



STATUTORY INSTRUMENTS.

**S.I. No.            of 2017**

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SECTORAL EMPLOYMENT ORDER (CONSTRUCTION SECTOR) 2017

## SECTORAL EMPLOYMENT ORDER (CONSTRUCTION SECTOR) 2017

WHEREAS I, PAT BREEN, Minister of State at the Department of Business, Enterprise and Innovation, being in receipt of a recommendation from the Labour Court under section 16 of the Industrial Relations (Amendment) Act 2015 (No. 27 of 2015) and being satisfied, having regard to the report referred to in subsection (3)(b) of that section accompanying the recommendation, that section 16 has been complied with:

NOW, I, PAT BREEN, in exercise of the powers conferred on me by subsection (1) of section 17 of the Industrial Relations (Amendment) Act 2015 (No. 27 of 2015) (as adapted by the Jobs, Enterprise and Innovation (Delegation of Ministerial Functions) (No. 2) Order 2017 (S.I. No. 362 of 2017)) and the Jobs, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2017 (S.I. No. 364 of 2017)), hereby make the following order:

1. This Order may be cited as the Sectoral Employment Order (Construction Sector) 2017.
2. This Order gives effect to the proposals set out in the Schedule.

## Schedule

### **Labour Court Recommendation to the Minister for Jobs, Enterprise and Innovation Regarding An Application for a Construction Industry Sectoral Employment Order as per the Industrial Relations (Amendment) Act 2015**

The matter came before the Court by way of an application by the Construction Industry Federation (the CIF) under Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015 (the 2015 Act). The CIF requested the Court to examine the terms and conditions of workers engaged in what it submits is, “a defined economic sector” for the purposes of the 2015 Act. The Court, as it is required to do, published its intention to undertake an examination of the CIF’s request and invited submissions from all interested persons. Written submissions were received from four interested parties, the Construction Industry Federation, The Irish Congress of Trade Unions, UNITE the Union and the Trustees of the Construction Workers Pension Scheme. All of the submissions support the application before the Court.

A hearing was held on 26 June 2017 to which the parties that had made written submissions and had declared themselves to be “interested and desiring to be heard” were invited to attend. Representatives from the Construction Industry Federation, the Irish Congress of Trade Unions, UNITE the Union and the Trustees of the Construction Workers Pension Scheme attended and made oral contributions at that hearing. Thereafter the Court received a further joint written submission from the Irish Congress of Trade Unions and the Construction Industry Federation which outlined a proposed dispute resolution procedure for the Court’s consideration.

#### **Conditions Precedent to an Examination by the Court under Chapter 3, Part 2 of the Act**

Section 15 of the Act specifies a number of conditions precedent which the Court must satisfy itself have been met in respect of any request made to it under section 14 to examine the terms and conditions of workers in an economic sector with a view to considering whether or not it should make a recommendation to the Minister to make a Sectoral Employment Order in respect of workers in that economic sector.

Section 15 states

*15. (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*

*(ii) where the request is made by a trade union or organisation of employers or jointly with a trade union or organisation of employers, the trade union or organisation concerned is substantially representative of the employers in 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 employed in the particular class, type or group in the economic sector concerned by employers represented by the trade union or organisation of employers concerned,*

*(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,*

*(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*

*(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.*

*(2) Prior to undertaking an examination under this section, the Court shall publish in such manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned, notice of its intention to undertake an examination under this section.*

*(3) A notice under subsection (2) shall invite representations to be made to the Court from any interested parties not later than 28 days after the date of the notice.*

*(4) Not earlier than 28 days after the date of a notice under subsection (2), the Court may hear all parties appearing to the Court to be interested and desiring to be heard.*

The Construction Industry Federation made an application in those terms to the Court.

The Court examined the application together with supporting documentation outlining the structure of the industry and the representative role of the Construction Industry Federation in the sector. On the basis of that examination the Court is satisfied that the Construction Industry Federation is substantially representative of employers in that sector.

The Court also examined the information before it regarding the number of relevant workers employed in the sector by employers that are represented by the Construction Industry Federation and was satisfied that it is substantial and that it is representative of the industry.

The Court also satisfied itself that it is normal and desirable practice to have separate terms and conditions of employment in relation to remuneration, sick pay schemes and pension schemes in respect of the workers of the class, type and group employed in the construction sector in respect of whom the application is made.

The Court is further satisfied that introducing a Sectoral Employment Order that sets mandatory terms and conditions of employment and dispute resolution procedures within the sector is likely to promote harmonious relations between workers of the class type or group in respect of whom the application is made and their employers.

### **Notification to the Public**

In accordance with section 15(2) of the Act the Court published notices on the Labour Court Website, in three national newspapers, The Irish Times, The Irish Independent and the Irish Examiner and An Oiris Oifigiuil and Foinse informing the public that it had received a request from the CIF to conduct an investigation under the Act and inviting interested parties to make submission to it on the application before it.

### **Submissions Received**

The Court received four submissions in response to the public notice. All of the submissions support the application and all make specific proposals on the levels at which the Court should recommend the setting of pay and conditions of employment within the sector. All four submissions contained identical proposals regarding pensions and sick pay for the sector.

### **Hearing of Interested Parties**

The Court invited the parties that made submissions to it to make oral submissions at a hearing on 26 June 2017. All four parties attended and engaged extensively with the Court.

### **The Courts Deliberations**

After the hearing at which the Court gave all of the interested parties an opportunity to be heard on all relevant matters it adjourned to consider the application in the context of the requirements of section 16 of the Act of 2015 and the evidence and submissions before it.

Section 16 states

*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.*

*(3) A recommendation under this section shall—*

*(a) specify the class, type or group of workers and the economic sector in relation to which the recommendation shall apply,*

*(b) be accompanied by a report on the circumstances surrounding the making of the recommendation, including confirmation that the Court has had regard to the matters set out in subsection (2), and*

*(c) be made not later than 6 weeks after a hearing under section 15.*

*(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.*

*(5) A recommendation under this section may provide for all or any of the following in respect of the workers of the class, type or group in the economic sector concerned:*

(a) a minimum hourly rate of basic pay that is greater than the minimum hourly rate of pay declared by order for the time being in force under the Act of 2000;

(b) not more than 2 higher hourly rates of basic pay based on—

(i) length of service in the economic sector concerned, or

(ii) the attainment of recognised standards or skills;

(c) minimum hourly rates of basic pay for persons who—

(i) have not attained the age of 18 years,

(ii) enter employment for the first time after attaining the age of 18 years,

(iii) having entered into employment before attaining the age of 18 years, continue in employment on attaining that age, or

(iv) have attained the age of 18 years and, during normal working hours, undergo a course of study or training prescribed by regulations made by the Minister under section 16 of the Act of 2000, reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned;

(d) minimum hourly rates of basic pay for apprentices;

(e) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base);

(f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer; and

(g) the requirements of a sick pay scheme.

(6) A recommendation under this section shall include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order.

(7) Subject to sections 14 and 15, a recommendation under this section may provide for the amendment or cancellation of a recommendation previously made under this section and confirmed by the Minister by a sectoral employment order.

(8) In this section “apprentice” has the same meaning as it has in the Industrial Training Act 1967.

The Court notes that all of the interested parties appearing before it made submissions to the effect that the introduction of a Sectoral Employment Order

would, within the meaning of section 16 (2) of the Act of 2015 have a beneficial effects on the sector.

Having considered the application in the context of section 16 of the Act and having considered the written and oral submissions and all of the evidence before it, the Court decided to uphold the CIF application in this regard and recommend the introduction of a Sectoral Employment Order.

### ***Recommendation***

The Court recommends that the Minister introduce a Sectoral Employment Order for the Construction Industry as defined below.

### **Definition of the Sector**

All of the parties that made submissions proposed that the sector in respect of which the Application is made comprise Building Firms and Civil Engineering Firms defined as follows:—

They proposed that Building Firm be defined as an undertaking whose principal business is one or a combination of any of the following activities;

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

They proposed that A Civil Engineering Firm be defined as an undertaking whose principal business is one, or a combination of any of the following activities:—



(a) *the construction, reconstruction, alteration, repair, painting, decoration and demolition of:—*

*roads, paths, kerbs bridges, viaducts, aqueducts, harbours, docks, wharves, piers, quays, promenades, landing places, sea defences, airports, canals, waterworks, reservoirs, filter beds, works for the production of gas or electricity, sewerage and all work in connection with building their sites and mains;*

*rivers works, dams, weirs, embankments, breakwaters, moles, works for the purpose of road drainage or the prevention of coastal erosion;*

*cattle markets, fair grounds, sports grounds, playgrounds, tennis-courts, ball alleys, swimming pools, public baths, bathing places in concrete, stone tarmacadam, asphalt or like material, any boundary walls, railings, fences and shelters erected thereon.*

The Court notes that these definitions are well established, have stood the test of time and have been the basis on which the industry has defined itself for many decades. The Court accordingly adopts those definitions.

### ***Recommendation***

Having considered the written and oral submissions of the Applicant and all other interested parties the Court recommends that the Minister adopt this definition of the Sector.

### **Categories of Worker**

Both the Construction Industry Federation and the Trade Unions made submissions to the Court that the Sectoral Employment Order set the mandatory pay and conditions of employment for a basic hourly rate for the sector and two higher rates of pay based on the level of skill of the operatives concerned. They called these workers by different names but in essence they proposed the following categories.

**General Operative Grade B** to consist of Skilled General Operatives with More than 1 Year's Experience working in the Sector

**General Operative Grade A** to consist of the following categories of Skilled General Operatives, Scaffolders who hold an Advanced Scaffolding Card and who have four years' experience; Banksoperative, Steel Fixers; Crane Drivers and Heavy Machine Operators.

**Craft Workers** in the following trades Bricklayers/Stone Layers; Carpenters and Joiners; Floor Layers; Glaziers; Painters; Plasterers; Stone Cutters; Wood Machinists; Slaters and Tilers; together with a pro rata rate of pay applicable to **Apprentices** in these trades.

**New Entrant General Operative** to apply to all new entrant General Operatives with less than one year's service working in the sector.

In accordance with section 16 (5) (a) of the Act the Court recommends the introduction of a basic minimum rate of pay to apply to all general operatives who have worked in the sector for more than 1 year. (Category A Worker)

In accordance with section 16(5) (b) two higher hourly rates of basic pay as follows

(1) *A higher hourly rate of pay to apply to Skilled General Operatives namely Scaffolders who hold an Advanced Scaffolding Card and who have four years' experience; Banksoperative, Steel Fixers; Crane Drivers and Heavy Machine Operators (Category 2 Worker) and*

(2) *a top hourly rate of pay to apply to Craft Workers. (Craft Worker)*

*A basic hourly rate of pay to apply in accordance with section 16 (5)(c)(ii) to General Operatives who enter employment for the first time after attaining the age of 18 years,(New Entrant Worker) and*

*And in accordance with section 16(5)(d) of the Act a minimum hourly rate of pay to apply to apprentices(Apprentice)*

### **Proposed Pay Rates**

The table below sets out the pay rates proposed respectively by the CIF and the Trade Unions for each proposed category of worker in the sector

	General Operative B	General Operative A	Craft	Apprentice	New Entrant
CIF Proposal	€13.50	€16.28	€17.21	1st Year Apprentice 33.33% of the Craft Rate of pay	€11.89
				2nd Year Apprentice 50% of the Craft Rate of pay	
				3rd Year Apprentice 75% of the Craft Rate of pay	
				4th Year Apprentice 90% of the Craft Rate of pay	
Trade Union Proposal	€17.25	€18.39	€18.96	As above	€16.68

The Court has examined the proposed rates in the context of the statutory framework set out in the Act.

The Court notes pay rates in the sector traditionally moved in line with pay rates for comparable workers employed in the Local Authority sector. When those rates were reduced during the financial crisis in the state the rates of pay in the construction sector moved in line with those reductions. This reduction was provided for in Labour Court Recommendation No LCR19847 which states *“the rate in Local Authorities has been used as an agreed reference point in determining construction rates ... and the relevance of public sector pay movements to that of the basic rates in construction, the Court recommends that similar adjustments should be made in the rates proscribed by the Construction REA”*.

The effect of this recommendation was to reduce pay rates by 7.5% in the sector.

The Court notes the view advanced by the Trade Unions that pay should continue to move in line with Local Authority pay movements. In simple terms the argument runs that having followed the rates down they should also follow them back up again.

The Trade Union Movement also submits that in addition to the reversal of the cuts recommended in LCR19847 workers in the sector should also receive a pay increase in line with general pay movement in the wider economy.

The Court has reviewed the development of pay rates in the Local Authority sector and notes that the rate of pay for Crafts Workers (the marker grade) in that sector now stands at €18.04 per hour.

The Court however, in making a recommendation on pay and conditions of employment, cannot confine its deliberations to the submissions of the parties. It must also address the requirements of the Act when coming to a decision on any matter before it including pay.

The parties were given the opportunity to make submissions to the Court on each of those factors and the Court has given careful consideration to those submissions.

Taking all factors into account the Court recommends the following basic hourly rates of pay in the sector.

Category 1 Worker	€17.04 per hour
Category 2 Worker	€18.36 per hour
Craft Worker	€18.93 per hour
Apprentice	Year 1 33.3% of Craft rate
	Year 2 50% of Craft Rate
	Year 3 75% of Craft Rate
	Year 4 90% of Craft Rate
New Entrant Worker	€13.77 per hour

The Court recommends that an hourly rate of pay of €13.77 apply to all New Entrant Operatives who are over the age of 18 years and entering the sector for the first time.

The Court so recommends

### **Unsocial Hours Payments**

Both the Construction Industry Federation and the Trade Unions submitted that the following premium rates of pay should apply to unsocial hours worked in the sector

Monday to Friday normal finishing time to midnight	time plus a half.
Monday — Friday Midnight to normal starting time	double time
Saturday (1) First four hours from normal starting time	time plus a half
(2) All subsequent hours till midnight	double time
Sunday All hours worked	double time.
Public Holidays All hours worked	double time plus an additional day's leave

### **Recommendation**

The Court has examined this proposal in the context of the framework set out in the Act. The Court finds that the proposed unsocial hours payments are broadly in line with those generally in operation in the wider economy.

Having taken all factors into account the Court recommends the adoption of these unsocial hours payments.

### **Pensions Scheme**

Both the CIF and the Trade Unions expressed support for the adoption of a sector wide pension scheme that would reflect the benefits set out in the long established and widely supported Construction Workers Pension Scheme.

The Trustees of the Scheme made submissions to the Court in support of the adoption of a scheme that meets the needs of both employers and workers in the sector. It submits that the structure and benefits of the jointly agreed and managed Construction Workers Pension Scheme form the basis for a mandatory scheme in an SEO for the sector.

The Court has considered the extensive submissions of all interested parties in this regard and the extensive documentation submitted outlining the structure and operation of the scheme.

The Court finds that the structure and operation of the Construction Workers Pension Scheme is well suited to the needs of the sector and makes reasonable

pension provision at reasonable cost for both workers and employers in the sector.

However the Court notes that the Construction Workers Pensions Scheme does not permit entry into the scheme until a worker is 21 years of age. The Court recommends that and SEO provide for entry into Pension scheme at age 18.

### ***Recommendation***

The Court recommends that a pensions scheme with no less favourable the terms, including both employer and employee contribution rates, than those set out in the Construction Workers Pension Scheme be included in the Sectoral Employment Order.

For ease of reference the Court sets out the contribution rates currently in force in the Construction Industry Pension Scheme

#### Pension Contribution

Employer €26.63 per week

Employee €17.76

Total Contribution weekly into the scheme per worker  
€44.39

#### Death In Service Contribution

Employer €1.11

Employee €1.11

Total €2.22

For ease of reference the main features of such a pension scheme are attached as appendix 1.

### **Sick Pay**

The Court finds that the industry involves working in difficult environments with hazards that can pose serious threats to the health and safety of workers in the sector. The Court also notes the precarious nature of employment within the sector. Accordingly finds that the provision of a sick pay scheme to finance workers though such periods of injury or illness should be a mandatory requirement on all employers in the sector. Such a scheme should be financed by both workers and employers and should address the specific nature of the worker and employment structure in the sector.

The Court notes that both sides of industry in their submissions recommended that sick pay schemes be mandatory in the sector and jointly proposed a model scheme for the Courts consideration. An identical scheme to that proposed to the Court has been jointly operated by the Unions and Employers in the sector

for many years. That scheme has found widespread support amongst both workers and employers.

The Court has given careful consideration to the model scheme proposed by all of the interested parties in the sector and notes the successful operation of a similar scheme that enjoys the support of both sides of industry.

### **Recommendation**

In that context and having reviewed the statutory framework within which the Court must consider all proposals for inclusion in a recommendation to the Minister the Court recommends that a scheme in line with the Construction Industry Sick Pay scheme, including no less comparable benefits and contributions by both workers and employers, be included in an SEO.

For ease of reference the current weekly Sick Pay Contribution in force in the Construction Industry Sick Pay Scheme are as follows

Employer €1.27

Employee €0.63

Total €1.90

The terms and benefits of the scheme are attached at appendix 2.

### **Dispute Resolution Procedure**

A sectoral Employment Order is required to contain a dispute resolution procedure. To this end the parties jointly recommended the following procedure to the Court.

If a dispute occurs between workers to whom the SEO relates and their employers no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with. All sides are obliged to fully comply with the terms of the disputes procedure.

#### 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 concerned or his 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 Service 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 workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.
- b) If the dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC.
- c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.

### ***Recommendation***

The Court has given careful consideration to this procedure. The Court notes that it is in line with those generally in operation in industry and complies with the principles of natural justice. On that basis the Court recommends it for inclusion in the SEO.

### **Travel Time**

The parties disagreed regarding the relevance of travel time within the sector. The ICTU argued that it was an essential feature of employment within the sector and reflects the variable nature of work locations. The CIF argued that it was a legacy arrangement that had no place in modern employment terms and conditions of employment.

The Court has given careful consideration to the submissions of both sides in this regard. The Court notes that currently there are schemes in operation that make different provision for workers employed in similar circumstances in Dublin, Cork, Limerick, Galway and Waterford. No provision is made for workers in those circumstances in other parts of the State.

The Court finds that differences in pay and conditions of employment for workers in similar circumstances based simply on geography is not a proper basis for inclusion in a Sectoral Employment Order.

The Court takes the 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.

### ***Recommendation***

Accordingly the Court does not recommend the inclusion of a travel allowance in a Sectoral Employment Order at this time.

Note.

The Court notes that some workers in various cities have contracts of employment that provide for the payment of travel time. These contractual arrangements are not affected by the terms of this recommendation. They remain in place and continue to apply as before.

The Court so recommends to the Minister.

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Brendan Hayes  
Deputy Chairman  
Labour Court  
13 July 2017

**Enquiries concerning this Recommendation should be in writing and addressed to John Deegan, Court Secretary.**

## **APPENDIX 1**

### **Recommended Terms for the Proposed Sectoral Employment Order (“SEO”) covering pension and sick pay benefits**

Every employer to whom the SEO applies shall participate in an SEO pension scheme that meets the pensions requirements of the SEO.

#### **Pension Scheme Structure**

The pension scheme to which the SEO applies (“SEO pension scheme”) should include the following features and benefits:

1. An SEO pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
2. Recognising the flexible nature of employment across employers within the construction sector and related industries (the Sector), an SEO pension scheme should be established as a multi-employer scheme open to all employers in the Sector.
3. Whilst a member remains employed within the Sector, members should be able to have a single individual pension account within the SEO pension scheme thereby enabling successive employers of the member to contribute to the member’s account provided the employer has joined itself to the SEO pension scheme.
4. Where an employee member leaves service of an employer, the contributions which have been paid by the employee and the employer in respect of the member will be retained in full within the SEO pension scheme in the individual account of that member.



5. The rules of an SEO pension scheme should not permit a member to take a refund of their own contributions prior to reaching retirement age.
6. Bodies that are representative of both employers and unions involved in the Sector must appoint the members of the SEO pension scheme trustee. The constitution of the Trustee Board should also include representatives of both employers and employees in the Sector.
7. In addition to providing pension benefits, an SEO pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme.
8. An existing pension scheme at the time the SEO comes into force may qualify as an SEO pension scheme provided it complies with the terms of the SEO or is adapted to so comply.
9. An SEO pension scheme must disclose and publicise information about the pension scheme's charges and who bears them. There must be full transparency of charges and this information should be disclosed in the scheme's Trustee Annual Report as well as provided to each member when joining. The total annual charges borne by members should be disclosed and must include all administration costs, Trustee costs, distribution costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the SEO pension scheme.

## **10. Scheme Design**

The terms and conditions applying under an SEO pension scheme and benefits to be provided must be at least as great as that described below.

### **10.1. Eligibility**

An SEO pension scheme must at least provide for an employee of a participating employer in the Sector to be eligible for membership of the scheme provided they have attained age 20 but not yet attained age 65.

### **10.2. Relevant Pension Contributions**

Employers and their employees working in the construction sector and related industries (the Sector) must contribute to an SEO pension scheme.

Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

### **10.3. Pension Benefits**

- a) Members' pension benefits within an SEO pension scheme should be based on the full value of their individual pension funds and there should be no deductions from the contributions paid or when the funds are drawn down.

- b) The Trustees of the Scheme will invest each member's pension contributions and these along with the investment returns declared, net of charges, will determine the value of the member's pension fund.

#### 10.4. Retirement

Normal Retirement Age shall be age 65. However a member may be permitted to retire from age 60 (at the discretion of the scheme trustee). When a member retires, he or she should be able to choose from a range of options based on their entire fund value in line with applicable pension and tax legislation. One of the options which must be available is the provision of a pension for life for the member.

#### 10.5. Death in Service Benefits

- a) Every employer to whom the SEO applies must participate in an SEO pension scheme that provides a death in service benefit for the deceased member's dependants. The death in service benefit should be in addition to the benefits provided for the dependants based on the full value of the member's pension fund.
- b) Provided the employee has completed a once-off initial qualifying contribution period, inclusion for death in service benefits shall be automatic on becoming a member of the SEO pension scheme, without medical underwriting or by reference to any previous medical conditions of the member. In the event of the member moving to another participating employer within the Sector, the member should not be required to complete any further qualifying period in order to be covered for death in service benefits.
- c) Death in Service Contributions will form part of the overall contribution rate of an SEO pension scheme with a portion payable by both the member and employer in addition to the pension contributions.
- d) Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.
- e) If a member had met the requirements for the full lump sum death in service benefit, but then leaves service and dies within four weeks of doing so without being re-employed in the Sector, the SEO pension scheme should provide a modified lump sum benefit in addition to the value of their pension account.
- f) Death in Service benefits should be payable regardless of cause or timing of death, so long as the member meets the qualification conditions for inclusion for Death in Service benefits as set out above.

**APPENDIX 2****Recommended Terms for the Proposed Sectoral Employment Order (“SEO”) covering pension and sick pay benefits****SICK PAY SCHEME**

Every employer to whom the SEO applies must have in place a provision for Sick Pay benefits for each employee covered in the SEO.

**Sick Pay Scheme Structure**

The sick pay scheme to which the SEO applies (“SEO Sick Pay Scheme”) should include the following features and benefits.

**Sick Pay Scheme Structure**

1. An SEO Sick Pay Scheme should be a funded arrangement with contributions held in Trust and independently administered and managed. An SEO Sick Pay Scheme should facilitate participation by multiple employers to reflect the flexible nature of employment within the Sector.
2. The main purpose of an SEO Sick Pay Scheme is the provision of benefits for every worker for periods of illness or injury while in the employment of employers to whom this SEO applies.
3. The Sick Pay Benefit should be paid to each employee without the need for underwriting or reference to previous medical conditions. Entitlement to Sick Pay Benefits should be unaffected and uninterrupted as employees transfer from one employer to another within the Sector.
4. The Sick Pay Benefits provided by an SEO Sick Pay Scheme should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.

**Sick Pay Conditions & Benefits****5. Eligibility**

Inclusion for Sick Pay Benefits will be automatic on becoming a member of an SEO Sick Pay Scheme. No charges should be incurred by either employers or members for Sick Pay benefit provision, other than the relevant contributions required to provide the benefits.

**6. Sick Pay Contributions**

- a) An SEO Sick Pay Scheme should be a contributory sick pay scheme with contributions payable by both employers and employees.
- b) A member shall not lose accrued Sick Pay Benefit rights or entitlements as a result of changing employment within the Sector as accrued service will transfer to the next employer to whom the SEO applies.

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

#### 7. Relevant Benefits

- a) An SEO Sick Pay Scheme shall provide for the payment of a standard Sick Pay Benefit for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- b) An SEO Sick Pay Scheme may include a waiting period during which a member would not be entitled to any benefit from the scheme whilst initially absent due to illness or injury. This waiting period should not exceed the first five working days of disability.
- c) An SEO Sick Pay Scheme should facilitate continuity of Sick Pay Benefit from the Scheme from the first working day of disability where a claimant has returned to work for a period of two working days or less. This is provided that the sick pay entitlement from the scheme has not been exhausted by reference to the duration limitations referenced earlier.
- d) An SEO Sick Pay Scheme should facilitate provision of a Supplementary Sick Pay Benefit if the claimant has no entitlement to Social Welfare benefit due to inadequate number of Social Welfare contributions.
- e) An SEO Sick Pay Scheme may set appropriate limitations on the maximum duration for which a Sick Pay Benefit may be payable. These must be clearly documented and disclosed to participating employers and members. The maximum duration under an SEO Sick Pay Scheme should not be any lower than a period of 10 weeks in any calendar year, whether for a single claim or in aggregate in a scheme year.

Given under my hand,

2017.

PAT BREEN,  
Minister of State at the Department of Business, Enterprise  
and Innovation.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

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€4.57 (*Provisional Price*)



Wt. (B32987). 285. m/yy. Essentra. Gr.30-15.