

INTRODUCTION

The Sectoral Employment Order (Construction Sector) 2021, SI No. 598/2021, which both amends and should be read in conjunction with SI No. 234/2019, came into effect on 1st February, 2022. It set minimum rates of pay and other conditions relating to sick pay and pension entitlements for persons employed in the construction sector. Under the Order those rates of pay are due to rise again in February, 2023.

WHO IS THIS SUBMISSION MADE BY?

This submission is made by the Irish Plant Contractors Association (IPCA).

WHO IS THE IRISH PLANT CONTRACTORS' ASSOCIATION (IPCA)?

The Irish Plant Contractors' Association represents a substantial number of Irish sub-contractors and employers operating in the construction sector on the island of Ireland. Our membership, which is involved in civil engineering, groundworks, specialist sub-contracting activities and plant maintenance and repair, consists of 80 members who between them employ approximately 4,800 direct employees and another 6,000 indirectly. Members vary in size from those employing 400 employees to those who employ in single numbers. Our membership is spread out right across the country and we represent members in every county in Ireland. Our membership is concerned with what is best described as "First Phase Construction Works" given that those we represent are the first to break ground on all construction projects. IPCA members employ groundworkers, craftworkers, general operatives, construction plant fitters and apprentices in the sector and invest in and own considerable amounts of both heavy and light construction plant, machinery and tools.

For the purposes of this submission, the IPCA has examined the current SEO in terms of (a) labour cost issues and (b) non-labour cost issues. Whilst the IPCA is strongly opposed to any increases in labour costs at this time and respectfully makes a number of submissions in relation to both labour cost and non-labour cost issues to ensure that any new SEO is fit for purpose, at the outset of this submission, the IPCA wants to assure the Labour Court that its main purpose, and indeed hope, in making this submission, is to ensure fairness and consistency across the sector and a decent wage for those who work in it.

ISSUES OF CONCERN WITH AND SUBMISSIONS TO THE COURT IN RELATION TO THE SEO:

1. Labour Costs:

Bearing in mind the pressures that the (a) state of the economy; (b) soaring prices of fuel; (c) possible shortages of fuel; (d) increases in the costs of materials; (e) ongoing delays in the supply of materials and (f) shortages of labour, are putting on the construction sector, it is submitted that any increases in labour costs at this time are not only adding to the problems as outlined but are unsustainable and will ultimately result in the loss of jobs, the collapse of the sector and the exacerbation of the housing crisis.

Submission to the Court:

The IPCA recommends the abolition of the rates of pay and labour costs prescribed in the current SEO pending the establishment of an independent body capable of auditing and monitoring any rates of pay prescribed in any existing or new SEO. This new body should have the power to enter any and all construction sites across the country to

ensure that all workers are being paid the recommended legal rate. At the very least, the current hourly rates of pay and labour costs should be frozen pending the outcome of that independent audit.

2. Lack of Enforcement:

There is a serious lack of fair and consistent enforcement of the SEO's rates of pay in both the private and public sectors. In particular, it has come to the attention of the IPCA that many Local Authorities and State Agencies are not enforcing the SEO's rates of pay. They do this by awarding works to contractors who, keen to win work, bid for the work at the lowest possible cost. In these instances, awarding the works to the lowest price contractor means that Local Authorities and State Agencies are not paying those contractors to whom they award the works enough to enable them in turn to pay the legal rate of pay, contained in the SEO, to their employees.

Whilst IPCA members have complied and will continue to comply with the SEO and pay their employees the legal rate of pay outlined therein, they are not content to pay it in circumstances where it is not applied and enforced in a consistent and fair fashion. Surely, the whole notion of "fairness" was the basis of the SEO in the first place. Currently, the rates of pay contained in the SEO are neither applied nor enforced consistently across the sector and there is nothing fair in that.

Submission to the Court:

It is submitted that it is essential that all aspects of the SEO should be consistently and fairly applied and enforced across both the country and the public and private sectors. A complete reform of the system of enforcement is necessary prior to any further increases in rates of pay and labour costs.

3. Two Tier System:

In a labour-intensive industry like the construction industry, the SEO was supposed to provide a mechanism for ensuring that contractors tendering for work do so on a level playing field with regard to labour costs. However, in reality, through lack of fair and consistent application and enforcement, the SEO has created an anti-competitive two-tier system. It has come to the attention of the IPCA that a number of employers in the sector do not pay the appropriate SEO rates of pay which of course reduces their labour costs. These reduced labour costs give these non-compliant contractors an unfair advantage over those who pay the correct rates, thus affording those who are non-compliant the opportunity to undercut and win work over those who are compliant. In many instances, non-compliant contractors are not only private contractors, but are actually working on behalf of the State. It goes without saying that non-compliant contractors and Local Authorities, who fly in the face of the SEO by repeatedly hiring in cheap labour, are not only an irritant and disincentive to honest, hard working, compliant contractors, but are also causing serious long-term detriment to the sector. Compliant contractors and employers simply cannot, and indeed should not have to compete, with non-compliant contractors and/or employers, no matter who they are.

Submission to the Court:

The IPCA proposes the establishment of a legal body governed by the State that has the ability, authority, appropriate funding and independence to ensure that all employees in both the private and public sectors, are being paid the correct legal rate of pay under any SEO. It is submitted that this could be achieved through the practice of spot-checks or whatever other method, after consultation with those concerned including IPCA members, is deemed most appropriate

4. Skills Shortage:

Failure to comply with the SEO rates of pay on the part of some employers is having the effect of (a) causing an exodus of talent and skill, particularly young talent and skill, from the sector and (b) failing to attract young people into it in the first place. This is particularly evident in rural areas where the non-compliant low rates of pay, particularly on Local Authority works, do not attract young people, with the result that many employees operating plant and machinery are in their 50s and 60s. It is not hard to see that if this continues, the industry will be in crisis in the very near future. Whilst other sectors recruit from abroad and outside the E.U., the current Department of Enterprise, Trade and Employment's Critical Skills Occupations List and Ineligible Occupations List make it difficult for the industry to bring in workers from outside the E.U. and many young and/or skilled workers are understandably leaving the country in order to work in the Australian & Canadian construction sectors instead where rates of pay, stability and career progression are guaranteed.

Submission to the Court:

It is submitted that the consistent application and enforcement of the appropriate rates of pay across the sector will not only retain skilled and experienced labour in the sector but will also attract new unskilled and skilled entrants all of whom will enable this now-more-than-ever essential sector to remain effective, attractive and vibrant.

5. Lack of Representation/Consultation:

The IPCA is dismayed, not to mention astonished, that its members who not only form the bedrock of the industry, but who also employ and substantially represent so many in the sector, have been neither consulted nor considered in any negotiations about the ongoing increases in the SEO's rates of pay and labour costs. Further increases in labour costs, without appropriate consultation and representation, will result in many tried, tested, skilled and experienced employers being forced to leave the sector, thus rendering it defunct.

Submission to the Court:

It is submitted that, going forward, any changes to, or reform of the SEO, should only be made after fair and reasonable consultation with those who substantially represent so many in the industry, including those in the IPCA, both in relation to rates of pay and the implementation and enforcement of the SEO on a nationwide basis.

6. Sustainability/ ESG:

At a time when there is a very real push towards achieving a climate resilient and climate-neutral economy as outlined in the Climate Action and Low Carbon Development (Amendment) Act 2021, it is important that all employers in the sector are both able to, and indeed do, play their part in achieving the goals as set out therein. Change is usually a costly affair and the changes required in the construction sector to achieve the goals of the 2021 Act are no different. Non-compliant State bodies and Local Authorities who do not allow for the SEO's rates of pay are rendering it impossible for the contractors they engage to meet the goals of the 2021 Act. It is incongruous to say the least, that Local Authorities who are obliged to prepare Climate Action Plans, to include both mitigation and adaptation measures under the 2021 Act, are in turn making it very difficult for the contractors they engage to meet their particular goals/obligations under the Act.

Submission to the Court:

In line with the common thread running throughout this paper, it is submitted again that the fair and consistent application and enforcement of the SEO's rates of pay are essential in order to ensure that contractors awarded works by Local Authorities are in a position to support initiatives such as Climate Action Plans, Reduced Carbon Footprints, Waste Action Plans and involvement in the Circular Economy thereby ensuring that Ireland achieves its climate goals and obligations under the Act in a timely fashion.

CONCLUSION

It is worth noting that the original SEO was introduced in 2017 at a time when the economy and indeed the construction sector in general was thriving. Since then global events have had a detrimental effect on the economy. In conclusion therefore, bearing all of the above in mind and in order to stem the ongoing serious loss of revenue to the State, the IPCA recommends:

- The abolition and/or freezing of the rates of pay and labour costs contained in the current SEO.
- A complete and comprehensive review and reform of the current enforcement system used to ensure the fair and consistent implementation of the rates of pay and labour costs outlined in the SEO.
- The strict, fair and consistent application and enforcement of the rates of pay and labour costs contained in the SEO across the entire sector, both public and private.
- The establishment of an independent body to audit, monitor and enforce the SEO's rates of pay and labour costs.
- Fair and reasonable consultation with those who substantially represent employers in the sector, including the IPCA.

While the IPCA members are content to pay their workers the legal rate of pay outlined in the Sectorial Employment Order act we are not content on paying it when the act is not legally enforced. The principle of non enforcement leads to a two tier system. Contractors who are keen to win works will bid for the work at the lowest cost whereby it is not possible to pay the legal rate of pay as set out under the SEO.

- *The IPCA would be unable to support any SEO rate among members when there's no enforcement throughout the country including UK registered companies delivering works in Ireland . There are companies on state projects not paying the SEO Rates. This practice is unacceptable given that firms who do pay the legal rate are unable to win state works.*

The IPCA is, therefore, opposed to any further increases in labour costs at this time. We believe that the SEO requires reform including adequate consultation with industry in order to address concerns in relation to how the SEO is implemented on a nationwide basis.