Court concludes that, while at least one economic sector and one other jurisdiction employs workers of a same or

similar class, type or group, it would not be appropriate to assume that the factors which determine pay rates and progression of pay rates in that sector or jurisdiction can readily be imported into this sector of the Irish economy.

The Court has noted carefully the information supplied by the parties and concludes that while it should have general regard to the data and information supplied it cannot regard such data as determinative of the matters before the Court arising from the shared view of CIC and CIF that the current SEO - S.I. 598 of 2021 - should be amended so as to increase the minimum pay rates in the sector.

Section 16(2)(e)

CIC

The CIC submitted that an SEO, having regard to the provisions of the Act and the operation of the law, will have binding effect on all workers of the class, type or group in the sector and specified in the SEO. Similarly, the SEO, by operation of the law, will have binding effect on employers in the sector defined in the SEO.

CIF

The CIF supported the submission of the CIC in relation to this subsection.

The IPCA

The IPCA agreed with the CIC submission on this matter.

CWPS

The CWPS made no submission in relation to this subsection.

Conclusion of the Court

The Court concluded that, by operation of the law, an amended SEO will have binding effect on all workers of the Class, type or group specified in the SEO and will, similarly, have binding effect on all employers in the sector defined in the SEO.

Section 16(4)(a)

CIC

The CIC submitted that the existence of an SEO of itself promotes harmonious relations between workers and employers in the sector and assists in the avoidance of industrial unrest in the sector. The SEO has the effect of removing the majority of conflict in relation to the matters covered by the Order and in addition, it contains a dispute resolution clause which, by definition, promotes the avoidance of industrial unrest and promotes harmonious relations. In the absence of an SEO, all matters concerning terms and conditions of employment in the sector would have the potential to be disputed between workers and employers and the absence of a binding disputes procedure would mean that such disputes would be more likely to lead to industrial unrest.

Current economic conditions are such as to mean that an increase in pay to workers in the sector is likely to ease industrial unrest and to contribute to harmonious relations between workers and employers in the sector. A failure to increase the pay rates in the sector would be likely to have the opposite effect.

CIF

The dispute resolution procedure contained in the current SEO has the effect of promoting the avoidance of industrial relations unrest and consequently promotes harmonious relations in the sector.

Economic conditions are such as to mean that an increase in pay to workers in the sector is likely to promote harmonious relations between workers and employers in the sector and to avoid industrial unrest.

IPCA

The IPCA submitted that an increase in pay to workers in the sector would be likely to promote industrial unrest as a result of the consequent loss of employment.

CWPS

The CWPS made no submission on this subsection.

Conclusion of the Court

The Court notes carefully the submissions of the parties and in particular the shared belief of the CIC and the CIF that the existence of an SEO promotes harmonious relations and assists in the avoidance of industrial unrest in the sector. The Court has earlier concluded that the trade unions are substantially representative of the workers in the sector and recognises that the CIF is an authoritative voice in relation to the operation of employment relations in the sector.

The current SEO or any amended SEO will, in accordance with the Act at Section 16(6), contain binding procedures that apply in relation to the resolution of industrial disputes, and the Court is satisfied that this has the effect of ensuring an orderly exercise of such procedures in advance of the occurrence of any strike, lock out or other form of industrial action in the sector.

It is clear that, having regard to prevailing economic circumstances, the CIC and CIF believe that an increase in pay is required in the sector, and it is also clear that they are in conflict as regards the level of such an increase. An amendment to the current SEO addressing the matter of pay growth in the sector will, in the view of the Court, remove this conflict between employers and workers in the sector and consequently promote harmonious relations and the avoidance of industrial unrest in the sector in relation to the matter of pay growth.

The IPCA has submitted that any increase in pay in the sector will promote industrial unrest. The submission to the Court is to the effect that significant job losses will result from any increase in pay in the sector. The Court has not been provided with data or evidence to support this contention and is unable to accept a submission that, in current economic conditions, an increase in pay to workers will likely promote industrial unrest.

In all of the circumstances and for the reasons set out, the Court is satisfied that a Recommendation to amend its previous Recommendation to the Minister, if accepted by the Minister, will promote harmonious relations and assist in the avoidance of industrial unrest in the sector.

Section 16(4)(b)(i)

CIC

If an SEO did not exist for the sector, workers with high levels of training and qualification would not be attracted to the industry because competition on rates of pay would have the effect of reducing pay levels in the sector over time.

CIF

The CIF agreed with the submission of the CIC on this point. Additionally, the absence of competition on rates of pay in the sector will encourage employers to invest in training and qualifications of staff as a means of competition both for labour and for work which will, of itself, promote and preserve high standards of training a qualification.

IPCA

The IPCA made no submission on this sub-section.

CWPS

The CWPS made no submission on this sub-section.

Conclusion of the Court

The Court notes carefully the submissions of the parties and in particular the shared belief of the CIC and CIF that an amendment to the current SEO will promote and preserve high standards of training and qualification in the sector. The Court has earlier concluded that the trade unions are substantially representative of the workers in the sector to which the application relates and has recognised that the CIF is an authoritative voice in relation to the operation of employment relations in the sector.

It is clear that reasonable rates of pay and reasonable terms and conditions of employment are likely to encourage rather than discourage workers to a particular employment. This logical conclusion has been submitted to the Court by both the CIC and the CIF.

The Court is satisfied that the current SEO and any amendment to that SEO to advance, for example, pay rates in the sector, will have the effect of eliminating competition between employers in the sector based on lower wage rates. It is likely therefore that the existence of minimum assured wage rates and other conditions of employment will have the effect of attracting workers with higher levels of training and qualifications to the sector and increasing the likelihood of retention of those workers in the sector.

The Court has noted carefully the assertion of the CIF that the elimination of competition between employers based on lower wage rates will encourage employers to invest in training and accepts this assertion as being a reflection of the view of the many employers in membership of that organisation.

The Court is also conscious that any amended SEO provides for a higher hourly rate of basic pay based on the attainment of recognised standards or skills.

In all of the circumstances, the Court is satisfied that a Recommendation to amend its previous Recommendation to the Minister, if accepted by the Minister, is reasonably necessary to promote and preserve high standards of training and qualification in the sector.

Section 16(4)(b)(ii)

CIC

The experience of the economy since the coming into effect of S.I 598 of 2021 has been an unanticipated and severe rise in the rate of inflation. This unanticipated development has had the effect of negatively affecting the fairness and sustainability of rates of remuneration in the sector having regard to the effect of that level of inflation on the standard of living of workers.

The fact of an amended SEO in the sector which increased the rate of pay of workers will support the achievement of fair and sustainable minimum rates of remuneration in the sector. The absence of an amendment of this nature to the existing SEO would mean that rates of pay in the sector will continue to become less fair and less sustainable.

CIF

The current SEO provides a minimum level of remuneration in the sector which was both fair and sustainable at the time of coming into being of S.I. 598 of 2021., It is accepted that the economy has faced high levels of inflation in the interim and an amendment to the current SEO so as to increase rates of pay contained therein will ensure that the rates of pay remain fair and sustainable.

IPCA

It is essential that enforcement measures are effective so as to ensure that legally binding rates of remuneration in the sector are universally adhered to.

CWPS

The CWPS made no submission on this subsection.

Conclusions of the Court

The Court notes carefully the submissions of the CIF and CIC and in particular their shared belief that an amendment to the current SEO will ensure fair and sustainable rates of remuneration in the sector concerned. The Court also notes the emphasis placed by IPCA on the need to ensure that enforcement mechanisms are an essential underpinning of an SEO for the sector.

In all of the circumstances, the Court concludes that a Recommendation to amend the current SEO is, having regard to prevailing economic circumstances and the impact of inflation on the standard of living of workers, reasonably necessary to ensure fair and sustainable rates of remuneration in the sector concerned.

Section 16(7) of the Act

The CIF, the IPCA and the CIC all submitted to the Court that a previous Recommendation of the Court which was confirmed by the Minister by a Sectoral Employment Order (SEO) [**S.I. No. 598 of 2021**] for the Construction Sector should be amended rather than cancelled.

The Court therefore gave consideration to the proposals of the parties for amendment of that previous recommendation and its conclusions in that respect are set out in a later section of this report.

Summary of matters submitted as being directly related to a proposal to amend a previous Recommendation of the Court which was confirmed by the Minister by a Sectoral Employment Order (SEO) [S.I. No.598 of 2021]

In this section the Court, noting that no proposals for amendment or cancellation of a previous Recommendation were received from CWPS, summarises the proposals of the CIC, CIF and the IPCA for amendment of a previous Recommendation of the Court which was confirmed by the Minister by a Sectoral Employment Order (SEO) [S.I. No.598 of 2021].

The Court also sets out its conclusions on the matters encompassed by such proposals and sets out its recommendation made in accordance with Section 16 of the Act.

Basic pay

CIC

The CIC submitted that the current SEO should be amended so as to increase all basic rates of pay by 4% with effect from 1st June 2023 and 4% with effect from 1st February 2024.

The increases sought by the Unions reflect the extraordinary circumstances which have been 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.

The CSO has 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 currently being experienced.

CIF

The CIF submitted that the current SEO should be amended so as to provide for hourly rate pay increases of 1% on 1st July 2023 followed by a further 3% on 1st July 2024. It is essential that any amendment to the current SEO is prudent so as to enable the sector to withstand current pressures. In addition, the imposition of an increased basic rate of pay must allow for a sufficient lead-in time to allow firms to include increased rates in tenders for work.

IPCA

The IPCA submitted that rates of pay contained in the current SEO should be abolished or frozen. The IPCA submitted that effective measures must be put in place to ensure that any binding obligations placed upon employers by the terms of an SEO are universally enforced.

CWPS

The CWPS had no view on basic pay.

Conclusion of the Court

The Court has considered carefully the written and oral submissions of the parties including as regards the economic circumstances of the industry, comparative pay rates, prevailing economic circumstances and developments in terms of pay growth generally. It is clear that the parties have reached divergent conclusions as regards the level of pay growth that is appropriate in the sector and that is, in the view of the Court, a normal and unremarkable state of affairs.

In its view, the function of the Court in this matter is to evaluate all that has been said and written by the parties and to apply its own particular understanding of such matters generally across the

economy and in the sector itself. In exercise of that function, it is not appropriate to articulate in a detailed manner the basis for any conclusion it might reach as regards the reasonableness of one rate of pay growth versus another. It is rather the function of the Court to make a judgement based on the nature of the submissions of the parties and the divergence between them and on its own understanding, insights and expertise as regards disputation and the resolution of disputes of this nature across the economy generally.

On that basis, it is the view of the Court that the current SEO, which provided for an increase in pay of 2.8% on 1st February 2022 and a further 2.8% on 1st February 2023, should be amended to as to provide for a further increase of 1.9% with effect from 18th September 2023 and a further 3.5% with effect from 5th August 2024.

The Court, in reaching this conclusion, has given weight to the shared optimism of the CIF and the CIC for the economic performance of the sector over the coming period and the fact that there is agreement between these authoritative stakeholders that pay growth is essential in the sector at this time.

The Court has also given weight to the undisputed rise in inflation and its effect on the cost of living in the period since the coming into being of S.I. 598 of 2021. In the view of the Court these economic circumstances have the effect of reducing the positive impact of that SEO on matters such as the avoidance of industrial unrest based on pay matters and the maintenance of harmonious relations in the sector which, by definition, requires a shared view among workers and employers that rates of pay are fair and sustainable. It is the view of the Court that it is necessary, in order to address these matters in the manner envisaged by the statute, that minimum pay rates in the sector be increased.

In coming to this conclusion, the Court has noted and considered the view of the IPCA that rates of inflation are predicted to fall into the future. The Court is unable to concluded with certainty whether that prediction will ultimately prove accurate but is clear that the rates of inflation experienced since the making of the existing SEO are not, in the submission of any party before the Court, predicted to be reversed in the form of negative rates of inflation.

The CIC and the CIF have tabled specific proposed increases and specific schedules on pay adjustment. The Court in making its Recommendation on these matters relied upon the submissions of the parties and its own institutional expertise in the area of pay disputation in the economy generally currently and over many decades past.

The Court therefore **recommends** an amendment of its previous Recommendation which was confirmed by the Minister by a Sectoral Employment Order (SEO) [**S.I. No. 598 of 2021**] so as to provide for the following pay rates with effect from 18th September 2023 and further pay rates to apply with effect from 5th August 2024:

Pay
Rates

The following minimum hourly rates of basic pay will apply in the sector from 18th September 2023 to 4th August 2024.

Craftsperson	€21.49 per hour
Category A Worker	€20.86 per hour
Category B Worker	€19.35 per hour

Apprentice	Year 1 - 33.33% of Craft Rate
	Year 2 - 50% of Craft Rate
	Year 3 - 75% of Craft Rate
	Year 4 - 90% of Craft Rate

A minimum hourly rate of basic pay of €15.64 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

The following minimum hourly rates of basic pay will apply in the sector from 5th August 2024.

Craftsperson	€22.24 per hour
Category A Worker	€21.59 per hour
Category B Worker	€20.03 per hour
Apprentice	Year 1 - 33.33% of Craft Rate
	Year 2 - 50% of Craft Rate
	Year 3 - 75% of Craft Rate
	Year 4 - 90% of Craft Rate

A minimum hourly rate of basic pay of €16.19 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

Travelling time

CIC

The CIC submitted that 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. It is, according to the CIC, now the case that the 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.

CIF

The CIF submitted that an amendment to the current SEO to provide for travelling time would, of itself, result in an increase of 12.8% in the remuneration provided for by the SEO. No binding arrangements for payment of travelling time have existed in the sector for many years. Prior to that, while provision was made for payment of travelling time in the urban areas of Dublin, Cork, Limerick, Waterford and Galway; no provision was made for payment of travel time outside these areas. In addition, whereas provision was made for payment of travelling time in Cork, Limerick, Waterford and Galway, a series of conditions were attached to relevant agreements so as to mean that in the latter years of such agreements the majority of workers in these city areas were not entitled to travelling time payments. The current practice in the industry is that many contractors pay a tax-free subsistence

allowance / country money payment to the value of €182 per week in accordance with Revenue Guidelines to workers who are transferred to sites which are over 20 miles from the contractor's base.

IPCA

The IPCA made no submission on this matter.

CWPS

The CWPS made no observation on this proposed amendment.

Conclusion of the Court

The Court notes that the submissions of the parties, insofar as they refer to this matter at all, diverge in relation to the degree of application of travelling time in the sector currently. It appears clear that wherever such payments are not currently paid, any amendment of the SEO to make provision for such payment would result in a substantial increase in remuneration which would not be reflective of the general trends in the economy as set out in the submissions of the parties in the context of their submissions in relation to basic pay.

The Court notes the assertion of the CIC that the majority of workers in the sector are already in receipt of travelling time payments and the submission of the CIF that this is not the case. The Court notes also that at no time historically was travelling time a universal feature of the industry.

The Court concludes that there is no clarity as regards the potential impact of an amendment to the current SEO to provide for a universal entitlement to travelling time in the sector where no agreement for such an arrangement across the sector nationally has existed previously. It is clear however that the universal application of travelling time across the sector would be a very significant development. Having regard to these circumstances and the fact that the Court is recommending growth in the basic pay provisions of the current SEO; the Court does **not recommend** an amendment of its previous Recommendation which was confirmed by the Minister by a Sectoral Employment Order (SEO) [**S.I. No. 598 of 2021**].

Pension Scheme

CIC

The CIC submitted that the current SEO should be amended so as to apply an increase to the daily contribution rates of employers and workers of 4% with effect from 1st June 2023 and a further 4% with effect from 1st February 2024 in line with its submission as regards an amendment to the SEO to provide for increases in rates of pay in the sector.

CIF

The CIF submitted that the current SEO should be amended so as to apply an increase to the daily contribution rates of employers and workers of 1% on 1st July 2023 and a further 3% on 1st July 2024 in line with its submission as regards an amendment to the SEO to provide for increases in rates of pay in the sector.

IPCA

The IPCA did not make a submission on this matter.

CWPS

The CWPS did not make a submission that an increase should be applied to the daily contribution rates contained in the current SEO.

Conclusion of the Court

The Court places weight on the submissions of the CIC and the CIF that contribution rates should increase. The Court notes that both of these parties believe that pension contribution rates should increase exactly in line with the rate of pay growth.

The Court has been persuaded that it is prudent, for reasons associated with the proposition that pension provision should, as far as possible, be such as to maintain the relative value to workers of income post retirement to income prior to retirement. The Court therefore Recommends that its previous Recommendation should be amended so as to provide for an increase in pension contributions exactly in line with wage growth.

Balancing all of the factors which have been put before the Court through the submissions of the parties and in particular the support from the CIF and the CIC for an increase in pension contribution rates, the Court concludes that the current SEO should be amended so as to provide for an increase in the daily contribution rates of both employers and workers of 1.9 % with effect from 18th September 2023 and a further 3.5 % with effect from 5th August 2024.

The Court therefore **recommends** that its previous Recommendation, which was confirmed by the Minister by a Sectoral Employment Order (SEO) [S.I. No. 598 of 2021] be amended so as to provide the following:

Minimum Pension Contribution rates

<i>Pension Contribution from 18th September 2023</i>	<i>Employer daily rate - €5.96 (weekly - €29.78)</i>
	<i>Employee daily rate - €3.97 (weekly €19.87)</i>
	<i>Total contribution daily into the scheme per worker - €9.93 (weekly €49.65)</i>
<i>Pension Contribution from 5th August 2024</i>	<i>Employer daily rate - €6.17 (weekly - €30.82)</i>
	<i>Employee daily rate - €4.11 (weekly €20.57)</i>
	<i>Total contribution daily into the scheme per worker - €10.28 (weekly €51.39)</i>

Recommendation of the Court made under Section 16 of the Industrial Relations (Amendment) Act, 20015 to amend its previous Recommendation confirmed by the Minister in S.I. 598 of 2021

Pay Rates

The following minimum hourly rates of basic pay will apply in the sector from 18th September 2023 to 4th August 2024.

Craftsperson	€21.49 per hour
Category A Worker	€20.86 per hour
Category B Worker	€19.35 per hour
Apprentice	Year 1 - 33.33% of Craft Rate Year 2 - 50% of Craft Rate Year 3 - 75% of Craft Rate Year 4 - 90% of Craft Rate

A minimum hourly rate of basic pay of €15.64 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

The following minimum hourly rates of basic pay will apply in the sector from 5th August 2024.

Craftsperson	€22.24 per hour
Category A Worker	€21.59 per hour
Category B Worker	€20.03 per hour
Apprentice	Year 1 - 33.33% of Craft Rate Year 2 - 50% of Craft Rate Year 3 - 75% of Craft Rate Year 4 - 90% of Craft Rate

A minimum hourly rate of basic pay of €16.19 will apply for two years after entrance to the Sector to all **New Entrant** Operative Workers who are over the age of 18 years and entering the sector for the first time.

Minimum Pension Contribution

<i>Pension Contribution from 18th September 2023</i>	<i>Employer daily rate - €5.96 (weekly - €29.78)</i>
	<i>Employee daily rate - €3.97 (weekly €19.87)</i>

Pension Contribution from 5th August 2024

Total contribution daily into the scheme per worker - €9.93 (weekly €49.65)

Employer daily rate - €6.17 (weekly - €30.82)

Employee daily rate - €4.11 (weekly €20.57)

Total contribution daily into the scheme per worker - €10.28 (weekly €51.39)